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1 LAND ACQUISITION

1.1 Land Guidance

1.1.1 Applicability

This document provides general guidance for the procurement of all real property land interests by lease, purchase, condemnation, or otherwise. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24) is **mandatory** and establishes the minimum Real Property Acquisition Policies for appraisal, negotiation and property possession standards and requirements.

1.1.2 Background

The Federal Aviation Administration has been relieved from the requirements of the Competition in Contracting Act, Federal Acquisition Regulations (FAR), Brooks Act, Prompt Payment Act, and other restrictive regulations and laws. This document provides general guidelines for the procurement of real property land interests taking into consideration the changes in laws, rules and regulations.

1.1.3 Guidelines Revised 4/2012

Normally land interests needed by the FAA are for on-airport sites or are site specific and will be acquired through a single source. Acquiring interests in land by the competitive method should be used when the possibility exists that more than one acceptable site exists within the delineated area that could satisfy the FAA.

1.1.3.1 Environmental / Sustainability / Energy Revised 10/2016

During the land acquisition process, Real Estate Contracting Officers (RECOs) are required to follow the requirements as set forth below in the following laws, executive orders, regulations, policies and orders, as applicable:

1. Energy Policy Act (EPAct) of 2005, Publ.L.No.109-58
2. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
3. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
4. National Environmental Policy Act (NEPA)
5. FAA EDDA Order 1050.19B: "Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions" and any revisions thereto or subsequently published Orders pertaining to environmental compliance
6. Resource Conservation and Recovery Act (RCRA)
7. Executive Order 11988, Floodplain Management
8. Guidelines for Implementing EO 11988, Floodplain Management, Oct. 8, 2015
9. Executive Order 11990, Protection of Wetlands

10. Implementing Instructions – Sustainable Locations for Federal Facilities, Sept. 15, 2011

A. Environmental Due Diligence Audits (EDDA) Requirements

FAA real property transactions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits (EDDA) in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities associated with the condition of the property and past activities at the site. After the EDDA process, the determination of whether to waive the performance of an EDDA must be completed prior to the execution of contracts for the acquisition or disposal of real property per 1050.19B.

Off-airport land acquisitions of new sites, or that result in the expansion of an existing site, require an EDDA per 1050.19B. All on-airport leases or no-cost on-airport acquisitions that utilize the Memorandum of Agreement (MOA) template will use the Hazardous Substance Contamination clause, preferably the version included in the template, unless an EDDA is required pursuant to FAA Order 1050.19B. In accordance with FAA Order 1050.19B, any revisions to the Hazardous Substance Contamination clause must be reviewed by and concurred by the appropriate Regional Counsel's office or the Office of the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-500). Any revisions to the Hazardous Substance Contamination clause will not be approved if such revisions result in a provision that increases FAA's potential environmental liability beyond that which can be proven to have resulted directly from FAA's use of the site and/or operation of equipment on site.

<u>Question and Answers concerning FAA Order 1050.19B</u>

Q 1: Is the RECO required to obtain a memorandum as stated in paragraph 1050.19B 1-9b(3) or an environmental due diligence audit (EDDA) if the RECO is executing a new or succeeding lease or exercising an option to renew the land lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. See additional information below:

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.
- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the line of business (LOB).
- For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if EDDA documentation (EDDA report, memorandum and/or waiver) is not provided by the LOB upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB.

Q 2: Are we required to use the "hazardous substance clause" in its entirety for an airport lease or MOA?

A 2: If the requirements imposed upon the Airport Sponsor by FAA conflict with that Sponsor's requirements under state law, and provided that any revisions to, or deletions from the clause which received the concurrence of the appropriate FAA Regional or Center Counsel or the Office of the Chief Counsel for Acquisition and Commercial Law (AGC-500), then the RECO has the authority to revise the Hazardous Substance Contamination clause found in the "Land On Airport Lease Template" (clause #21) and the "MOA". However, under no circumstances may the clause be revised to increase FAA's potential liability beyond that incurred as a direct result of FAA's actions installing, operating, and/or maintaining of the facility or equipment that FAA has placed on the demised premises. An example of an acceptable revision to the Hazardous Substance Contamination clause is set forth below:

> HAZARDOUS SUBSTANCE CONTAMINATION (MAY-00): The Government agrees to remediate, at its sole cost, all hazardous substance contamination on the leased premises that is found to have occurred as a direct result of the installation, operation, and/or maintenance of the (type of facility) facility. The Lessor agrees to remediate at its sole cost, any and all other hazardous substance contamination found on the leased premises.

B. National Environmental Policy Act (NEPA) Requirements

In accordance with the requirements of FAA Order 1050.1E, Change 1, Policies and Procedures for Considering Environmental Impacts, before acquiring (by lease, purchase, or otherwise) any additional land (new sites or expanding existing sites), the FAA must comply with the requirements of the National Environmental Policy Act (NEPA) to the extent applicable to such acquisitions. The appropriate level of environmental review must be determined by the program office Environmental Specialist or the project designated Environmental Specialist.

The three levels of environmental review include:

- Categorical Exclusion (CATEX),
- Environmental Assessment (EA), or
- Environmental Impacts Statement (EIS).

In the absence of Extraordinary Circumstances (e.g., the presence of wetlands), most real property acquisition transactions can be categorically excluded by the program office from further environmental review. Chapter 3 of FAA Order 1050.1E, Change 1 provides information on CATEXs and the application of extraordinary circumstances. Specifically, paragraph 310 provides the list of categorical exclusions for FAA actions involving facility siting, construction and maintenance.

If there are extraordinary circumstances directly applicable to the site acquisition, and consequently, the action cannot be categorically excluded from further environmental review then the EA must be initiated by the Environmental Specialist. If the impacts are not significant the environmental review will end with a Finding of No Significant Impact (FONSI).

If any impact to the site attributable to FAA's acquisition or the proposed use of the site, is found to be significant and cannot be mitigated then an EIS must be initiated by program office. The EIS process ends in a Record of Decision.

The environmental review process must be complete before negotiating the acquisition of any new and additional land interests. The RECO must obtain written notification from the program office that all applicable NEPA requirements have been met, which would include all required EDDA documentation, prior to proceeding with the land acquisition including all required EDDA documentation. The written notification and additional documentation must be placed in the real estate lease file. Once the RECO receives the written notification, the RECO can proceed with the real property transaction for any new or additional land acquisition. The office requesting the land acquisition is responsible for keeping the official documentation for the NEPA review. It is not necessary for the RECO to obtain copies of the CATEX, EA, FONSI, EIS or Record of Decision.

1.1.4 Request

The process for procurement of real property interests can be initiated informally such as a request for market information, potential costs, or availability. Prior to conducting formal negotiations, or awarding of a contract a formal written request certified by an authorized requesting official must be received. At present, formal certification is normally provided by means of a Procurement Request (PR); however, a memo or other form of document can be used as a formal request as long as the document contains an original signature of an authorized requesting official.

If costs are involved in the procurement, a certification of funding must be received prior to obligation of any funds for any purpose or award of a contract.

1.1.5 Requirements Revised 1/2015

Requirements received from the customer may be general in nature or can be very specific. The Real Estate Contracting Officer must ensure that whatever requirements are received, they contain sufficient detail to assure the customer's needs are met. The Real Estate Contracting Officer should work with the customer to clarify unclear or incomplete requirements and verify that the procurement requested is in conformance with applicable regulations. When appropriate, the Real Estate Contracting Officer should advise the customer of any alternatives available to satisfy the requirement.

Improvements to the land accomplished by the property owner (i.e. gates, grading, paving, clearing, fencing, etc.), as requested by the FAA, may be included in the procurement. Costs of improvements shall be evaluated to assure they are fair and reasonable. Payment for costs of these improvements can be by lump-sum payment or amortized over the term of a lease.

On requests for renewal of existing leases, the Real Estate Contracting Officer should determine if the property continues to meet the FAA's needs without any changes. Any changes required in the lease terms should be negotiated and included in the succeeding lease.

Legal description, title information, market survey/appraisal, Environmental Due Diligence

Audit (EDDA), Environmental Impact Statement (EIS), Environmental Assessment (EA) or Finding Of No Significant Impact (FONSI) should be obtained as early as possible in the land procurement process. This information is required prior to making a final offer to the property owner(s) for a new land lease/purchase. The requiring office shall provide the EDDA, EIS, EA or FONSI.

The Real Estate Contracting Officer makes the determination of the appropriate method of procurement to be used to satisfy the requirement, either competitive or single source. A preliminary assessment of potential available sources may be needed to assist in the determination of the procurement method.

1.1.5.1 No Cost Land on Airport Memorandum of Agreement (MOA) Revised 4/2012

The MOA template **must** be used for the acquisition of land on an airport only when the airport sponsor is issued an Airport Improvements Project (AIP) Grant (reference AMS Policy Section 4.2.3.2, Requirements). As defined in the AIP Grant Assurance 28, the airport sponsor is to provide land without cost to the Federal Government for the purpose of any air traffic control or air navigation activity. Although a large majority of airports have received AIP Grant funds, some airports have not. The Real Estate Contracting Officer (RECO) can obtain a list of airports that have received AIP grants through the FAA Regional Airport Division, AXX-600.

GENERAL INFORMATION:

It is recommended that the MOA term be for the greatest number of years (life expectancy) of a FAA facility (as this is a no-cost agreement). Although the grant obligates the airport sponsor to give FAA 20 years of land use at no cost, the airport sponsor, most of the time, continues to get AIP grants that extend the 20-year period for no cost from the date of the last signed AIP grant. Millions of dollars in grant funds will have to be paid back by the airport sponsor if they do not give FAA land use or try to remove FAA facilities from their airports, because the airport sponsor has agreed to Grant Assurance 28.

As mentioned earlier, the RECO **must** use the MOA for all new no-cost land agreements on Airports where AIP Grants are in place. If there is a lengthy list of leases being terminated and superseded by the MOA, the RECO needs to reference an attachment that lists all the leases being superseded. There is an exception to using the MOA on an airport that received an AIP Grant. If there is a provisional agreement attached to an expiring lease, for example, an Air Traffic Control Tower (ATCT), the RECO **must** use the ATCT MOA with the Operating Agreement for Tower (under the land section of the real estate template library).

If facilities need to be added to or deleted from the MOA, the RECO will modify the contract agreement by deleting the old List of Facilities and replacing it with a revised list ensuring the new date change is made on the List of Facilities. A written notice will be sent to the Airport Sponsor and the RECO will retain the latest copy in the acquisition file.

If the RECO needs to change or add clauses to this agreement, they can work with their Regional Counsel to effect any changes on a case-by-case basis. The changes worked with the Regional Counsel should not become a standard for the region but an exception for that case. Any

permanent changes that are found necessary to the standard business practice for the regions need to be worked in conjunction with ALO-200 and AGC-500.

THE MOA PROCESS:

1. The RECO must acquire the new contract number from the PRISM system.

2. The RECO will send out the MOA Template to the Airport Manager. If unsure which clauses are mandatory and required, look up information on the Lease Land Matrix.

3. The RECO should explain as part of the initial discussion with the Airport Manager or the Airport Manager representative the purpose and benefits of the MOA. The MOA is less labor intensive, easier to administer, sign, and provides potential cost savings for both the FAA and the airport sponsor.

4. The list of facilities must be made a part of the MOA agreement. The attached List of Facilities is a sample table used to validate facilities, their GSA number and the associated runway. If the facility is not associated with a runway the term, support, is listed in the R/W column**.** It is recommended that if a clear zone radius and location(s) is not on the ALP, then the facilities clear zone criteria will be noted at the bottom of the attached list of facilities by reference to the appropriate FAA siting criteria order, i.e., ILS clear zone is in the current FAA Order 6750.16C, Siting Criteria for Instrument Landing Systems. The Operations and/or Field and Equipment (F&E) Engineers can help the RECO in determining the latest siting criteria order. Other options are the most recent ALP depiction referenced or if required, a drawing showing the location and size provided by the engineer.

5. If additional facilities are required on the airport, adding the new facilities to the attachment entitled List of Facilities can modify the MOA. A copy will be sent to the airport sponsor and a copy retained in the acquisition file.

6. The RECO should ask the local Service Support Center (SSC) or on-site technician to review the Airport Layout Plan (ALP) and the List of Facilities to verify both the accuracy of the list and location of the facilities. Also the RECO should contact the Airport Manager or their representative and request that they verify the facilities as well. If there is a discrepancy between the lists given by the SSC or the Airport Manager, the RECO will notify the appropriate parties and work on a solution with the SSC.

7. Highlight the FAA facilities on the ALP before putting the drawing in the contract file on the documentation side for informational purposes. The most recent ALP is part of the MOA only by reference, because it allows the ALP to change as new ALP updates occur. This reduces the amount of mandatory modifications and takes care of the situations in which FAA Real Estate has not been notified when changes occurred on the ALP drawing. It is recommended that Logistics Service Area Real Estate office work with their Regional Airports Division to be notified of new ALP updates when FAA Airports Division receives them.

8. The policy of the FAA is not to restore. However, Restoration Clause - Alternative A

may be used on a case by case basis when non-restoration is not feasible or appropriate. If the RECO is using this alternate restoration clause, they must get the line of business to provide written concurrence on use of this alternate clause. Another alternate is the MOA can remain silent and not have any reference to restoration or non- restoration if the airport sponsor will agree.

9. Once executed, the RECO must provide copies of the MOA to the airport sponsor; input the MOA in the Real Estate Management System (REMS); and appropriately document the real estate file.

1.1.5.2 Succeeding Leases/Lease Renewals Revised 7/2012

General Requirements: In general, when a lease for land for an off-airport NAS facility is expiring, the requirements are not re-competed, unless a compelling reason to relocate is established. This is due to the long service life of facilities installed on the leased land, as well as the cost of installation. Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO may initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. The RECO must ensure that all new and revised clauses are incorporated in the succeeding lease agreement. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses that may be added by reference.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport navaid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. This time period should be extended if the RECO is aware of issues that could jeopardize timely

completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

1.1.5.2.1 Holdover Tenancy Revised 1/2015

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded, then the RECO must follow the steps in the AMS policy as per 4.2.3.2.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy. In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a “holdover tenant.” If the expired lease does not have a “holdover” clause, the laws of the state in which the facility is located will determine FAA’s rights of occupancy.

As mentioned under the policy, the RECO must notify his manager, regional counsel, and the LOB Budget office of issue.

If the RECO is unable to get the lessor to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months. Prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period, and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year, they shall provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency reservation of funds, and to await further instructions from the Accounting on when to make any payments. Note: The RECO must document in the file a justification for the emergency reservation of funds. Below is information for dealing with holdover tenant with accounting in the financial system.

1. FAA cannot use its holdover status to avoid its obligation to pay for leased facilities. This may necessitate a memo for the emergency reservation of funds or temporary supplemental lease agreement so that PRISM can accept the obligation without a signed contract. The interim contract number will be the old lease number with an “OH” suffix to the old lease number, or will be a new lease number.

2. Delphi Miscellaneous Obligating Documents (Delphi MOD) will be used only for FY200X funds that are due to the lessor of a holdover lease where funds have not yet been obligated or paid in FY200X for the time already lapsed. Instructions for recording in Delphi in accordance with year-end closing instructions are on the Delphi website (FAA only). The Delphi M.O.D. is regularly used to accrue utilities, credit card purchases, etc. in Delphi for transactions that will not clear before year-end. A Delphi M.O.D. will not be used for leases where FAA is a holdover tenant except in the instance mentioned above.

3. Note if the LOB validates, it can pay the back rent from current year funds, it is not necessary to perform the emergency reservation of funds.

During this period the RECO must continue to negotiate a lease extension even if considering a condemnation posture. Once the RECO has negotiated a final lease agreement, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.

1.1.6 Procurement Method Revised 4/2012

The single source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that specific location, site, or unique need is required to meet the FAA. s mission, or when it has been determined that only one source is reasonably available that can meet the requirement.

Competition is appropriate when the requirement is not site or location specific and the reasonable possibility exists that there is more than one provider that can meet FAA needs. Competition should be utilized whenever practical and reasonable. Competition is obtained by providing two or more sources an opportunity to express an interest in satisfying the requirement. Advertising is not required. Interest may be expressed either orally or in writing.

1.1.7 Advertising

If the requirement is not for a site specific location and multiple sources may be available to meet the requirement, then advertising to allow for competition may be appropriate. When advertising the Real Estate Contracting Officer should utilize the publicizing method most likely to result in receipt of offers appropriate to satisfy the specific requirement. Advertisements in most cases will be by local or area wide newspapers; however, this is not limited and may include commercial trade journals, electronic bulletin boards, and the Commerce Business Daily. Multiple advertising may be utilized if considered necessary.

The Real Estate Contracting Officer determines need or requirement for advertising. Data from a market survey may be used to determine the need for advertising.

1.1.8 Right Of Entry Revised 4/2012

The Real Estate Contracting Officer should ensure that a "right of entry" permit to the property for any purpose has been obtained from the land owner prior to ingress by an FAA employee or any of its agents. Legal counsel should be consulted for the proper action to take if the landowner refuses to grant a "right of entry" permit. Entry onto private property without appropriate rights may constitute trespass.

1.1.9 Survey / Title / Appraisers

Competition for obtaining the services of surveyors, appraisers, or title companies, is not required, however, obtaining competition for providing these services is encouraged as a sound business practice and should result in award of a contract at the most reasonable cost. Ranking of surveyors as required by the Brooks Act, does not apply to the FAA.

1.1.10 Market Survey / Appraisal Revised 4/2012

A market survey or appraisal should be accomplished for each land procurement where costs are involved.

Market survey data can be used to: determine the availability of properties within the delineated area; eliminate unsatisfactory properties from consideration; determining the willingness of landowners to provide property for the FAA's use; determining fair market rents; determining suitability of responses to advertisements; and, determining estimated cost for the purchase of property.

An appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. An appraisal is used to determine the fair market rent, and value or just compensation for purchase of a specific property.

1.1.10a. Market Survey

A market survey is required for each new land lease or renewal where rent will be paid. The survey does not need to be formal; however the RECO **must** document the lease contract file with the market survey results starting September 30, 2006. In general, the more expensive the lease the more information is required to support the rental amount. If there is a lack of survey data then an appraisal may be appropriate.

Market survey data may be used to determine fair market rent and to determine the estimated cost for the purchase of property for a lease vs. purchase analysis. Market surveys can be conducted by telephone, mail, on-site visits, or a combination of methods. The survey can be informal - just data gathering, or formal - where a request for written data is made.

When determining estimated market values, data should be obtained from a minimum of three sources. Sources may include, but are not limited to: local real estate offices; other lessees, city/county/parish/township assessors; local appraisers; internet sites; and, governmental offices dealing with land such as the Soil Conservation Service, Bureau of Land Management, and Forest Service.

The RECO **must** develop his own format for writing market surveys; however, any format must contain the following four basic parts.

- ☐ Property Identification – The subject property should be identified as accurately as possible using legal descriptions, plats, FAA drawings, state, county, land lot numbers,

tax map number, parcel number, and acreage.

- ☐ Data – Sources should be reliable and accurate. Some surveys may require more detailed information than others. Data incorporated into the survey should be verifiable and the name, company, and telephone number of the person supplying the data should be included; data should be the most current available and, in any event, should not be more than one year old. Examples of data sources are: City and County Tax offices, Farm Credit Services, Farmers Home Administration, appraisal companies and real estate sales people. The data is typically dates of sale/lease, size, and sales price or lease amount, price per acre, current use and probable highest and best use.
- ☐ Analysis – Once data is gathered, the information needs to be analyzed. Any sales or lease information that is used should be from arms-length transactions with willing buyers/sellers or lessees/lessors. Any unusual circumstances should also be recognized and considered. Sales or lease data for property that is most similar to the subject usually provides the best indicator of value what FAA should pay.
- ☐ Conclusions of Value – After analyzing the data, a value range can be established and conclusion of value can be reached. Analyze and compare each sale/lease, and then make adjustments to the subject. Correlation of the information results in a conclusion of value that amount to be paid is justified and reasonable.

1.1.10b. Appraisal

An Appraisal is a formal written statement that a qualified appraiser prepares independently and impartially, giving an opinion, as of a specified date, of the defined value of a described parcel of real property, supported by the presentation and analysis of relevant market information. The appraisal of the market value of any real estate interest is not a matter of exact determination, and appraisers do not “establish” or “determine” the value. An appraisal is an estimate of the current value based upon, and supported by, an analysis of all the factors, physical, economic, and social which influence the present and future benefits to be derived from the ownership of the property appraised.

A. The need for or use of appraisals:

Before the initiation of negotiations, the FAA shall establish an amount which it believes is the just compensation for the real property. The amount shall not be less than the approved appraisal of the fair market value of the property, taking into account the value of allowable damages or benefits to any remaining property.

The RECO sends out an appraisal request letter (create link) to request appraisal services. The RECO must use the Appraisal SOW (create link) . This SOW provides the information that should be given to the appraiser for inclusion in the appraisal, such as:

- ☐ legal description of property
- ☐ ownership data/title information
- ☐ results of the EDDA
- ☐ on new property the results of the EIS, EA or FONSI
- ☐ any other data that could have an effect on the property. s value

Note: Attached to the SOW is a certification for the appraiser to sign regarding his/her service to the FAA.

- ☐ No appraisal is required for:
  - o Purchase of properties where the just compensation is estimated by the Real Estate Contracting Officer to be less than $2,500.00. (An appraisal is required for any property to be purchased whose value is estimated to be $2,500.00 or greater);
  - o the owner's is donating the property and releases the FAA from its obligation to appraise the property:
- ☐ A value finding appraisal (opinion of value) can be used for properties whose value is estimated to be $2,500.00 to $5,000.00.
- ☐ The Real Estate Contracting Officer shall determine the appropriate type of appraisal method to be used.
- ☐ The real estate appraisals should be performed in accordance with generally accepted appraisal standards as set by the Appraisal Standards Board of the Appraisal Foundation.
- ☐ For the purchase of real property the appraisal should include a before and after valuation of the property to determine the value of any severance damage.

B. Requesting Funding from ALO for Appraisals

When a RECO is requesting funding for an appraisal, the RECO must fill out the ALO Appraisal Questionnaire (create link). This questionnaire can be sent electronically to ALO. Upon receipt of the Questionnaire, the RECO will receive a response within fifteen (15) working days regarding the status of the request. If ALO requires further information, they will notify the RECO within the same time frame of 15 working days.

C. Information on determining a Qualified Appraiser

The appraiser and review appraiser must each be qualified and competent to perform the appraisal and appraisal review assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

Most states have various levels of licensing which are based on the appraiser's experience. Only individuals may hold appraiser licenses. There are no appraisal licenses issued to business entities. An appraiser that is licensed or certified has received a State designation based on the quantity and type of appraisal assignments. They then take a state exam and become either licensed or certified by that State (depends on how the state issues it). Some states have Reciprocity in that they will recognize and allow appraisers from other states to appraise in their state for a small fee.

The RECO must use an appraiser which is qualified as a State Licensed or Certified appraiser with a national designation of MAI or SRPA

- ☐ MAI is a national designation which stands for "Member of Appraisal Institute". There is also another designation from the Society of Real Estate Appraisers. It is broken down into SRA for residential appraisals and SRPA for all types of appraisals. About 10 years

ago, the two merged and at the present time, is still hanging on to their designations. For most types of appraisal assignments the RECO must use an appraiser who has either an MAI or SREA in addition to the State Certification. It would be acceptable to use appraisers who are certified as both MAI and SREA so that should be fine.

D. Review appraiser

The term "review appraiser" is used rather than "reviewing appraiser," to emphasize that "review appraiser" is a separate specialty and not just an appraiser who happens to be reviewing an appraisal. The review appraiser should possess both appraisal technical abilities and the ability to be the two-way bridge between the FAA's real property valuation needs and the appraiser.

Appraisals and review reports must comply with the Uniform Standards of Professional Appraisal Practice and the Uniform Appraisal Standards for Federal Land Acquisitions.

The review appraiser is responsible for ensuring that the appraisal report and its conclusions are reasonably supported by market information and complies with agency regulations, as well as, Federal and professional appraisal standards.

The RECO must note that the review appraiser qualifications are the same as above and should look for a State licensed or certified appraiser with national designation MAI or SRPA.

The RECO can acquire the services of a review appraiser in two ways:

1. Directly contract for a review appraiser; or

2. Contract with DOI center for excellence appraisal service.

Other resources

BLM Land Exchange Regulations:
http://www.access.gpo.gov/nara/cfr/waisidx_02/43cfr2200_02.html

U.S. Department of Justice Uniform Appraisal Standards for Federal Land Acquisitions: http://www.justice.gov/sites/default/files/enrd/legacy/2010/11/16/Uniform-Appraisal-Standards.pdf

The Appraisal Foundation: http://www.appraisalfoundation.org/

The Appraisal Subcommittee National Registry of state certified and licensed appraisers:
http://www.asc.gov/

Professional Appraisal Organizations

American Society of Farm Managers and Rural Appraisers: http://www.asfmra.org/

American Society of Appraisers: http://www.appraisers.org/

Appraisal Institute: http://www.appraisalinstitute.org/

1.1.11 Lease versus Purchase Analysis Revised 4/2012

Except as noted below, a lease versus purchase analysis must be made for all new land interests to be acquired and existing land leases to be renewed, taking into consideration the expected term the property will be needed. The analysis is used to determine the most cost-effective method of procurement - purchase or lease. Data from a market survey or appraisal must be used for input into the analysis. If the analysis shows purchase to be the most effective method of procurement, the RECO must initiate land purchase action in accordance with established procedures.

If cost is not a determining factor, such as when a landowner is unwilling to allow FAA use of the property or demands unreasonable lease terms, and eminent domain proceedings are needed, a lease versus purchase analysis is not required.

The RECO should note that the FAA does not routinely accept ATCT towers from nonfederal entities due to the maintenance and repair and final disposition costs. It is not fiscally sound to undertake ownership even if it is offered at no-cost. All purchases of ATCT should be reviewed by legal counsel and ALO corporate real estate office.

1.1.12 Term Of Lease

As provided in 49 U.S.C., Section 40110 (b)(2)(A) the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options.

For purposes of this guidance a firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate

acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the real estate contracting officer (CO), there is any doubt about the long term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing that consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the real estate CO.

1.1.12a. Firm-term authority for land leases only:

Regions/Centers:

> 1-20 Years Firm-term Unlimited. Leases not exceeding 20 years including all renewal periods. Unless a firm-term lease is clearly advantageous to the FAA, suggest the "TERM" clause in the standard land lease that provides for 30 day termination by the Government be used.

However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Real Estate Policy Branch (ASU-140), in order insure all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Real Estate Policy Branch (ASU-140).

1.1.12b. Other Lease Considerations:

To provide some protection to the FAA the lease should include a clause allowing the FAA to sublease the premises in whole or in part.

1.1.13 Evaluation / Negotiation Revised 4/2012

Based on the results of market surveys or appraisals the Real Estate Contracting Officer must negotiate with property owners to obtain the necessary land interests at a fair and reasonable cost.

Costs of any improvements to the real property to be included in the procurement must be evaluated to ensure they are reasonable.

When using the competitive method of procurement, all offers received must be evaluated to ensure they can satisfy FAA needs. The total cost to the FAA should be a consideration in

making the final selection. In addition to land costs, items such as the following should be considered for each site: site preparation costs, costs for construction of access roads, special maintenance considerations, environmental considerations, and utility service availability and cost.

If multiple offers are received and a competitive range is established, any offer falling within this range may be selected for final negotiation without further consideration of selection factors.

Purchase or lease costs must be comparable to costs charged to the general market. The value of the Government's enhancements, or intended use should not be used in determining the procurement or lease cost of the real property.

When appropriate, environmental cleanup costs for existing conditions must be considered in the negotiations. If environmental contamination is found, the requesting office must state in writing that they request continuation of the procurement.

All reasonable efforts should be made to conclude negotiations to the satisfaction of the concerned parties. Determining when to cease negotiations with landowners who demand unreasonable fees or are unwilling to allow the FAA use of their property is at the discretion of the Real Estate Contracting Officer. Eminent domain proceedings, in accordance with established procedures, should be initiated when negotiations have reached an impasse and a satisfactory conclusion to the procurement cannot be reached. Protracted negotiations are generally not in the best interests of either party.

1.1.14 Contract Execution Revised 1/2015

The Real Estate Contracting Officer will make any necessary changes or additions to the contract based on negotiations with the landowner. RECO must have legal review where deviation from standard clauses is made in a contract. Legal review is required on purchase contracts and legal counsel shall provide an opinion of title. The Department of Justice rules on condemnation and title requirements must be followed

The Prompt Payment Act does not apply to the FAA; however, the FAA should make payments within 30 days after acceptance or as provided in the contract. As determined by the Real Estate Contracting Officer, the FAA may apply late payment interest to payments made within the scope of real property contracting actions.

The Government is to make all payments through the use of EFT (P.L. 104-134). See Section D., Real Estate Asset Management, for guidance.

The Real Estate Contracting Officer shall send an appropriate number of contracts to the property owner for signature and return for final execution. All off-airport leases and purchase documents (deeds) shall be recorded in the appropriate County/Parish/Township office.

1.1.15 Documentation for Land Contracts and Files Revised 7/2014

Sufficient documentation must be developed to explain and justify the real estate acquisition action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. RECOs must use a 6 part folder for all acquisition files.

Contract Review Process (Land)

RECOs must fill out the appropriate Contract Clause Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file

File Review Process (Land)

The File Review is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

1.1.16 Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (49 CFR Part 24).
(http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/non_regulatory_supplement/index.cfm) and (http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm).

This Act was intended to establish a uniform policy for the fair and equitable treatment of persons who are displaced as a direct result of programs or projects that are undertaken by a Federal agency **or** with Federal financial assistance. The ACT ensures that displaced persons shall not suffer disproportionate injuries as the result of programs and projects designed for the benefit of the public as a whole and minimizes the hardship of displacement on such persons. **The ACT also establishes minimum Real Property Acquisition Policies for appraisal, negotiation and property possession standards and requirements.**

The Uniform Act applies to any Federal or federally assisted program or project if Federal funding is used in **any phase** of the program or project. **Provisions of the Uniform Act are mandatory and are applicable to each Federal agency that administers programs or provides financial assistance for projects, which involve land acquisition or relocation assistance**.

The Uniform Relocation Act of 1970 was enacted January 2, l971 and amended by: the 1987 Uniform Act Amendments, 1991 Public Law 102-240 and the Nov 1997 Public Law 105-17. The

Final Rule on the 1997 amendments was published in the February 12, l999 Federal Register (Volume 64, Number 29, pages 7127-7133), http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm. This final rule provides that "an alien not lawfully present in the United States shall not be eligible to receive relocation payments or any other assistance provided under the Uniform Act unless such ineligibility would result in exceptional and extremely unusual hardship to the alien's spouse, parent, or child and such spouse, parent, or child is a citizen or an alien admitted for permanent residence". The final rule requires that persons seeking relocation payments or assistance under the Uniform Act certify, as a condition of eligibility, that they are citizens or are otherwise lawfully present in the United States. The format of the certification is left up to each Agency. The certifications may be for individuals or a family [in which case the head of household may certify as to the status of other family members (see section 24.208(a)(2))]. FHWA has determined that the final rule applies to businesses as well as individuals and believes the prohibition on benefits must be applied differently to differing "ownership" situations, such as: a sole proprietorship, a partnership or a corporation. Any payments that a business is eligible to receive should be reduced by a percentage based on the prorated shares of the ownership between eligible and ineligible owners.

The Uniform Act designates the Department of Transportation (The Department) as the lead agency for implementing the Uniform Act. The Department has delegated this responsibility to the Federal Highway Administration (FHWA) [49 CFR 1.48(cc)]. Pursuant to section 213 of the Uniform Act, the FHWA promulgated a single government–wide regulation for implementing the Uniform Act, at **49 CFR Part 24** (http://www.fhwa.dot.gov/real_estate/uniform_act/policy_and_guidance/non_regulatory_supplement/index.cfm).

Note that as of 6/30/1999 the final rule has not yet been incorporated into 49 CFR Part 24; therefore, to obtain text of the final rule go to: http://www.fhwa.dot.gov/real_estate/archives/uafnl99.cfm

Helpful Reference Material Available from Federal Highways (Available in hard copy or on the Internet at http://www.fhwa.dot.gov/real_estate/):

- ☐ ***Your Rights and Benefits as a Displaced Person Under the Federal Relocation Assistance Program*** – Publication No. FHWA-PD-95-010
- ☐ ***Acquiring Real Property for Federal and Federal-Aid Programs and Projects*** – Publication No. FHWA-PD-92-006 HRW-11/5-92(20M)E
- ☐ ***The Appraisal Guide*** – Publication No. FHWA-PD-93-032 HRW-22/9-93(15M)P

Other Helpful Reference Material:

1. ***FAA Order 5100.37A, Land Acquisition and Relocation Assistance for Airport Projects, dated April 4, l994***. This order is written for the Airports Grant Program, but contains a lot of information that may be useful to the Real Estate Contracting Officer.

1.1.17 Outgrant Revised 1/2015

Outgrants, formerly known as outleases, are used when there is a secondary need for unutilized or underutilized FAA leased/owned land or space by either another government entity or third party and such use does not interfere with current or known future FAA needs for the property.

Maximum Term: Starting October 1, 2014, outgrants, new or succeeding, are not to exceed a 5-year term. If the FAA does not own the underlying land or building/structure but is leasing it from someone else, the term of the outgrant cannot exceed the term of the underlying FAA contract or 5 years, whichever is less. Unexercised options are not to be included when calculating the remaining term of the underlying contract. For instance, if FAA is leasing land for a Very High Frequency Omni-directional Range (VOR) and the underlying lease has 3 years remaining on the original term and one unexercised 5 year option, the maximum term for any outgrant shall not exceed three years.

Cancellation Rights: Starting October 1, 2014, outgrants, new or succeeding, must contain the right by the FAA to cancel at will -- at any time and for any reason. Cancellation rights by the grantee are allowed but should require sufficient notice to the FAA to inspect the property and to determine if any restoration is required.

Outgrant (Application Form 1.3.18 for land or 2.6.31 for space): Requesting parties will be required by the RECO to fill out an Application for Outgrant Form found in the Real Estate Template Library for all outgrant requests, including new uses, modification to existing uses, or to request a succeeding outgrant. The RECO will review the request against current real estate records to determine the status of the property, including whether FAA holds sufficient legal interest in the property, and real estate restrictions, if any, on FAA's ability to grant the use. The RECO will forward the Application for Outgrant, along with pertinent information identified during the real estate review, to the head of the line of business (LOB) or LOB designee responsible for the property.

LOB Concurrence: The LOB shall conduct a thorough review and analysis to ensure the secondary use will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased liability. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the RECO must obtain, in writing, concurrence from the LOB, along with any stipulations imposed by the LOB as a condition of issuing the outgrant.

LOB Non-Concurrence: If the LOB does not concur with the outgrant request, the LOB will provide the reason for non-concurrence to the RECO in writing. The RECO will send a letter to the requestor denying the request.

Retention Period and Document Location for Denied Applications: Letters of denial for new requests and the initial application form shall be kept in a central file location within the Real Estate office for a minimum of 1 year after denial. After 1 year, the documentation can be destroyed. All letters of denial to modify existing outgrants or to enter into succeeding outgrants shall be filed in the official outgrant project file.

Permit and License (Outgrant) Forms: The RECO must use the appropriate Outgrant Permit Form or the Outgrant License Form. The Permit form is used solely for Federal government entities. The License form is used for all other entities, including State or Local governments and third parties. The Office of the Chief Counsel or the appropriate Regional Counsel must

approve any modifications to the standard template.

Questions and Answers:

Q1. Outgrant vs. Reimbursable: How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable agreement?

A1. An outgrant license or permit is not considered a reimbursable agreement because it does not result in the direct provision of a supply or a service by the FAA. Rather, an outgrant gives the grantee permission to utilize an FAA real property asset. Utility, janitorial, or other services that may be provided because of the outgrant are incidental to the use of the subject real property. The RECO must use the award designation letter J under the PRISM system for an outgrant award number.

A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, the FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. The RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant, which should represent a fair market value for use of the property and the cost of any additional services and overhead costs provided by the FAA.

Q2. Cost Structure: How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the outgrants in the following order of preference:

- Based upon fair market value along with any additional services and overhead provided to grantee;
- Based upon the FAA cost and overhead only; or
- A no cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Waiving Rent: Under what circumstances should a RECO waive 1) collecting the fair market value for an outgrant and only charge for services provided or 2) collect no monetary consideration at all?

A3. If the grantee is providing non-monetary consideration to the FAA that is of a direct benefit to the National Airspace System and the cost of any services provided by the FAA to the grantee are minimal, then the RECO may waive collecting monetary consideration with LOB approval. The value of the non-monetary consideration should be of equivalent or greater value than the fair market value waived. The RECO should not waive the cost of the services and related overhead in the outgrant if the FAA is providing more than minimal services to the grantee.

Q4. Specify Use: Should the outgrant specify the use of the property?

A4. Yes. The outgrant must state the specific use of the property. Examples: agricultural use including type of crops and maximum height of crops allowed; grazing use including type and maximum number of animals; mining rights, including what is being mined and exactly how it

will be extracted; communication site, including type, maximum number of frequencies, etc.

Q5. Options: Can outgrants have options?

A5. No.

Q6. Termination: Must outgrants be revocable by the FAA?

A6. Yes. The FAA must be able to terminate an outgrant at any time and for any reason during the term of the outgrant. All outgrants will contain an FAA revocation clause. Outgrants are considered a form of temporary disposal until the property is needed by the FAA or the FAA elects to permanently dispose of the property. FAA must be able to regain control of the property at any time. A grantee looking for a more permanent use should seek other property. For outgrants on property that the FAA does not own (e.g. leased property), the revocation clause in the outgrant must be structured to ensure the FAA can comply with all contractual termination rights of the underlying contract (lease).

Q7. Transferability: Can the licensee or permittee transfer the rights of the outgrant?

A7. No. Outgrants are issued exclusively to the licensee/permitee for limited time and for a specific purpose, the licensee/permitee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

Q8. Emergency Service Providers: Can we waive the fee for an emergency service agency that requests an outgrant from the FAA?

A8. The criteria to charge rent to an emergency provider is not whether they provide emergency services but whether the grantee is a state or local government or the grantee is a private entity. If the emergency service or 911 provider is another government entity, such as a state, county, or city government, the RECO can waive the rent for use of the property. However, the government entity should make their own improvements, be liable for what it does on the property, and pay for any FAA-provided services based on actual costs and overhead (i.e. utilities, pro rata share of road maintenance, and any other services that FAA renders for the grantee).

If the emergency service provider is a private entity, then the RECO will need to charge fair market value for use of the property along with any FAA provided services. The FAA must not give an unfair advantage to one private entity over another. Further, if other private property is available nearby, the emergency service provider should be encouraged to seek use of the private property and not the FAA property.

Q9. Liability Insurance: Is the grantee, as a condition of the outgrant, required to carry general liability insurance?

A9. It depends on whether the grantee is a Federal agency, a State or local government entity, or a private entity (all others). As a general policy, the FAA requires that any use of FAA property by a grantee is adequately covered against potential liability and/or damage caused by the use. In addition to general liability insurance, this must include coverage of costs due to

potential damage to the environment (e.g. wetlands, endangered plants, etc.) or through the release of hazardous substances or petroleum products on the property. RECO's must obtain a copy of the Certificate of Insurance prior to allowing any new or continuing use (in the case of a succeeding lease) of the property and place the copy in the real estate file. Since insurance policies are generally written for only one year, the RECO is to obtain a copy of any successive insurance coverage period from the grantee during the term of the outgrant.

- Other Federal Agency: Federal agencies are self-insured and are generally prohibited from paying for insurance. In lieu of insurance, the Federal agency agrees to pay for any damage caused to the property subject to the availability of appropriations.

- State/Local government: All State and local government entities are required to provide insurance; however, if the government entity is prohibited from providing insurance due to state or local law, the RECO will need to work with the government party, the LOB, and FAA legal counsel to develop an acceptable alternative liability clause.

- Private Entity: Effective October 1, 2014, all private entities must obtain and maintain a general liability insurance policy as a condition of use of FAA property. All outgrant licenses with private entities shall contain the standard general liability insurance clause found in the Outgrant License Form for non-Federal entity.

1.1.18 Contracting Officer Representative (COR) Added 1/2007

a. Designating a Contracting Officer's Representative. The RECO may designate an individual representative, such as a COR to facilitate administration of a lease or contract. The RECO will designate a representative by written memorandum describing the specific authorities and responsibilities delegated to the representative. The RECO should ensure that the assigned representative has adequate training at the time of the assignment or will receive training within three months of being assigned the responsibility. Based on the yearly anniversary date of the lease/contract, the RECO should also obtain from the appointed representative, an annual validation that the representative has participated in adequate refresher training during the year.

The RECO provides a delegation memorandum to the appointed COR at the time the assignment is made or changed in any way.

b. Authority of the Representative. A duly-assigned representative is authorized to perform the actions delegated by the RECO. The representative of the RECO may assume the designated authorities when appointed, provided the COR has demonstrated adequate training. If the COR does not have adequate training at the time of the assignment, the COR may assume designated authorities for a provisional period, not to exceed three months, until completion of adequate training. While performing as a representative, the COR maintains current knowledge of the COR duties and responsibilities through formal training or other means and advises the RECO annually. The RECO should consider the specific requirements and needs of the lease/contract in determining the support required from the representative and clearly enumerate the authority granted to the COR in a written memorandum of delegation. A sample delegation memorandum is included herein. One memorandum of delegation for all situations may not be appropriate since contractual situations are distinct and have varying needs. Therefore, the sample

memoranda may be modified to reflect the specific needs of the lease/contract and the RECO.

c. Changing the COR. To change the COR on a lease/contract, the RECO must revoke the previous delegation and issue a succeeding delegation to the new COR, Both of these memoranda must be in writing and issued concurrently.

d. Information to the Lessor/Contractor. The RECO furnishes copies of all memoranda of delegation, revocation, changes in authority, or re-delegation to the lessor/contractor to make them aware of the authorities and limitations of the COR. A sample lessor/contractor notification letter is included herein and may also be modified to reflect the specific needs of the contract and the RECO.

1.1.19 Condemnation Added 4/2009

When negotiations reach an impasse and FAA has a need for real property, the FAA may initiate eminent domain proceedings. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings.

The FAA almost exclusively uses Declarations of Taking (DT) when it acquires property by eminent domain since the majority of FAA acquisitions involve property that the FAA currently leases and which already support FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a DT to acquire immediate title to the property, which permits the agency to continue operating the facility on the property. The Agency should avoid using condemnation for short-term acquisitions.

The RECO must follow the FAA procedural guide on “Acquisition of Real Property by Eminent Domain”. When preparing the condemnation file, the RECO must use the condemnation checklist.

Exceptions to the procedural Guide for FAA on Acquisition of Real Property by Eminent Domain

- Condemnation Package may be decided by Service Area such as RECO prepares the condemnation assembly for legal counsel who then puts the declaration of taking together and sends the package to DOJ. (reference to FAA guide page 11, Special Consideration for Expiring Leaseholds, paragraph 3 and page 15, Preparing a Condemnation Assembly, paragraph 1)
- Each Service Area needs to work with the Assistant US Attorney; however some service area the legal counsel receives the name of the AUSA and works with them and other service areas the RECO works with the AUSA. (Reference to FAA Guide on page 21, Post-Transmittal Activities, paragraph 1.)

A. WHEN CONDEMNATION IS NECESSARY

- Price disagreement

- Title defects
- Missing or unknown landowner
- Landowner violates terms of contract for sale
- Landowner's request or necessity
- Landowner unwilling to sell at any price

B. PRE-CONDEMNATION PROCESS

It is extremely important for the RECO to start lease renewal process at least 18 months prior to lease expiration allowing sufficient time for the agency to make an economic decision whether to institute a "straight" (complaint-only) condemnation (with full adjudication) or the DT. The agency will decide if it is in its best interest to condemn, continue leasehold, or possible relocate the facility. Should a "straight" condemnation not be fully adjudicated prior to expiration of the lease, a lease extension or leasehold condemnation should be completed.

A feasibility study or business case should be prepared by the using service/requesting office to determine the remaining operational facility life. This is especially important with changing technology and the agency's plan to decommission facilities. The feasibility study or business case will be approved by AJA-62. The using service/requesting office will provide the determination to the RECO on the continuing need requirement of the facility

A lease versus purchase analysis must be conducted in order to determine the most economical acquisition method.

If it is determined it is in the best interest of the Government to acquire the property by direct purchase the RECO will follow the standard procurement process as outlined in AMS. The RECO will determine the estates to be acquired, obtain an accurate survey, obtain title evidence, obtain an initial appraisal report and assess any environmental issues.

If leasing property it is particularly important for the RECO to conduct a market survey and document the lease file. This information will be extremely important if the RECO ends up with a condemnation situation.

C. ACQUISITION OF REAL PROPERTY BY CONDEMNATION

The FAA should not automatically file a DT in every condemnation but should consider using the "straight" condemnation, if determined to be in the agency's best interest. Finally, for each condemnation, a written determination and decision paper should be developed on whether the "straight" or DT condemnation should be used.

Note: The purpose of the "straight" condemnation would be to minimize large adverse awards by the Court under the DT method, and to give FAA flexibility to cease the condemnation action should it be determined not to be in the agency's best interest at a later time.

In addition to condemning the fee or fee and restrictive easement, leasehold condemnations should also be considered. Leasehold condemnations may be appropriate when there is a very high risk of a large adverse award for a fee condemnation or the remaining facility operational

life is ten years or less.

- A survey will be conducted on the property. The survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc.
- The title company should be provided with complete and accurate survey information so it can conduct a title search over the appropriate number of years. Copies of recorded documents should be obtained (which could be voluminous). The title search should also include any out grants or leases given by the former owners.
- In cases where facilities require clear zones, because of potential interference with the operations of the facility, then fee simple of the entire property should be valuated, and also the value of fee only for the site with a perpetual easement for the clear zone area. In all appraisal assignments, the value of leasehold for the facility life should be provided.
- The real estate contracting officer (RECO) actions must be consistent with the FAA Order 1015.19B, Environmental Due Diligence Audits, in the Conduct of FAA Real Property Transactions when a condemnation is in process.

The RECO is prohibited from providing the landowner with a copy of the appraisal report

Note: If the FAA is paying rent and the lessor accepts the rental payment. The FAA is still considered in a holdover tenancy.

1. Time line for submissions to DOJ

- When using the Declaration of Taking method the submission of the condemnation assembly to DOJ must be at least sixty days prior to the date of lease expiration.

    - Note: RECO please remember to clearly state all the estates that you are taking under the Declaration of Taking. For further information please see Acquisition of Real Property by Eminent Domain, Appendix Four paragraph 6 subparagraph c.

- If the FAA determines that a “straight” (complaint-only) condemnation is appropriate, then the condemnation assembly should be sent to the DOJ at least one year before lease expiration.

- The FAA does not have to get title insurance policy however the FAA is required to get a title opinion from either DOJ, or someone to whom that authority is delegated in FAA.

2. Key Points for a RECO to remember regarding condemnation

- Condemnation is the process by which property of a private owner is taken for public use, without his consent, but upon the award and payment of just compensation. Condemnation is the right of the state to reassert its domain over any part of the soil of the state on the account of public exigency and for the public good. For all practical purposes the terms “condemnation” and “eminent domain” are synonymous.

- An available option to the US Government under the Constitution.
- You have the authority and responsibility to recommend when condemnation is appropriate.
- Cost/benefit of condemnation should be considered; a value issue: "what is in the best interest of the U.S. Government?"
- Used after earnest negotiations with property owner reaches impasse.
- A "Declaration of Taking" is a document used in a condemnation to give the government immediate use of the property.
- Involve FAA attorneys as early in the process as possible and consult with regional/center and headquarters counsel regarding condemnation issues.
- Document, document, document!
- The negotiator's report is extremely important documentation in a condemnation case
- DOJ rules must be followed (4.2.3.7& "Preparing Condemnation Assemblies for Submission to the Department of Justice")

1.1.19.1 Acquisition of Real Property by Eminent Domain - Procedure Guide for the FAA

Revised 7/2016

Acquisition of Real Property by Eminent Domain

A Procedural Guide for the Federal Aviation Administration

Written by the Land Acquisition Section of the Department of Justice [1]

May, 2005

FOREWORD

It gives me great pleasure to introduce the Federal Aviation Administration's instructions contained in this pamphlet. These instructions, written to meet present-day concerns and conditions encountered by FAA realty specialists involved in acquiring real property by eminent domain, are designed to achieve two very important goals of the FAA. Those goals are (1) to establish uniformity concerning the necessary steps for preparing a condemnation action, and (2) to promote the timely filing of condemnation actions in conjunction with the expiration of current FAA leaseholds. I am confident that the FAA's goals will be substantially achieved if these instructions are followed carefully.

Although this pamphlet represents a major step in developing uniform procedures for acquiring real property by condemnation, it is expected that those procedures will continue to evolve. As experience is accumulated in the preparation of condemnation assemblies and new regulations affecting real estate acquisitions are implemented, it is our hope that the FAA will accordingly revise and update this pamphlet.

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United States Department of Justice

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Introduction

A. Overview of Eminent Domain

Eminent domain (also known as condemnation) is an essential attribute of government power. Without this power, a landowner could thwart agency objectives that depend on the acquisition of his property by refusing to sell the property at any price, or by demanding an exorbitantly high price based upon the agency's need for the property.[2] Eminent domain resolves such potential problems by enabling the agency to initiate a proceeding in federal court

to acquire title to the property in exchange for "just compensation."

The Fifth Amendment of the Constitution states that "Nor shall private property be taken for public use without just compensation." This language has been interpreted by the Courts to mean that (1) condemnation must be for a public use, and (2) just compensation must be paid for the property taken. The term "public use" has been interpreted liberally by the Courts to mean a use that is rationally related to any valid public purpose or legitimate governmental activity.[3] The term "just compensation" usually means the "fair market value" of the property taken.[4]

There are two types of condemnation actions that may be filed: (1) declaration of taking cases, and (2) "straight," or complaint-only cases. In a declaration of taking case, the agency takes title to the estate as soon as the case is filed and an estimated amount of just compensation is deposited in the registry of the court. Once a declaration of taking case is filed, the agency is committed to the condemnation, and the land cannot be given back to the landowner without the landowner's consent. Moreover, the agency is committed to paying whatever amount of just compensation the court ultimately awards for the taking. By contrast, in a "straight" or complaint-only condemnation case, the agency does not take title until after the condemnation case is fully adjudicated and the court determines the amount of just compensation owed for the estate. At that point, the agency can decide based on the price whether it wants to acquire the estate, or whether it wants to abandon the condemnation because the price is too high.

The FAA almost exclusively uses declarations of taking when it acquires property by eminent domain. This is because the majority of FAA acquisitions involve property that the FAA currently leases and which already contain FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a declaration of taking to acquire immediate title to the property, which permits the agency to continue operating the facility on the property.

B. When Is Condemnation Necessary?

Although the agency is required by statute and agency policy to acquire real property by negotiation and direct purchase whenever possible, there are certain circumstances that necessitate acquisition by condemnation. Examples of situations that typically require condemnation are:

1. The **landowner is unwilling to negotiate or sell at any price** the property or interest therein.

2. The agency and the property owner agree in principle to most of the terms and conditions for direct purchase of the property or interest therein, but are **unable to agree on the price**.

3. An examination of title evidence discloses **title defects** that are too numerous or complex for curative action, or that can only be cured through condemnation proceedings.

4. It is **impossible to locate the owners** of the property or interests therein to be acquired.

5. The property **owners refuse to comply with the terms and conditions** of an executed offer-to-sell agreement.

6. The **owners request that condemnation be used** to acquire title to their property or interests therein, or where owners, such as fiduciaries, states, cities, or other public bodies **are without legal authority to sell** or otherwise dispose of real property or interests therein.

The Pre-Condemnation Process

Outlined below are the initial considerations and steps that should be undertaken by realty specialists contemplating the use of condemnation to acquire property. Note that most of these same steps and considerations would apply to acquisition by purchase as well.

A. Verify the Long-Term Need for the Property/Facility

The FAA uses eminent domain whenever it cannot negotiate a long-term interest or a direct purchase of real property. Given the degree of difficulty, the length of time, and the considerable expense involved in litigating a condemnation action, the FAA seeks to avoid acquisition of non-permanent interests such as short-term leaseholds by condemnation. Rather, the agency encourages the use of condemnation primarily for the acquisition of the permanent fee simple or easement interests. Accordingly, when considering whether condemnation is the appropriate method of acquisition, the realty specialist should first ascertain whether there is a well-established, long-term need for the property that the agency seeks to acquire. Thus in the FAA's typically effort to acquire property on which a particular facility already exists. The real estate contracting officer (RECO) should determine whether there is a long-term need for the particular facility. In order to make this determination, the realty specialist should contact appropriate personnel in the following lines of business and staff office: Air Traffic Organization (ATO), Terminal Services, En Route Services, Oceanic Services and Technical Operations, Aviation Safety (AVS) , and/or Security and Hazardous Material (ASH) to advise of the agency's intention to acquire the property underlying the facility, and to solicit their feedback about whether there is a long-term need for the facility. Similar inquiries should be directed to the District Office Manager, who should also be asked to provide his input on local concerns pertinent to the planned acquisition.

At this stage of the process, it may be appropriate for the RECO to visit the facility or the FAA office serviced by the facility to interview agency personnel about the long-term need for the property and the facility. At this point, the RECO should also attempt to become more knowledgeable about the local area, obtain listings of local surveyors, appraisers, and title companies/attorneys, and possibly initiate preliminary negotiations with the property owner.

B. Determine the Estate(s) to be Acquired

The RECO must next determine what estate(s) should be acquired in order to meet the agency's needs, and then draft language describing such estate(s). The typical long-term interest FAA acquires is fee interest. Depending on the particular needs and circumstances of each acquisition, it may be necessary for the agency to acquire other estates as well. For example, if the acquired parcel is not accessible by public road, it will be necessary for the agency to acquire an access easement to ensure ongoing access to the facility. Similarly, if the agency plans to build a new facility on the acquired parcel, it may be necessary to acquire a temporary construction easement on adjacent property. In addition to access and construction easements, proper operation of the facility may require the acquisition of restrictive easements on adjacent

property, such as limits on nearby tree height or restrictions on residential development.

When drafting the language to describe each estate, the RECO should attempt to meet the agency's goals while minimizing encroachment on neighboring property interests whenever possible. For example, the estates taken should exclude all existing easements of record for public roads and highways, public utilities, railroads and pipelines when doing so does not conflict with the agency's needs. As discussed further in Part D below, an examination of the title evidence should reveal whether any such easements exist, while the appropriate Air Traffic Organization personnel should be able to determine whether such easements would interfere with the agency's needs. In cases where the agency must acquire an access easement, the RECO should consider drafting the easement so that it is non-exclusive, or so that the easement could be shifted to another location at the landowner's request. All estates should be drafted in a manner that most closely resembles an estate recognized under state law.

C. Obtain an Accurate Survey

For any real property acquisition, it is necessary to obtain an up-to-date survey that accurately describes the area of each property interest that the agency seeks to acquire. An accurate survey should define all the property the FAA needs to operate the facility to include the site (plot), access right-of-way (ROW), building restrictions easement, tree cutting easement, metal fencing easement, etc. It will be essential for negotiations with the landowner (to depict the exact area of the interests the agency seeks to acquire), and is also a necessary part of the condemnation assembly that will be sent to the Department of Justice if the agency chooses to acquire by condemnation. The RECO should refer to The Department of Justice Title Standards 2001, Section 5(d), for additional information concerning surveys.

In cases involving multiple or overlapping property interests, it is advised that the realty specialist obtain separate legal descriptions for each interest, and that all the interests should then be depicted on one single plat. The appropriate Air Traffic Organization (ATO) office should review and approve the estates, property descriptions and plats for technical accuracy and to ensure that operational requirements are being met by the proposed acquisition.

D. Order Preliminary Title Evidence

At the outset of the acquisition process, it is imperative to obtain and review up-to-date title evidence of the property, which generally will be in the form of a title insurance commitment. The realty specialist should refer to the Department of Justice Title Standards 2001 for additional information concerning title matters.

The title evidence should identify all interests such as leases, easements, liens and other recorded documents that affect the property. These interests will be listed as exceptions on the title insurance policy, and they all must be further researched to determine what impact they may have on the conveyance of good title to the United States

. Some title exceptions, such as the rights of a mortgage holder, can usually be extinguished at or prior to closing and, when extinguished, will not affect the conveyance of good title.

In some instances, the existence of certain easements and other property interests may

adversely impact the operation of some types of FAA facilities. For example, gas/oil exploration agreements and utility easements that grant rights over or across the property may interfere with the operation of certain FAA facilities. In these cases, it is imperative for the RECO to inform the appropriate Air Traffic Organization office of the existence of these property interests and determine whether they would adversely affect operation of the facility prior to making the acquisition. In cases where an existing easement conflicts with agency needs, appropriate FAA officials must determine whether the easement should be acquired and extinguished (often at significant cost), or alternatively, whether the agency should seek other property to meet its needs. For example, if an existing utility easement would interfere with the operation of an FAA facility, the FAA may choose to relocate the facility rather than pay the cost associated with acquiring the easement.

RECO should discuss any title problems that are discovered with the title company as well as with the Regional Counsel or Headquarters Counsel. The Assistant Chief Counsel has been delegated authority from the Department of Justice to pass on the sufficiency of title to lands being acquired by the agency (see Appendix 2), which he/she will do by issuing a preliminary opinion of title prior to the acquisition and a final opinion of title afterwards. However, researching, clearing title defects and providing an opinion as to the sufficiency of title is generally the responsibility of the RECO. If title cannot be satisfactorily cleared, condemnation to clear title may prove to be the only recourse.

E. Obtain an Initial Appraisal Report

Prior to any real estate acquisition, it is necessary for the agency to obtain an up-to-date and approved appraisal report. The information and analysis contained in the appraisal report, such as the determination of the highest and best use for the property and market data utilized by the appraiser, will provide the realty specialist with vital information for use in negotiations with the landowner. In situations where the appraised amount for property containing an existing facility is exorbitantly high (as defined by the FAA), the realty specialist should contact Technical Operations to explore the option of relocating the facility rather than proceeding with the acquisition.

The agency is required by statute to offer to purchase the property from the landowner for an amount that is not less than the value stated in an approved appraisal report.[5] If the agency chooses to acquire the property by condemnation, then the appraisal report must be updated to the date of taking and will be used as the primary evidence for establishing the amount of just compensation owed for the property.

Given the various purposes that the appraisal report must serve, the quality and professional nature of the report, along with the qualifications of the appraiser who prepared it, must be able to withstand intense scrutiny. Accordingly, it is strongly encouraged that the realty specialist select the appraiser with care. If the acquisition presents complex issues, such as a disagreement with the landowner about the possible highest and best use of the property, it is strongly recommended that the agency seek an appraiser who is qualified as an MAI (Member of the Appraisal Institute).

It is imperative that the RECO provide the appraiser with all necessary information pertaining to the estates that are sought to be acquired. If the agency seeks to acquire an estate in

fee simple and an estate for an access easement, the appraiser should be instructed to determine market value in accordance with ***Uniform Appraisal Standards for Federal Land Acquisitions, December 20, 2000***, hereafter referred to as the Yellow Book. If there are any questions concerning whether additional should be given instructions to give the appraiser, particularly in situations presenting complex valuation problems, the realty specialist should consult with FAA counsel or contact the Land Acquisition Section.

If condemnation is necessary and the case proceeds to trial, it will be up to the Department of Justice and the AUSA to determine whether the initial appraisal report is adequate for use at trial. If the initial report is not deemed adequate, it is the responsibility of the FAA to provide funding for an appraisal report that meets with DOJ approval. To avoid having to obtain a second appraisal for use at trial, the RECO should select the initial appraiser carefully, and provide the appraiser with all necessary information and instructions for the preparation of an adequate report. Although the agency may be required to select the "lowest bidder" when choosing an appraiser, the realty specialist can attempt to ensure a high quality appraisal report by adding qualification requirements to the scope of work, such as the requirement that the appraiser must be qualified as an MAI, or that the appraiser must have prior experience in federal condemnation actions.

F. Assess Any Environmental Issues

Agency policy requires that prior to acquisition of any real property, testing must be conducted to determine if the property contains any hazardous materials ("HAZMAT"). Under applicable environmental legislation, the current owner/operator of the property may be liable for cleanup and remediation of certain hazardous materials that exist on the property. Thus, in cases where the FAA has occupied the site for a number of years under a leasehold agreement, the agency may be jointly or severally liable for any contamination that exists on the property. Even when the FAA is not responsible for the contamination on the property, the cost of remediation and potential future liability risk should be factored in as part of the cost of acquisition. Accordingly, it is imperative that the property be inspected for hazardous material contamination prior to making the final decision to acquire the property.

In instances where the agency seeks to acquire the property by condemnation, the agency must certify that all applicable environmental regulations and procedures, including testing for hazardous material contamination, have been complied with. If cleanup or remediation of hazardous materials is necessary, it is not required that the cleanups be completed or even underway at the time of filing a condemnation action. Rather, the agency must inform the Department of Justice that hazardous materials exist on the site and explain the efforts that will be or have been taken to redress the contamination. Be aware that environmental contamination is a factor to be considered in determining property value.

Special Considerations for Expiring Leaseholds

The FAA currently holds leasehold interests on many of the properties that it seeks to acquire. Because these leasehold arrangements often impose unfavorable economic terms for the agency, upon expiration of the lease the agency usually seeks to acquire the fee simple interest to the underlying property. In cases where the landowner is unwilling or unable to convey fee simple to the property, the agency must resort to condemnation in order to acquire the property.

In situations where an existing leasehold is about to expire, it is imperative that the RECO be prepared to acquire an interest in the property as soon as the leasehold expires. Otherwise, once the lease expires the agency will enter into a "holdover tenancy," meaning that the agency remains as the tenant on the property without paying rent, which gives rise to an inverse condemnation claim for the landowner. In addition to the inverse condemnation claim, a holdover tenancy will likely complicate any potential negotiations for acquisition by purchase or for settlement of a condemnation case, and may also add to the agency's overall cost of acquiring the property.

Accordingly, the RECO must be aware of the expiration dates of existing leases, and proceed with plans for acquiring the underlying property accordingly. If the RECO determines that a condemnation action may be necessary, then the Declaration of Taking condemnation assembly should be prepared and sent to the Department of Justice at least sixty days prior to the date of expiration of the leasehold. Negotiations to purchase the property from the landowner may continue after the condemnation package has been sent to the DOJ; however, any agreement to purchase the property must be made before the declaration of taking is filed.

If the agency is already in holdover status before the condemnation package has been sent to the Department of Justice, the Declaration of Taking should include a retroactive taking of a leasehold interest for the holdover period. The agency must separately appraise the value of the holdover leasehold interest, and include an estimated amount of just compensation for this holdover leasehold. Note that the property owner may challenge the holdover (retroactive) portion of the taking and there is a possibility that he may succeed because, technically, a Declaration of Taking cannot have a retroactive effect. This is a matter to be decided by the Court, but if the property owner's challenge succeeds, the agency could be liable for attorney fees. Moreover, if the landowner subsequently brings an inverse condemnation claim for the holdover period and is successful, the agency will be liable for attorneys fees associated with that action as well. Thus, it is in the agency's best interests to avoid holdover situations altogether by preparing to file a condemnation action as soon as the existing leasehold expires.

Negotiations to Purchase the Property

Prior to initiating a condemnation action, an agency should first attempt to acquire the property by negotiation and direct purchase. The Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4651, requires the agency to make "every reasonable effort to acquire expeditiously real property by negotiation." The Act states in pertinent part that:

Real property shall be appraised before the initiation of negotiations, and the owner or his designated representative shall be given an opportunity to accompany the appraiser during his inspection of the property, except that the head of the lead agency may prescribe a procedure to waive the appraisal in cases involving the acquisition by sale or donation of property with a low fair market value.

42 U.S.C. § 4651(2). The Act goes on to state that

Before the initiation of negotiations for real property, the head of the Federal agency concerned

shall establish an amount which he believes to be just compensation therefor and shall make a prompt offer to acquire the property for the full amount so established. In no event shall such amount be less than the agency's approved appraisal of the fair market value of such property . . . The head of the Federal agency concerned shall provide the owner of real property to be acquired with a written statement of, and summary of the basis for, the amount he established as just compensation. Where appropriate the just compensation for the real property acquired and for damages to remaining real property shall be separately stated.

See 42 U.S.C. § 4651(3).

Although the Act requires the Agency to provide the landowner with a "written statement" and summary of the basis for the estimated just compensation, the realty specialist is **strongly discouraged from providing the landowner with a copy of the appraisal report**, in case the negotiations are not successful and the property must be acquired by condemnation.

Frequently, once the realty specialist has made an offer to purchase the property, the landowner will wish to suspend the negotiations while the landowner retains an attorney and/or his own appraiser. This may cause several months to one year of delay, depending on how expeditiously the landowner chooses to proceed. The RECO should therefore establish a time frame in which the landowner is to respond to the Government's initial offer. Moreover, it is crucial for the RECO to initiate negotiations well before the existing leasehold is to expire, in order to avoid adding the pressure of an impending deadline to the negotiations process.

Early in the negotiations for the purchase of the property, the RECO should urge a the landowner to make a counteroffer. If the property owner is unresponsive to repeated requests for a counteroffer, it is probably appropriate to advise the owner that you will continue the acquisition process through condemnation. The exercise of tact at this critical juncture may result in the realization by the property owner that delaying tactics and unreasonable counteroffers will serve no useful purpose and he or she will begin to negotiate in good faith. The RECO should be open to any reasonable counteroffer from the property owner that will immediately lead to the prompt purchase of the property. Be wary of minor concessions made by the property owner in an effort to reopen negotiations where substantial differences still exist.

In some cases, however, the RECO will conclude that further negotiations are fruitless, and that acquiring the property through condemnation is necessary. In such cases, the RECO should provide the property owner with a certified letter outlining the progress of negotiations to date, make a final and best offer, and establish a deadline for a response from the property owner. The letter should also inform the landowner that if no response is made by the deadline, the agency will initiate a condemnation action to acquire the property, and that thereafter all negotiations would involve the Department of Justice and the United States Attorney's office. This letter may be sent at any time but should be sent at no later than 90 days before expiration of current leasehold rights.

The preparation and submission of the condemnation assembly to the Department of Justice does not prevent continued negotiations and settlement up to the date of filing the Declaration of Taking. Generally, the Declaration of Taking will be drafted so that the taking will become effective on the day of the expiration of the leasehold. Coordination with the appropriate U.S. Attorney's office should resolve any issues regarding last minute negotiated

agreements.

Please note that it is crucial to document all offers and counter-offers made during the negotiation process. This information will be useful to the U.S. Attorney's office and prevents duplication of negotiations by that office after the filing of the Declaration of Taking.

Statutory Authority for Condemnation and Financing the Acquisition

The basic authority for FAA to acquire property by condemnation is contained in Section 303(a)(i) and 307(b) of the Federal Aviation Act of 1958, as amended, 49 U.S.C. § 40110(a)(1) et seq and 49 U.S.C. 106 (L6-N1A). This basic authority has been delegated from the Administrator of the Federal Aviation Administration to the Director of the Aviation Logistics Organization, ALO-1. Authority to acquire property by declaration of taking is set forth in the Declaration of Taking Act, 40 U.S.C. § 3114.

Funding for acquisitions is generally made available by appropriations acts, which change from year to year. It is important to note that funding for acquisitions is valid for only three years after enactment of the appropriations statute. This means that all funds must be obligated (though they need not actually be spent) within three years of passage of the statute. Accordingly, RECO must be aware of the applicable deadlines on which particular funding will expire, and must be prepared to expedite the acquisition process if the three-year deadline is fast approaching. If there is some doubt as to which appropriations act applies to a given acquisition, you should contact the Service Center budget office or, alternatively, ABU- for guidance.

In some condemnation cases, the ultimate award of just compensation, or the settlement amount agreed to by the parties, may exceed the amount of funding provided by the original appropriations legislation. In those cases, it is imperative that the RECO contact ATO or the appropriate LOB to attempt to secure additional funding to cover the shortfall. The RECO should identify potential funding shortfalls as soon as possible to maximize the agency’s ability to acquire additional funding. For example, if the landowner’s appraiser produces a credible report concluding that the value of the property is in excess of the total funds provided by the appropriations legislation, the RECO should alert the ATO or the appropriate LOB of the possibility that there could be a funding shortfall for the acquisition, so that Service Center Logistics Manager may begin to plan for this contingency.

Preparing a Condemnation Assembly

In order to acquire property by condemnation, the realty specialist must send a condemnation assembly to the Department of Justice. This section describes the necessary contents of the condemnation assembly.

Given the lengthy amount of time needed to prepare all the necessary elements of a condemnation assembly, RECO are strongly encouraged to begin assembling these materials well in advance of the expiration of any existing leasehold. Once the condemnation assembly has been completed it should be forwarded to the regional Assistant Chief Counsel and headquarters counsel for final review. Upon completion of this review, the condemnation package should be forwarded to the Director of the Aviation Logistics Organization, ALO-

1for signature and mailing to the U.S. Attorney General. Regional procedures vary but in all instances the condemnation package should be tracked to insure that the package is mailed to Department of Justice at least 60 days prior to the expiration of the current lease agreement.

A. The Transmittal Letter

The first part of a condemnation assembly is the Transmittal Letter from the FAA to the Attorney General of the United States. Generally, the Transmittal Letter will be signed by the Director of the Aviation Logistics Organization, ALO-1. The Transmittal Letter should contain the following information (see Appendix 3 for a sample Transmittal Letter):

1. GENERAL AUTHORITIES AND APPROPRIATIONS ACT The letter should contain a recitation of the FAA's general authority to acquire real property by condemnation, as well as a recitation of the delegation of that authority from the FAA Administrator to the Director of the Aviation Logistics Organization, ALO-1. It is also necessary to include the correct appropriations act that provides the funds to acquire the property.

2. NECESSITY STATEMENT

The letter should include a statement that the taking is necessary for a well-established long-term need for a particular property or facility. A simple statement usually will suffice. For example, "The Remote Communications Air/Ground facility is a vital part of future FAA navigational aids and is a critical element of the National Airspace System. It is in the best interest of the Government to utilize the facility in its present location. There will be a continuing need for the facility throughout the foreseeable future."

3. IMMEDIATE POSSESSION STATEMENT

The letter should contain a statement as to whether immediate possession of the property being acquired is needed. If the property is currently under lease, the letter should note when the leasehold is set to expire. If the FAA is continuing its existing occupancy, no order of possession is required.

4. DECLARATION OF TAKING STATEMENT

If applicable, the letter should include a statement that the agency seeks to acquire the property by a Declaration of Taking (DT). A Declaration of Taking will vest the property with the United States immediately upon filing the action and depositing the estimated amount of just compensation in the appropriate District Court.

5. COMPLIANCE WITH UNIFORM RELOCATION ACT

The letter should include a general statement that the agency has complied with the provisions of Uniform Relocation Assistance and Real Property Acquisition Policy Act, 42 U.S.C. § 4601.

6. ENVIRONMENTAL COMPLIANCE STATEMENT

If the acquisition will result in the construction of new facilities, the Transmittal Letter should indicate compliance with the provisions of the National Environmental Policy Act, 42 U.S.C. §

4332 and, if applicable other statutes such as the National Historic Preservation Act of 1966, 16 U.S.C. § 470f. If the acquisition is for an existing facility that will not undergo any site changes or modifications, environmental proceedings are excepted by 42 Fed. Reg. 32467 Appendix 5, Paragraph 5f. In such cases, a statement referencing this exception will suffice.

7. LIMITATION STATEMENT

If there is any limitation that may be imposed on the acquisition by any statute, a statement as to the limitation must be included. The Federal Aviation Act does not impose any limitations on the acquisition of land for technical facilities except that of funding imposed by annual appropriations acts. It is unlikely that any individual acquisition will exceed the appropriation for all the land acquisitions funded in any particular year. Accordingly, a general statement that the acquisition will not exceed statutory limitations will serve to meet this requirement

8. POINT OF CONTACT

The letter should contain the name and contact information of the agency official who has been involved in the negotiations and preparation of the condemnation assembly.

B. Attachments to the Transmittal Letter

Several attachments must be included along with the transmittal letter, the most notable being the Declaration of Taking which will be discussed in detail in the next section. Other attachments are described below:

1. PAYMENT OF ESTIMATED JUST COMPENSATION

A Treasury check payable to the Clerk of the Court for the appropriate federal district should be enclosed. If doubt exists as to what district the case will be filed in, contact the Assistant Chief Counsel's office. The estimated amount of just compensation should be not less than the appraised value for the rights and/or interests being acquired. Be mindful that checks issued by the Treasury expire one year after the date of issue.

2. APPRAISAL REPORTS AND REVIEWS

Copies of all appraisal reports, including all unapproved and outdated appraisal reports and updates, along with the appraisal reviews should be included as an attachment to the transmittal letter.

3. TITLE EVIDENCE AND PRELIMINARY TITLE OPINION

A title package should be prepared that includes a copy of the title evidence (usually a title insurance commitment with copies of the documents mentioned therein), preliminary title opinion, a statement as to the location of title evidence (name and address of the local recorder of deeds, registrar, etc.), and all efforts made to cure title defects, if any. For those cases where a condemnation is being requested because of title defects, the following information is also required:

A. An analysis of the defects and the agency's opinion as to the correct resolution

of those title defects.

B. A listing of the attempts to cure title defects made by the realty specialist.

C. A summary of all discussions with the title company to have title defects removed.

D. Any curative data obtained to remedy title defects.

E. A Contract-to-Sell signed by the property owners, if applicable.

Additional Guidance can be found in the Department of Justice Title Standards 2001, Section 7.

4. NEGOTIATOR'S REPORTS

A copy of the negotiator's report that lists the time and place of all negotiations, offers and counter-offers made, and any other relevant information concerning discussions with the property owner(s).

5. HAZARDOUS MATERIALS NARRATIVE

In accordance with FAA policy, DOJ should be provided with an explanation of all HAZMAT testing and remediation efforts that are planned for or underway on the property being acquired.

6. CERTIFICATE OF INSPECTION AND POSSESSION

This form should be completed, signed and dated by an individual employed by the acquiring agency who has recent knowledge of the property being acquired. (See the Department of Justice Title Standards 2001, Section 4(b) “Instructions” and 10(b) “Required Forms”).

7. DECLARATION OF TAKING

A minimum of one copy of the Declaration of Taking (described in Part C below), signed by the Director of the Aviation and Logistics Organization, ALO-1, along with the necessary attachments (described in Part D below), must be included with the Transmittal Letter to the Attorney General. If more copies are requested by the Department of Justice, more will be provided.

C. The Declaration of Taking

The format and content of a Declaration of Taking is standardized, and must include the following information (see example in Appendix Four).

1. CASE CAPTION

A case caption should be set at the top of the Declaration of Taking, setting forth the name of the United States District Court, with the names of the parties set forth below. In all cases, the Plaintiff in the condemnation action will be “THE UNITED STATES OF AMERICA.” The

Defendants are identified by stating the property interest by size and location (for example "32.945 Acres of Land, More or Less, Situated in Montgomery County, Maryland"), and listing at least one individual who possesses an interest in the property (usually the primary landowner). Leave the Civil Number as a blank; the number will be assigned by the clerk after the case has been filed.

2. AUTHORITY FOR THE TAKING AND CERTIFICATIONS

The body of the DT begins by identifying the individual possessing the authority to acquire the property. This will be the Director of Aviation Logistics Organization, ALO-1 in most cases. The DT continues with a number of certifications that identify FAA's authority to take the property including the funding appropriation, the public uses for which the land is being taken, the estimated compensation for the taking, a legal description of the property and the estate(s) being taken, and a plat showing the estate(s) being taken. The legal description, estates being taken, and the plat are usually schedules that are attached to the DT.

3. CLOSING

The DT closes with an authorizing statement, date, signature, and signature block.

D. Attachments to the Declaration of Taking

1. Attachment A

The first attachment should be labeled "Schedule A" and should consist of a legal description of the property being acquired. In instances where more that one parcel is being acquired, each parcel should be separately identified (Parcel 1, Parcel 2, etc.) and described. It is strongly recommended that, rather than re-type legal descriptions from a title report or land survey, that such legal descriptions instead be copied in order to avoid mistakes or omissions. Label and number successive pages as "Schedule A, page 1 of 3", to avoid confusion with other schedules.

2. Attachment B

The second attachment should be labeled "Schedule B" and should consist of the survey plat(s) of the property being acquired. The plats should be easy to read and understand, but contain sufficient information to be useful. As a practical matter, try to avoid plats drawn on excessively large size paper.

3. Attachment C

The third attachment should be labeled "Schedule C" and should describe the interest(s) or estate(s) to be acquired. The types of estates taken may include the fee simple title and perpetual easements of various kinds (i.e., restrictive use, utility, access, etc.). Exercise care in describing the estates you wish to acquire as errors are common. For example, if you need an easement that will provide access and serve as a utility corridor, you should call it an access and utility easement, and not simply an access easement.

Each interest or estate being acquired should be matched to the appropriate parcel identified in

Schedule A. Schedule C should also include a listing of all entities by name and address that may have an interest in the property being acquired. This list should include not only all the owners but also all persons shown by the title evidence as potentially or actually having an interest in the property, if we are taking that interest. Depending on the estate taken this could include the local tax assessing office, mortgagees, lienholders, utility companies with rights-of-way interests, lessees, as well as holders of gas, oil, timber, and mineral rights, etc. If an interest, or class of interests, is excluded from the estate taken, the holder of such interest need not be named. For example, if the estate taken is "fee simple, subject to existing easements for public roads and highways, public utilities, railroads and pipeline.", then holders of utility easements need not be owners and parties in interest is required because all holders of any interest in the property being taken must be given notice by the Assistant U.S. Attorney that the property is being acquired for public purposes. If all individuals with an interest in the property are not served, the possibility exists that the acquiring agency may have to pay twice for the property being taken.

Post-Transmittal Activities

Once the Condemnation Assembly is sent to the Department of Justice, it is reviewed by an attorney in the Land Acquisition Section of the Environment and Natural Resources Division. That attorney may contact the realty specialist to discuss details of the taking and/or the assembly package. Typically, the condemnation assembly is then sent to the appropriate U.S. Attorney's office in the federal district where the subject property is located, where it will be assigned to an Assistant U.S. Attorney (AUSA). Once the realty specialist receives the name and contact information for the AUSA handling the condemnation, the RECO should initiate a call to the AUSA and offer any assistance possible in preparing the case for trial. This initial contact should begin a period of close cooperation between the AUSA and the realty specialist. A meeting between the RECO and the AUSA at this stage may provide the AUSA with insight about property valuation issues as well as negotiation prospects with the property owner.

In Declaration of Taking cases, the estimated amount of just compensation is deposited in the registry of the court at the time that the case is filed. Distribution of the estimated amount of just compensation to the appropriate parties is the responsibility of the court. However, the realty specialist and the AUSA should make every effort to assist the court in this endeavor.

As soon as the AUSA files the Declaration of Taking, or notice of lis pendens, the RECO should coordinate with the AUSA and file a copy of the Declaration of Taking (or, in complaint-only cases, a notice of lis pendens) in the local land records for the county in which the subject property is located. The RECO should also obtain updated title evidence, usually in the form of a title insurance policy (see the Department of Justice Title Standards 2001, Section 5(a)). to include a search of all records through the date of recording of the Declaration of Taking or the lis pendens. This updated title report should be promptly furnished to the AUSA. In addition, the initial appraisal report will need to be updated to the date of taking. In some cases, the AUSA may ask the acquiring agency to obtain a new appraisal or to assist in locating and retaining expert witnesses such as environmental or land use experts.

The RECO should offer to attend pre-trial meetings and negotiation sessions and should have full authority from the agency to recommend settlement prior to trial based on detailed knowledge of the circumstances surrounding the case and on advice of the AUSA. Prior

to any negotiation session, the RECO should contact ABA to determine exactly what funding limits may apply to settlements due to budgetary constraints. As the case proceeds to trial the RECO should offer to assist in the preparation of any exhibits that may be required. In many instances the official property file will contain photographs or plats that may be useful during the trial.

Finally, the RECO should plan to attend the entire trial proceeding. Negotiations and settlements have been known to occur up until the day of the trial itself, or during the trial. DOJ officials are the ones who negotiate and settle matters after a case has been filed. The realty specialist should consult the AUSA handling the case regarding how the realty specialist should participate in the settlement process.

Post-Trial Activities

When a court award (or a negotiated settlement) has been made that exceeds the estimated amount of just compensation deposited in the registry of the court, the AUSA will provide a certified copy of the judgment to the realty specialist. The RECO should then take immediate steps to arrange for prompt payment of the deficiency (with interest) by Treasury check to the Clerk of the Court. The Land Acquisition section can assist in the calculation of the amount of interest due.

In those instances where compensation is awarded that is significantly higher than the Government's appraised amount, the title insurance policy may need to be increased to correspond to the higher property value (see the Department of Justice Title Standards 2001, Sections 5(c) and 7(d)(1)). However, that portion of the compensation awarded for damages to the remaining property should not be considered as part of the value of the property taken when determining how much title insurance to acquire. Unfortunately, the compensation awarded does not always provide a distinction between the value of property taken and any severance damages to the landowner's remainder parcel.

When the judgment involves an award which is considered to be excessive, the RECO should discuss the possibility of an appeal with the AUSA and ALO-200. Those discussions should focus on the potential success of an appeal and be weighed against the additional litigation costs associated with the appeal process. Specific procedures are required for filing an appeal; contact ALO-200for guidance concerning appeal procedures. See the Department of Justice Title Standards 2001, Section 7(e) for guidance on recording the judgment fixing compensation and proof of payment, if the condemnation action is a compliant only action.

APPENDIX ONE

Definitions

Appraisal

An appraisal is an estimate of value of property. Usually an appraisal is a written statement setting forth an opinion of value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant data.

Assistant

United States Attorney (AUSA)

An attorney employed by the Department of Justice who works under the supervision of a United States Attorney in one of the 94 United States Attorneys offices located throughout the United States. There is a United States Attorney in each federal judicial district.

Condemnation

The process by which property of a private owner is taken for public use upon the award and payment of just compensation. Condemnation is the right of the state to reassert its dominion over any part of the soil of the state on account of pubic exigency and for the public good. For all practical purposes the terms "condemnation" and "eminent domain" are synonymous.

Complaint

A complaint is the first or initial pleading on the part of a plaintiff in a civil action. A complaint will generally contain a statement of facts constituting a cause of action and a demand of relief to which the plaintiff supposes himself entitled.

Declaration of Taking

A document in the form and content specified in the Declaration of Taking Act, 40 U.S.C. § 3114, prepared by an acquiring agency and signed by an authorized agency official. The filing of a declaration of taking in a condemnation action together with a deposit into the registry of the court of estimated compensation thereby immediately vests title to the property in the United States. The amount of compensation due for the taking is adjudicated in subsequent proceedings and any difference between the estimated and actual just compensation with interest thereon computed from the date of taking is due the property owner.

Department of Justice

Department of the Executive branch of the Federal government responsible for, inter alia, prosecuting condemnation actions on behalf of other agencies of the Federal government.

Easement

An interest which one person has in the land of another, normally for the benefit of adjoining land. There are two types of easements. One is an “appurtenant” easement, which is an easement across a servient estate for the benefit of another property. An access easement is one example of an appurtenant easement. (For an example of a “Floating” access easement, see Appendix Four, Paragraph 6, subparagraph b.) The other is an “easement in gross”, or “restrictive” easement, which is an easement that restricts what an owner can do with his property.

Fee

An absolute estate, subject only to the limitations of eminent domain, escheat, police powers, and/or taxation, where the owner is entitled to the entire property, with unconditional power of

disposition during his life, and descending to his heirs upon his death intestate.

HAZMAT

An acronym referring to any substance or class of substances that may be hazardous to the health and well being of the human population. Environmental regulations recommend that testing for hazardous substances be conducted prior to the acquisition of real estate in order to limit the liability of the property owner or user to correct any contamination discovered on the property regardless of who caused the contamination.

Interest

A very general term that denotes a right, claim, or share in real estate or chattels.

Inverse Condemnation

This is a claim brought by a property owner against a governmental agency to recover damages for the taking of property as a result of the government's activities when no compensation has been made to the property owner. A frequent basis for an inverse condemnation claim is damage to property due to airplane overflights which, by noise and vibration, cause a diminution of the property below the flight path.

Just Compensation

The full and fair monetary equivalent for the property taken for public use.

Lease

A written document by which the rights of use and occupancy of land and/or structures are transferred by the owner to another person for a specified period of time in return for a specified rent or other recompense.

Leasehold

An estate in realty held under a lease. The right of use by a lessee to use and enjoy real estate by virtue of a lease agreement.

Plat

A map or representation on paper of a piece of land, usually drawn to a scale. Plats will generally show property lines, and may also show other features such as roads, abutting ownerships, building locations, topographical features, vegetation, etc.

Property Description

This is an unequivocal identification of a specific piece of land. Several methods of have been devised for adequately describing tracts of land such as the metes and bounds system and the Government Survey system (also called the Township/Section system).

Public Use

This means a use concerning the whole community as distinguished from particular individuals. Each member of the community need not be equally interested in such use, or be personally or directly affected by it; if the object is to satisfy a public want or exigency, that is sufficient.

Title Insurance

This is insurance against loss or damage resulting from defects or failure of title to a particular parcel of real estate, or from the enforcement of liens existing against it at the time of the insurance. In some locations the Torrens system of land registration exists in which the sovereign governmental authority issues title certificates covering the ownership of land which tends to serve as title insurance.

Vest

This means to give a fixed and indefeasible right. To have vested rights to a property means that rights have been so completely and definitely accrued to or settled in a person that they are not subject to being defeated or cancelled by the act of any other private person.

APPENDIX TWO

Title Information

The Attorney General has redelegated his authority to pass on the sufficiency of title in land acquisitions to the Department of Transportation, Federal Aviation Administration. That redelegation is recited below.

FEDERAL REGISTER, VOL. 35 NO. 251 - 29 DECEMBER 1970

DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

REGIONAL COUNSELS AND CENTER COUNSELS AND/OR HEADQUARTERS COUNSEL

Notice of Redelegation of Authority to Approve

Sufficiency of Title to Land

Section 355 of the Revised Statues, as amended by Public Law 91-393, 84 Stat. 835 (40 U.S.C. 255) authorizes the Attorney General to delegate to other departments and agencies his authority to give written approval of the sufficiency of the title to lands being acquired by the United States. The Attorney General has delegated to the Assistant Attorney General in charge of the Land and Natural Resources Division the authority to make delegations under that law to other Federal departments and agencies (35 Fed. Reg. 16084; 28 C.F.R. 0.66). The Assistant Attorney General, Land and Natural Resources Division has further delegated certain responsibilities in connection with the approval of the sufficiency of title to land to the department of Transportation as follows:

DELEGATION TO THE DEPARTMENT OF TRANSPORTATION FOR THE APPROVAL

OF THE TITLE TO LANDS BEING ACQUIRED FOR FEDERAL PUBLIC PURPOSES

Pursuant to the provisions of Public Law 91-393, approved September I, 1970, 84 Stat. 835, amending R.S. 355 (40 U.S.C. 255), and acting under the provisions of Order No. 440-70 of the Attorney General, dated October 2, 1970, the responsibility for the approval of the sufficiency of the title to land for the purpose for which the property is being acquired by purchase or condemnation by the United States for the use of your Department is, subject to the general supervision of the Attorney General and to the following conditions, hereby delegated to your Department.

This delegation of authority is further subject to:

i. Compliance with the regulations issued by the Assistant Attorney General on October 2, 1970, a copy of which is enclosed.

2. This delegation is limited to:

(a) The acquisition of land for which the title evidence, prepared in compliance with these regulations, consists of a certificate of title, title insurance policy, or an owner's duplicate Torrens certificate of title.

(b) The acquisition of lands valued at $100,000 or less, for which the title evidence consists of abstracts of title or other types of title evidence prepared in compliance with said regulations.

A stated in the above-mentioned act, any Federal department or agency which has been delegated the responsibility to approve land titles under the Act may request the Attorney General to render an opinion as to the validity of the title to any real property or interest therein, or may request the advice or assistance of the Attorney General in connection with determinations as to the sufficiency of title.

This the 2nd day of October, 1970

SHIRO KASHIWA, Assistant Attorney General, Land and Natural Resources Division.

The above authority was delegated to the General Counsel of the Department of Transportation by Amendment 1-41 to Part 1 of Title 49, Code of Federal Regulations, 35 F.R. 17658, November 17, 1970

Finally, the authority was redelegated to the Chief Counsels of the operating administrations of the Department of Transportation, including the Federal Aviation Administration (35 F.R. 18412, December 3, 1970).

In consideration of the foregoing and pursuant to the authority delegated to me as chief counsel of the Federal Aviation Administration by the General Counsel of the Department of Transportation, the Regional Counsels and Center Counsels of the Federal Aviation Administration are hereby authorized to approve the sufficiency of the title to land being

acquired by purchase or condemnation by the United States for the use of the Federal Aviation Administration. This delegation is subject to the limitations imposed by the Assistant Attorney General, Land and Natural Resources Division, in his delegation to the Department of Transportation. Redelegations of this authority may only be made by the Regional Counsels and Center Counsels to one attorney within their respective staffs.

Issued in Washington, D. C. on December 22, 1970.

GEORGE U. CARNEAL, JR. General Counsel

APPENDIX THREE

Sample Transmittal Letter

The Honorable Name, Attorney General

c/o Land Acquisition Section

P.O. Box 561

Washington, DC 20044

Dear Mr. Attorney General:

It is respectfully requested that you acquire, by condemnation, fee simple title to certain land situated in Perry County, Illinois, for use as a land site for radio communication link (RCL) facility. The land is more fully described in the Declaration of Taking.

This request is made pursuant to 49 U.S.C. § 40110, 40 U.S.C. §§ 3113-14, and in accordance with the authority delegated by the Administrator of the Federal Aviation Administration to the Director of the Aviation Logistics Organization, ALO-1. Funding was apportioned to the Federal Aviation Administration for the purchase of this property by the Transportation and Related Agencies Act of 1993 (Public Law 107-388), dated April 3, 2001.

The radio communication facility link facility provides a voice and data link between air traffic control facilities and is critical to the operation of the National Airspace System. There will be a continuing need for the facility throughout the foreseeable future.

The government has operated and maintained this facility under a lease agreement since 1977. The owners have rejected all government offers to purchase the subject property. The current lease will expire on September 30, 2004, and continued possession is required on October 1, 2004. Thus, immediate possession is necessary and a Declaration of Taking is therefore requested.

Since this acquisition is for an existing operational facility that will not undergo any site change, environmental processing is exempted by our procedure 42 Fed. Reg. 32647 (Appendix 5, paragraph 5f).

I certify that the provisions of the Uniform Relocation Assistance and Real Property Acquisition

Policy Act (Pub. L. 91-646) have been complied with in our attempts to acquire this property. I also certify that there are no statutory limitations imposed on this acquisition and that the ultimate award for said land will probably be within any limits prescribed by law on the price to be paid therefore.

Enclosed herewith are the following:

1. An original and three copies of the Declaration of Taking with Schedules "A", "B", and "C" attached.

2. U.S. Treasury Check No. 786,465,982 in the amount of $86,500, said sum being the amount estimated as just compensation for said property with all buildings and improvements thereon.

3. Four copies of the complete condemnation assembly package.

If you or your staff need any assistance or additional information in connection with this request, please contact (insert and telephone number of point of contact) of FAA's Great Lakes Region Real Estate and Utilities office.

Sincerely,

Director of the Aviation Logistics Organization, ALO-1
Enclosures

APPENDIX FOUR

Sample Declaration of Taking

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

United States,)
)
Plaintiff,) CIVIL NO. _____
)
vs.)
)
32.945 ACRES OF LAND, MORE)

OR LESS, SITUATED IN MONTGOMERY)

COUNTY, MARYLAND, AND FRED)

JOHNSON, AND UNKNOWN OWNERS)

)

Defendants.)

DECLARATION OF TAKING

I, Name, Director of the Aviation Logistics Organization, ALO-1, Federal Aviation Administration, Eastern Region, do hereby declare that:

1. The land, hereinafter referred to as the "property," is hereby taken under and in accordance with 49 U.S.C. § 40110, 40 U.S.C. §§ 3113 and 3114, and Public Law 107-87, dated December 18, 2001, which appropriated funds for such purposes, and the authority delegated by the Administrator of the Federal Aviation Administration (FAA) to the ALO-1 of the FAA (27 Fed. Reg. 3773).

2. A determination has been made by me that the subject property is necessary for public use to provide a site for the continued operation and maintenance of a Non-Directional Radio Beacon facility. This facility is used by aircraft for navigational purposes and is a critical element to the National Airspace System.

3. A general description of the property being taken is set forth in "Schedule A" attached hereto and made a part hereof.

4. A plan showing the property taken is attached hereto as "Schedule B" and made apart hereof.

5. The owner and any parties having or claiming an interest in the subject property are listed in "Schedule C," attached hereto and made a part hereof.

6. The estates being acquired here for public use are:

a. As to the Non-Directional Radar Beacon facility lot, containing 32.00 acres of land: fee simple, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines.

b. "Floating" Easement - A perpetual and assignable easement and right-of-away to locate, construct, operate, maintain, and repair a roadway in, upon, over and across the land described in "Schedule A", together with the right to trim or remove any vegetative or structural obstacles that interfere with the right-of-way; subject, to existing easements for public roads, highways, public utilities, railroads and pipelines; reserving, however, to the landowner, its heirs and assigns, to 1.) the right to use the surface of such land as access to their adjoining land or for any other use consistent with its use as a road; 2) the right to relocate said right-of-way at any time, provided a) the United States shall have continuous access during the

relocation process; b) the relocated easement and right-of-way shall provide access as passable as that of the existing road, and it shall be located on a reasonably convenient route from described in Schedule "A" to the public road; c) the relocated easement and right-of-way shall be of equal width as the road described in Schedule "A", and shall be clearly described in the same manner as the original easement in a properly recorded instrument; and d) the relocated easement and right-of-way is clearly described in a recordable instrument, and the United States must sign said instrument to acknowledge that it has received notice of the relocation, which signature shall not be unreasonably withheld.

c. The estate(s) taken for said public uses is (list estate(s) or interest being taken – fee simple, perpetual easement such as utilities, cabling, leasehold, leasehold than fee simple or term of years then fee simple for holdover situations, etc.) and is further set forth in "Schedule A" which is attached thereto and made a part hereof.

7. A plan showing the property taken in the form of a survey is attached hereto as "Schedule B" and made a part hereof.

8. The owner and any parties having an interest in the subject property are listed in "Schedule C" attached hereto and made a part hereof.

9. The sum of money estimated by me as just compensation for the acquisition of said property interest is ninety-five thousand five hundred dollars ($95,500.00). It is my opinion that the ultimate award of just compensation for this acquisition will be within any limits prescribed by law on the price to be paid therefore.

10. I herewith deposit ($95,500.00) in the registry of the court for use and benefit of the persons entitled thereto.

In witness whereof, the United States of American has caused this Declaration of Taking to be signed in its name by me, as Director of the Aviation Logistics Organization, ALO-1, Federal Aviation Administration on this __ day of _____, 2005 at Jamaica, New York.

_____

_____

Name

ALO-1

Federal Aviation Administration

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[1]/This document is a revision to the 1993 pamphlet Preparing Condemnation Assemblies for Submission to Department of Justice

[2]/ The Supreme Court has stated that "[Condemnation] authority is essential to [the] independent existence and perpetuity [of the United States]. . . . If the right to acquire property . . may be made a barren right by the unwillingness of property holders to sell . . . the constitutional grants of power may be rendered nugatory, and the government is dependent for its practical existence upon the will of . . . a private citizen. This cannot be." Kohl v. United States, 91U.S.367, 371 (1875).

[3]/ See, e.g., Hawaii Housing Authority v. Midkiff, 467 U.S. 229 (1984); Berman v. Parker, 348 U.S. 26 (1954).

[4]/ See, Kirby Forest Industries v. United States, 467U.S.1 (1984).

[5]/ See Uniform Relocation Assistance and Real Property Acquisition Policy Act, Pub. L. 91-646, 42 U.S.C. § 4651(3) (1987).

1.1.19.2 Condemnation Procedures Checklist Added 1/2008

CONDEMNATION PROCEDURES CHECKLIST	
DESCRIPTION	**DATE**
Receive & Prepare PR for Land Acquisition	
Prepare Right-of-Entry for Survey and Appraisal	
Solicit Survey	
Award Survey	
Review Survey	
Solicit Appraisal	
Award Appraisal	
Preparation of Appraisal Report by Contractor	
Receive Appraisal	
Review Appraisal and take any necessary corrective action	
Solicit, award and review title evidence	
Physical Inspection of Land	

Prepare Certificate of Inspection and Possession	
Lease vs. Purchase Analysis (This should be completed prior to the initiation of the condemnation action)	
Negotiate Purchase	
Letter of Condemnation Notification to Owner	
Prepare DT Package	
Letter to Attorney General	
Declaration of Taking (DT)	
Schedule A Property Description	
Schedule B Plat of Survey	
Schedule C Owners of Record & Interested Parties (Tax/Liens, etc)	
Schedule D Estate to be Acquired	
Appraisal Copies	
Check to Clerk of District Court - coordinate with the DOJ attorney handling the case	
Update Appraisal if requested by Office of Council	
Forward DT to DOJ	
DT File to AUSA	
Title Assumed by FAA Record DT in Land Records Update Title Insurance through date of recording (typically the updated title evidence is a title insurance policy)	
Order new Appraisal or update if necessary	
Pretrial Work including as appropriate discovery information and settlement negotiations	
Hearing	
Court Award	
Obtain & Deposit Deficiency Judgment (plus interest)	
Receipt of Final Judgment (If you have recorded the DT, it is not necessary to record the final judgment)	

Report Final Cost	

1.2 Land Clause Matrix Revised 10/2014

Legend:

Mandatory (M) – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

Recommended (R) – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

Optional (O) – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

CLAUSE TITLE	DATE OF CLAUSE	ON AIRPORT	MEMORANDUM OF AGREEMENT (MOA)	PRESCRIPTION
Anti-Kickback	Oct-96	M	M	Insert in all leases IAW 41 U.S.C. 51-58. In the MOA incorporated by reference.
Assignment of Claims	Oct-96	N/A	N/A	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Cancellation	Aug-02	M	M	Insert in all leases and MOAs to preserve the Governments rights to terminate for our convenience. In the MOA this clause is inserted in the Terms and Condition clause.
Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property	Jan-13	M	N/A	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note: If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract
Certification of Registration in	Jan-13	M	N/A	Required on all cost contracts, unless vendor is exempted from

System for Award Management (SAM)				SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.
Contractor Payment Information – Non-SAM	Jan-13	M*	N/A	*Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: "System for Award Management - Real Property", "Contractor Identification Number— Data Universal Numbering System (DUNS) Number - Real Property", and "Certification of Registration in System for Award Management (SAM)".
Consideration (Cost)	Aug-02	M	N/A	Insert in all leases where we pay money for a lease term. This clause is required by the basic contracting principle that all leases must have clearly defined consideration. The dollar amount represents only the firm term portion of this lease.
Consideration (No Cost)	Aug-02	M	M	Insert in all leases where we do not pay money for a lease term or for MOAs. This clause is required by the basic contracting principle that all leases must have clearly defined consideration.
Contract Disputes	Nov-03	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Covenant Against Contingent Fees	Oct-96	M	M	Insert in all leases IAW 41 USC 254. For MOA incorporated by reference.
Day-to-Day Lease Extension	Aug-02	O	N/A	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a lease where cost is the consideration or part of the consideration, the total

				term of the lease, including the total NTE days included in this clause must not exceed the twenty year FAA leasing authority (49 USC 40110). No cost leases can be executed for the expected life of the system supported by the land lease.
Examination of Records	Aug-02	M	M	Insert in all leases.
FAA Facilities	Oct-05	N/A	M	This clause must be inserted in all MOAs. It references the most recent Airport Layout Plan (ALP) and defines the list of facilities placed under this agreement
Funding Responsibility For Government Facilities	Oct-96	M	M	This clause must be inserted in all on airport leases. It ensures that the sponsor will pay for the relocation, replacement and/or modification of Government equipment unless the change is specifically requested in writing by the Government
Hazardous Substance Contamination	May-00	M*	M	Insert in all **on airport** leases and MOAs. This clause requires the lessor to hold the Government harmless for environmental contamination found in the property that is not associated with Government activity. Having this clause may allow the requiring office to waive the requirement to conduct an environmental due diligence audit (EDDA) prior to the property transaction (see FAA Order 1050.19B). If the lessor does not agree to this clause, an approved EDDA (or EDDA waiver) must be obtained prior to the real estate transaction
Interest For Late Payments	Aug-02	N/A	N/A	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the lessor when negotiating an off airport lease. Since airports have an inherent benefit from installed

				FAA equipment, an added incentive is not needed for on airport leases.
Interference with Government Operations	Oct-96	M	M	Insert in all on airport leases and MOAs. This clause ensures that the sponsor will conform to the approved airport layout Plan (ALP). The clause does not relieve the RECO of the requirement to obtain real property rights for the technical clear zone
Lease Succession	Aug-02	M	M	Insert in follow-on contracts to track continuity of data.
Non-Restoration	Oct-96	M	M	Insert in all leases in order to make the Government's intention of not restoring the premises and abandoning the equipment. This clause is needed to clearly convey the Governments intentions and the agreement between the parties upon termination or expiration of the lease. It is the policy of the FAA not to restore. This clause is mandatory for a MOA; however the RECO can remain silent on this clause if the airport sponsor will agree.
Notification of Change in Land Title	Aug-02	M	N/A	Insert in all leases. This clause protects the lease rights of the Government in case of change in ownership of the property.
Notices	Oct-96	M	M	Insert in all leases and MOAs. This information is needed for contract administration; all contractual communication should be done through these contacts. A change in this information requires a contract modification.
Officials Not to Benefit	Oct-96	M	M	Insert in all leases IAW 41 U.S.C. 22
Payment by Electronic Fund Transfer	Jan-13	M	N/A	Insert in all "cost" leases IAW 31 U.S.C. 333
Premises	Aug-02	M	N/A	Insert in all leases. This clause is required by the basic contracting principle that all leases must

				clearly define the leased premises. This should include a description of the leased air rights.
Purpose	Oct-05	N/A	M	Insert in all MOAs to define the FAA air traffic activities with airport sponsor.
Protest	Nov-03	M	N/A	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS
Quiet Enjoyment	Oct-96	M	N/A	Insert in all leases. This clause is required by the basic contracting principle to protect the FAA's full rights to the property
Renewal Options	Jul-07	M	N/A	Insert in all leases that have Options in order to comply with basic contracting principle that all options must be clearly defined. RECO can modify the clause to reflect the correct number of lease options. NOTE: This clause requires the RECO to provide the lessor 60 days notice of the Government's intent to exercise the option or its intent to vacate the premises at the end of the current lease term. It also requires the RECO to send the lessor written documentation of the option exercise; it is our policy that a contract modification would be issued to document that the option has been exercised.
Restoration Clause – Alternate A	Jan-07	O	O	This is an alternate restoration clause to be used for On-Airport Leases and MOAs. The policy is still not to restore however this clause may be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Restoration Clause – Alternate B	Jan-07	N/A	N/A	This is an alternate restoration clause to be used for Off-Airport leases. The policy is still not to restore however this clause may

				be used on a case by case basis when non-restoration is not feasible or appropriate. Also need to get the LOB to provide written concurrence on this alternate clause.
Signature Block	Aug-02	M	M	Insert in all leases and MOAs in order to comply with the basic contracting principle that all leases must be signed by authorized parties to the agreement. This clause must be modified to comply with recording requirements of the local jurisdiction, i.e. the local recording office may require the signature to be notarized.
Subordination, Nondisturbance and Attornment	Jan-14	M	N/A	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondisturbance and/or attornment.
System for Award Management – Real Property	Jan-13	M	N/A	Insert in all cost leases, unless the RECO grants an exception to use of SAM per provisions of Guidance Section "3.1.4.1 : System for Award Management (SAM)".
Term	Aug-02	M	M	Insert in all leases in order to comply with the basic contracting principle that all leases must have a clearly defined term. 1. This clause is used in all firm term leases that will be incrementally funded; this is the preferred type of lease. 2. This clause is also used in leases that are structured with options. In this case, the term set out in this clause is only the firm term part of the lease. NOTE: Leases, where cost is part of the consideration, may not exceed 20 years (including all option periods and the Day-to-Day Lease Extension period). However, "no cost leases" can be executed for the expected life of the system supported by the land lease. Delete last sentence for

				On-Airport is a no cost lease. Insert in all MOAs, this clause is labeled "Term and Conditions". The term of MOA is to be for the greatest number of years (life expectancy) of a FAA facility.
Title to Improvements	Oct-05	N/A	M	Insert in all MOAs to define title to improvements.
FORMS List of Facilities	Oct-05	N/A	M	Any modifications or additions to this list must be signed by the lessor and the FAA.

1.2.1 Outgrant Clause Matrix Revised 4/2012

CLAUSE TITLE	DATE OF CLAUSE	OUTGRANT LICENSE for Non-Feds	OUTGRANT PERMIT for FEDS	PRESCRIPTION
Anti-Kickback	Jan-07	M	O	Insert in all Outgrant License.
Assignment of Outgrant	Jan-07		M	The Outgrant Permit is not assignable to a third party.
Breach of Contract (Otherwise known as Cancellation)	Jan-07	M	M	The Outgrant Permit can be terminated or cancelled by the FAA.
Consideration (Cost)	Jan-07	M	M	Insert in all outgrants where "fee for use" is received. If outgrant (license or permit) need to put reimbursable number in parenthesis.
Consideration (No Cost)	Jan-07	M	M	Insert in all outgrants where we do receive "fee for use".
Compliance	Jan-07	M	O	For clauses A5 and B1 in Outgrant License, licensee is required to comply with all conditions or restrictions.
Covenant Against Contingent Fees	Jan-07	M	O	Insert in all Outgrant License.
Damage	Jan-07	M	M	No FAA property shall be damaged by the outgrant licensee or permitee.
Environmental Liability (Permit) or (License)	Apr-12	M	M	Insert in all Outgrant licenses and permits. Use the appropriately labeled version for the License or the Permit. In the past, FAA has been held financially responsible for environmental clean-up of sites due to the deliberate acts of Permittees/Licensees on FAA controlled property. Consequently, FAA has

				determined that it is in the best interests of the Agency to require inclusion of this clause.
Governing Law	Jan-07	M	M	The Outgrant License and Permit shall be governed by Federal Law.
Indemnification	Jan-07	M	O	Outgrant Licensee and Permitee agrees to hold harmless the FAA, its officers, agents and employees.
Interference with Government	Jan-07	M	M	This clause in Outgrant License is referred to "common impact to a FAA facility" (clause A6) and clause #4 for
Operations				Outgrant Permit.
Laws and Ordinances	Jan-07	M	O	In the Outgrant License, the licensee shall comply with all applicable State, municipal and local laws, and the rules, orders, regulations and requirements of Federal governmental departments and bureaus.
Hazardous Substances (Permit) or (License)	Apr-12	M	M	Insert in all Outgrant licenses and permits. Use the appropriately labeled version for the License or the Permit.
Maintenance	Jan-07	M	M	The Outgrant License and Permit, the licensee and permitee is required to maintain the demised premises and shall schedule with the government representative any proposed installation or maintenance.
Notices	Jan-07	M	M	Insert in all outgrants. This information is needed for contract administration; all contractual communication should be done through these contacts. Changes in this information require a contract modification.
Officials Not to Benefit	Jan-07	M	O	Insert in all outgrant license.
Operations	Jan-07	M	M	The outgrant licensee and permitee shall confine activities or construction to the facility stated in the outgrant as stated in the license and permit.
Premises	Jan-07	M	M	In Outgrant License and Permit known as description of premises.
Purpose	Jan-07	M	M	Insert in all outgrants to define the FAA asset.
Contract Disputes	Jan-07	M	M	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Restoration –	Jan-07	M	O	Required for all Outgrant Licenses, the

Outgrant				licensee shall restore the demised premises.
Security of Premises	Jan-07	M	M	In the Outgrant License and Permit, the licensee and the permitee is required to provide adequate security for the demised premises (clause A8).
Signature Block	Jan-07	M	M	All outgrants must be signed by authorized parties to the agreement.
Term	Jan-07	M	M	All outgrants must have a clearly defined term.

1.2.2 Easement Clause Matrix Added 4/2013

Legend:

Mandatory (M) – When applicable these clauses shall be included in agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

Recommended (R) – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

Optional (O) – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

CLAUSE TITLE	DATE OF CLAUSE	PERPETUAL EASEMENT	RESTRICTIVE AERIAL EASEMENT	PRESCRIPTION
Binding Effect	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Cancellation	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Clauses by Reference	Jul-12	M	M	Insert in all easements.
Compatible Uses by Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Consideration	Jul-12	M	M	Insert in all easements. The RECO must check the box of the consideration clause that applies to the lease and delete the other non-applicable clause.
Certificate of Acknowledgement	Jul-12	M	M	Insert in all easements.

w/Notary				
Deed of Easement	Jul-12	M	M	Insert in all easements. Referred to as “Restrictive Aerial Easement
				Agreement” for restrictive aerial easements.
Disputes	Jul-12	M	M	Insert in all easements.
Drawings	Jul-12	M	M	Insert in all easements.
Duties & Obligations of the Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Easement Property	Jul-12	M	M	Insert in all easements. Included in the “Description of the Easement Area” clause in the Perpetual Easement.
Easement Purpose	Jul-12	M	M	Insert in all easements. Referred to as “Purpose(s)” in the perpetual easement.
General Provisions	Jul-12	M	N/A	Insert in all perpetual easements.
Grant of Easement	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Holdover	Jul-12	M	M	Insert in all easements.
Legal Authorities	Jul-12	M	M	Insert in all easements.
Notices	Jul-12	M	M	Insert in all easements.
Rights of the Government	Jul-12	M	N/A	Insert in all perpetual easements.
Rights of the Government and Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Rights Reserved in the Grantor	Jul-12	M	N/A	Insert in all perpetual easements.
Scope of Easement	Jul-12	N/A	M	Insert in all restrictive aerial easements.
Signature Blocks	Jul-12	M	M	Insert in all easements.
Term of Easement	Jul-12	M	M	Insert in all easements.
Witnesseth	Jul-12	M	M	Insert in all easements.

1.3 Land Lease Templates Revised 4/2010

Real Estate Templates

2 SPACE ACQUISITION GUIDANCE

2.1 Applicability

This document provides general guidance in the acquisition of office, storage and special purpose space.

2.2 Real Estate Acquisition Process

2.2.1 Request

The acquisition of real property interests is usually informally initiated by a request for market information and estimated costs. The Real Estate Contracting Officer (RECO) must receive a written request along with a funding certification in order to start the acquisition process. A certification of funding must be received prior to the obligation of any funds for any purpose (i.e., surveys, appraisals, space lease, etc.) or the award of a contract. This certification is normally provided by a Procurement Request (PR), which must commit valid funding to fully cover the first fiscal year costs.

2.2.2 Requirements and Planning Revised 1/2011

The RECO should assist the customer in the development of requirements to ensure that the space to be acquired will meet their needs and that it will conform to FAA regulations such as the Administrative Space Guidance, found in 2.4.1: Appendix A and the Administrative Space Regulations as found in the Space Order 4665.4 for administrative space found in 2.4.1.1. The customer should be advised of available alternatives that may fulfill their needs at a lower cost or in a more efficient manner. The RECO must consider the potential budgetary impacts of long- term (over 5 years including options) space leases when developing alternatives and generally should avoid any lease terms that could result in the lease being classified as a capital lease or lease purchase, unless the customer has prepared and obtained budgetary authority for such a lease. See OMB Circular A-11, Appendix B, and "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information.

When the FAA is currently leasing space, in or near the delineated area, consideration should be given to the advantages of collocation, both from economic and program point of view. If there is a demonstrated advantage to collocation, negotiations may be conducted with the lessor provided the proposed rental will be comparable with the market survey determination of the fair annual rental. The RECO should also consider other available federal space, if it meets the requirements of the customer.

The FAA's mission generally requires that offices be located within 5 miles of an airport and outside the central business area.

On requests for renewal of existing leases, the RECO should determine that if the property continues to meet the FAA’s needs, any changes required in the lease terms should be negotiated and included in the renewal.

2.2.3 Procurement Method

Competition is the preferred method of procurement and should be utilized whenever practical and reasonable. Competition is appropriate when the requirement is not site specific.

The single source method of procurement is appropriate when technical requirements, business practices, or programmatic needs have determined that a specific site is required to meet the FAA's mission. The lease file should document the reason(s) competition was not used in the acquisition.

2.2.4 Succeeding Leases/Lease Renewals Revised 7/2012

General Requirements: Prior to determining whether to enter into a succeeding lease (this is a new lease because the lease expires at the end of the term and succeeds the prior lease), or renew an existing lease (this is the exercise of an option to stay in the existing location for the amount of time stated in the option(s) to renew), the RECO must consult with the tenant organization and obtain a statement of continuing need. If the tenant organization indicates a need to remain in the same location, the RECO can initiate filling in the single source justification form and send to the tenant organization for concurrence prior to initiating the procurement. Competition is the preferred method of acquisition for administrative space; however, if a single source is in the best interest of the Government, the single source form must have signature concurrence from the line of business. In addition, if the term of a lease is less than 20 years, including options, and if the RECO determines that the best method to fulfill a short term continuing need is by extending the current lease, the Supplemental Lease Agreement must contain all new and revised clauses. However, if the lease has met its 20 year authority, the RECO must negotiate a new lease using the current lease template.

When to sign a succeeding lease: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated. This means that the RECO can sign a lease now, even when rent commences in the next fiscal year.

Example: The RECO diligently negotiates for a succeeding lease for an off airport nevoid and obtains the lease signed by the lessor in the month of July 2010. The rent does not commence until October 1, 2010 (the start of FY-2011). In order to consummate the lease, the RECO must sign the lease AND award it in the PRISM system in July 2010. The RECO can obtain either a zero dollar PR or a subject to availability of funds PR for the award of the lease.

Timing of renewal efforts: In order to allow sufficient time for completion, and prevent FAA from becoming a holdover tenant, the RECO must commence the renewal process, or the process of entering into a succeeding lease, at least 18 months prior to the lease expiration date. For all GSA controlled space, the RECO must commence the renewal process at least 24 months prior to the lease expiration date. Further, this time period should be extended if the RECO is aware of issues that could jeopardize timely completion of the lease transaction.

NOTE: If a lease is to be terminated and not renewed, the RECO must ensure that the lease and any associated utility or other associated contracts are appropriately terminated and that accounting is notified to ensure that lease and associated utility payments are terminated at the appropriate time.

2.2.4.1 Holdover Tenancy Revised 7/2008

If a continuing need has been determined and it appears the lease will expire without a Supplemental Lease Agreement for a short term extension, or succeeding lease has not been awarded, then the RECO must follow the steps in the AMS policy as per 4.2.3.2.1.2 Emergency Reservation of Expiring Funds for Continued FAA Occupancy**.** In those instances where FAA continues to occupy leased facilities after the expiration of the lease term, the FAA is considered a **"holdover tenant."** If the expired lease does not have a "holdover" clause, the laws of the state in which the facility is located will determine FAA's rights of occupancy.

As mentioned under the policy, the RECO must notify his manager, regional counsel, and the LOB Budget office of issue.

If the RECO is unable to get the lessor to sign a temporary agreement, then the RECO must take steps to ensure that sufficient funds are either reserved, or set aside for settlement of the holdover period. A holdover period should not exceed 6 months. Prior to the end of the current fiscal year, the RECO will notify the affected LOB of the potential need to reserve the minimal funds necessary to pay for the FAA's occupancy during the continued occupancy period (so long as it occured in the same fiscal year), and provide an estimate. If the LOB wishes to reserve funds from the soon to be expiring budget year (for rent that is incurred during the same fiscal year), they shall provide a requisition to the RECO, and the RECO will reserve the estimated rent as an emergency contract. The RECO will send a formal memo to the Accounting office of the emergency reservation of funds, and to await further instructions from the Accounting on when to make any payments. **Note:** The RECO must document in the file a justification for the emergency reservation of funds. Below is information for dealing with holdover tenant with accounting in the financial system.

1. FAA cannot use its holdover status to avoid its obligation to pay for leased facilities. This may necessitate a a memo for the emergency reservation of funds or temporary supplemental lease agreement so that PRISM can accept the obligation without a signed contract. The interim contract number will be the old lease number with an "OH" suffix to the old lease number, or will be a new lease number.

2. Delphi Miscellaneous Obligating Documents (Delphi MOD) will be used only for FY200X funds that are due to the lessor of a holdover lease where funds have not yet been obligated or paid in FY200X for the time already lapsed. Instructions for recording in Delphi in accordance with year-end closing are on the Delphi website (FAA only)**.** The Delphi M.O.D. is regularly used to accrue utilities, credit card purchases, etc. in Delphi for transactions that will not clear before year-end. A Delphi M.O.D. will not be used for leases where FAA is a holdover tenant except in the instance mentioned above.

3. Note if the LOB validates, it can pay the back rent from current year funds, it is not necessary

to perform the emergency reservation of funds.

During this period the RECO must continue to negotiate an lease extension even if considering a condemnation posture. Once the RECO has negotiated a final lease agreement, the RECO must perform a modification to the emergency lease to document the conversion to a fully executed lease contract. Any difference in lease rental payment should be settled and paid at that time.

2.2.5 Advertising/Market Survey and Appraisal Revised 1/2015

Advertising: If advertising is to be accomplished, the Real Estate Contracting Officer (RECO) shall utilize the publicizing method most likely to result in receipt of offers appropriate to satisfy the specific requirement. The content of the advertisement is at the discretion of the RECO. In most cases, advertisements will be in local newspapers. Also, advertisements may include commercial trade journals, electronic bulletin boards, and the Commerce Business Daily. Multiple advertising may be utilized, if necessary. If the RECO chooses to advertise, the RECO shall place the largest circulation in the geographic delineated area and include placement on the days when the "Real Estate" Section is published.

Advertising is not required when the RECO determines that it is not warranted, or reasonable competition can be achieved. Data from an advertisement or market survey may be used to determine the competitive range.

Market Survey: A market survey is a tool used to help the RECO determine the following when leasing a space:

- ☐ the FAA's needs and requirements,
- ☐ determines the fair market rental value and the rental price, and
- ☐ allows for the determination of the competitive range.

A market survey must be conducted in both competitive and single source space acquisitions for all new, succeeding, renewal or small space lease.

Market Information for a Business Case

Under the Space Council Administrative Space Standard Operating Procedures, all lines of business are required to submit a copy of an approved business case to the RECO for all new administrative space requirements. The AFI will submit a copy of an approved business case to the RECO for all technical space. The RECO will assist the LOB with the business case by providing limited market information.

A limited market survey is used for assisting the customer in the development of a business case. A limited market survey is basic fact finding, and includes gathering data that answers the following questions:

- ☐ Is space available in the delineated area?
- ☐ What is the cost per square foot?
- ☐ What are the general terms in the surveyed area?

In addition, the customer must provide initial information on their space requirements to the RECO to conduct a limited market survey.

The RECO has the authority to proceed with a full market survey only after receiving a copy of the approved business case for all new space acquisition, either technical or administrative. The RECO must place a copy of the approved business case in the lease documentation file.

There is one exception to this requirement for an approved business case. In the case of an emergency, which creates an immediate threat to the life or safety of FAA employees, such as a fire or an earthquake, the requesting servicing organization can contact the RECO to proceed immediately with a full market survey.

The business case must not identify a pre-selected location when the intent is to procure the requirements using competitive method. If a business case identifies a specific site location when competition is available within the geographically delineated area, the RECO must notify the customer that the AMS policy requires a RECO to use competition when available.

Full Market Survey

Once a copy of an approved business case is received by the RECO, a "full" market survey is conducted by the RECO with their customer. Prior to initiating a full market survey for a new space requirement, the RECO and the customer must determine space requirements such as square footage, security, parking, electrical, data/telephone and any special build-out requirements. Time frames must be established for the acquisition of the space and a delineated geographic area must be identified. The RECO will conduct a full market survey based upon the requirements received from the customer including receiving a zero dollar purchase request.

The RECO will request funding from the customer to ensure that the RECO and customer are able to participate fully in the market survey process. However, if funding is not available, the RECO must send a copy of the space market survey form to the potential lessor(s) to fill in the required information and either by fax or e-mail a completed copy to the RECO within 5 business days from the date the RECO sent the request to the potential lessor(s).

New Lease Market Survey

With respect to the acquisition of new space leases, a full market survey must be conducted. This ensures that the RECO leases space that meets the FAA's requirements and is in the FAA's best interest. As mentioned above, the RECO needs to receive a copy of an approved business case with a zero dollar purchase request in order to proceed with a full market survey.

The following are guidelines for performing a full market survey for new space:

- ☐ The RECO must check if other government space is available for occupancy prior to initiating a market survey. Your local General Services Administration (GSA) point of contact is one potential source for such information.
- ☐ The RECO must ask the customer/facility manager if he/she has developed information concerning space available in the geographic delineated area. If so, the RECO must request specific points of contact and follow up with the named individuals/companies.

If possible, the RECO must physically canvas the geographic delineated area for space offerings, and listings of competing space by looking for vacancy signs, or reviewing the available real estate listings as published in the local paper serving the geographic delineated area. An on-site market survey visit is important in both a competitive and single source acquisition. However, if the RECO is unable to attend the on-site market survey, the RECO must fax or e-mail the market survey form to the potential lessor(s) to fill in and contact the customer to visit the site with the form, if possible.

- ☐ Communicate with other RECOs and review existing files to determine if there have been other recent surveys (e.g. within the last 6 months) completed with respect to the delineated area that may provide points of contact (brokers, property managers and property owners), leads for buildings with available space, or associated information on rent, operating costs, tenant improvements, etc.
- ☐ Contact and communicate with other federal agency real estate representatives (GSA, Corps of Engineers, etc.) to see if they have completed recent surveys or lease negotiations in the geographic delineated area.
- ☐ The RECO is recommended to use Loop net or GSASales.gov or other market tools to gather data. These tools are extremely helpful when the RECO is gathering limited market information.

Succeeding, Renewal and Small Lease Market Survey

It should be noted that a copy of an approved business case is **not** required for succeeding lease (a new lease succeeds the lease expired) or lease renewals (exercising an option to stay in the same location) for standard or small space requirements; however, the RECO should receive a continuing need statement before proceeding with the process of a succeeding lease or a renewal lease including a zero dollar purchase request. This statement should include sufficient and verifiable justification that the requirement for the space is ongoing.

With the above information, (i.e., approved business case or continuing need statement), the RECO can proceed with a full or limited market survey. For most succeeding leases, when a lease has expired and a continuing need statement indicates requirements to remain at the existing location, the RECO **must** conduct a full market survey (see above information on full market survey). For a renewal lease or a small lease (3,000 square foot or less) a full market survey is not required. However, at a minimum, the RECO is required to gather limited market information. As mentioned above a limited market information gathering must be conducted by 3 or more telephone calls to owners of potential sites located within the delineated area to evaluate present market conditions. This would be sufficient information for the RECO's assessment. The RECO must document the lease file with the limited market information.

Market Survey Form

For all new or succeeding space leases the RECO **must** use the 2.6.10 Space Market Survey Form when conducting a full market survey. The RECO **must** complete the market survey form or have designated FAA personnel complete the if the RECO cannot travel to the site. A completed Space Market Survey form(s) must be placed in the lease contract file for each location.

The RECO must request a block plan from the potential lessor(s) (owner or owner representative) outlining the space being offered. This plan will assist the RECO and customer in determining if the potential lessor(s) can meet the requirements of the FAA.

- ☐ The space form will be completed by the RECO (part I-III) and the potential lessor(s) (part IV-V). When the RECO is conducting a market survey, part of the form can be given to the potential lessor(s) to fill in onsite, or it may be sent to a potential lessor(s) to fill in sections VI-VII. This information will assist the RECO and the customer to decide the acceptability of the space for further consideration.
- ☐ If the RECO is unable to attend the market survey, the potential lessor(s) must fill in the form. Then the potential lessor(s) must send back the completed form to the RECO either by fax or e-mail to the RECO within 5 business days from the date the RECO sent the form to the potential lessor(s).

Developing a List of Potential Lessors to whom FAA's Requirements will be provided

Once a full market survey is completed and the market information has been collected, the RECO must determine a reasonable range for rents, anticipated operating expenses and tenant improvement allowances for potential space that meets the customer's needs. This information forms the basis for discussions with potential lessors. The market survey is a vital tool for the RECO to use to determine the price reasonableness of offers that are otherwise likely to qualify for an award based upon the FAA's requirements. The market survey is essential for making a determination of the fair market value (FMV) of the rent and the FMV of asset under lease. Such a determination is necessary in both competitive and single source acquisitions.

The RECO must send the customer a written notification of the selected potential lessor(s) within the competitive range. This will give the customer notice of the potential lessor receiving a Solicitation For Offer (SFO).

2.2.6 Request for Offers/Solicitation for Offers Revised 4/2015

After the market survey is completed, the RECO will decide if they need to send out the Solicitation for Offerors (SFO) to those offerors whose space meets the FAA requirements and whose prices have been determined initially to be fair and reasonable. If the RECO is using the SFO, they **must** use 2.6.1 the Solicitation for Offer form. The SFO will set forth a detailed statement of FAA's space requirements, including any tenant improvement requirements; will set forth pertinent evaluation criteria and the basis for award; will include a schedule for space delivery; will set forth all statutory and regulatory requirements, such as accessibility, life safety, how disputes will be addressed, and labor wage requirements; and will include such additional provisions as are necessary to ensure that the space is acquired in the best interest of FAA. The SFO should be clear and unambiguous. An SFO is not required for a small lease (under 3,000 square feet). However, a modified version of an SFO for small lease is acceptable for the RECO to use.

2.2.7 Negotiation Revised 10/2015

Depending on the acquisition method, the RECO will begin negotiating the FAA's requirements with a single source offeror or with multiple offerors.

If negotiations result in FAA and an offeror reaching an agreement on all of the FAA's requirements, but the rental or an item price is higher than the market survey supports, the offeror can be asked to lower the rental or any other particular item price to be within the amount supported by the market survey. This may be done formally or informally.

Should negotiations not result in an agreement, negotiations with that offeror may be discontinued and the RECO should proceed to negotiate with the remaining offeror(s).

If the RECO cannot reach agreement with any offeror, the RECO shall consult with the Line of Business (LOB) with respect to modifying minimum requirements and/or expanding the delineated area. If the LOB and the RECO agree upon revised requirements, the RECO shall complete a new market survey and re-solicit the lease requirements (RE Guidance 2.2.5 and 2.2.6).

If requirements cannot be modified, or property is not available in the market to meet FAA needs, or the RECO cannot reach an agreement on available properties, the RECO will need to inform the LOB and cancel the request. If the lease being negotiated is a succeeding lease and the RECO reaches an impasse with the Lessor, the RECO should consult with the appropriate Regional, Center, or Headquarters Counsel before proceeding further with the acquisition.

2.2.7.1 – Negotiation for Cost Leases Added 10/2015

Set forth below is the order of preference of the rent structure for all new or succeeding cost leases to be negotiated by the RECOs. RECOs shall negotiate the rent structure of cost leases, including any supplemental lease agreements that extend or modify the lease term or payment, as follows:

1. Fixed Rent: The RECO negotiates a fixed rate over the entire term of the lease. For example - $500 per month for the entire term of the lease.

2. Defined increases at stated intervals (Stepped Rent): Despite best efforts, if the owner is unwilling to agree to a fixed rent over the entire term, then the RECO should negotiate an agreed-upon rent schedule with increases that are calculated (known) in advance. This is commonly called a stepped rent.
   Examples - $2000 per month for the first 12 months, then increase to $2050 for months 13 through 24; or $800 per month for the first five years, then $950 month starting year 6 through year 10.

3. FAA Standard Operating Costs Escalator (CPI)/Tax Adjustment Clauses: If the owner is unwilling to agree to a fixed or stepped rent cost structure in the lease, the RECO offers to use the FAA's standard Operating Costs Escalator clause and/or the standard Tax Adjustment clause.

The standard Operating Cost Escalator clause is calculated based on changes in a specific Consumer Price Index (CPI), which is spelled out in the lease template, and is applied to that portion of the rent associated with the *operating expenses* only. The tax increase is applied proportionally to the percentage of FAA's occupancy.

The standard Operating Costs Escalator clause and the Tax Adjustment clause require changes in the rental amount in future years that cannot be calculated in advance because the CPI and property tax rates change annually. In order to avoid budget shortfalls, the RECO shall insert an annual maximum "not-to-exceed" cap on any rent or lump sum increases. This can be stated as a not-to-exceed dollar amount or as a not-to-exceed percentage change. The annual maximum cap will be determined by the RECO based on prevailing economic and market conditions and inserted in the standard Operating Costs Escalator clause and the Tax Adjustment clause.

4. Any other type of alternate rent adjustment clause: If, after making a good faith effort to negotiate either a level rent, a stepped rent, or use of the FAA standard Operating Costs Escalator and/or Tax Adjustment clauses – in that order – the RECO is unable to come to an agreement with the property owner, then the RECO can consider an alternate cost structure proposed by an owner.

   Cost structures that provide for alternate rent adjustments in a lease are known by various names. Some of the more common ones are described as "pass-through", which are actual Lessor expenses that are higher than the initial base established in the lease; "CAM" charges, which are shared costs of common area maintenance (CAM) expenses; other "CPI-type" clauses, which are increases based upon other than the index used in the standard Operating Costs Escalator clause. This list is not all-inclusive.

   Use of an alternate rent adjustment clause requires careful review to ensure: 1) that the method proposed by the offeror to calculate adjustments in rent is readily understood, 2) the proposed lease clause is clearly written and can be calculated in the future by the FAA, 3) it will contain a not-to-exceed cap; and 4) it cannot cause FAA to exceed budget limitations.

   Prior to incorporating an alternate adjustment clause into the lease, the RECO must obtain written approval, on a case-by-case basis, from the Real Estate Group Manager and from the appropriate Regional, Center, or Headquarters Counsel.

If the property owner is unwilling to negotiate a fixed rent (option #1 above), then the RECO, - prior to lease award - must notify the LOB and the appropriate budget office, in writing, that the proposed lease will contain a cost structure that will result in rent adjustments in future years.

Regardless of the structure of the cost lease ultimately negotiated, the RECO must be able to

support the proposed rent, including any proposed adjustments, by market survey data or appraisal information. This shall be documented in the Negotiator's Report.

2.2.8 Evaluation of Offers

If the competitive range method is used, once offers are determined to be within the competitive range, selection for final award may be made without further consideration of the selection criteria. Selection from the competitive range group may be made based upon that proposed offer that is best suited to the FAA's needs, in the RECO's opinion. This includes benefits offered that have not previously been addressed in the FAA's requirements provided. Any new benefits identified do not change the evaluation criteria used to develop the competitive range group. The evaluation criteria should be in writing and the lease file should indicate how the criteria would be used. Use of the evaluation criteria should be consistent through out the procurement. The use of "best and final" offers is generally not used in real property acquisitions. Negotiations may be terminated at anytime by the RECO.

When using the competitive range method in determining the offer most advantageous to the FAA the reason for selection should be some characteristic (or group of characteristics) that cannot be obtained from one or more of the other offerors. As an example, the selected offer may be located very near the main gate so as to provide ideal access to the FAA by its airport customers.

The RECO should review the offer(s) and make a selection that will represent the best value. Price must always be considered along with the other written evaluation criteria. RECO's required for both competitive and sole source procurement conduct a price evaluation of the offeror(s). The length of the lease determines whether actual or discounted dollars are used. Programs to evaluate offers dollars are available.

As part of the evaluation, a fair market value determination must be made. This can be done by appraisal or use of market data. This is true for competitive or non-competitive space.

The requiring office should be advised as soon as possible of the recommendation for award.

2.2.9 Documentation to the Lease File Revised 7/2014

Sufficient documentation must be developed to explain and justify the real estate acquisition action taken. RECO's are to use the appropriate checklists (file and/or contract) to ensure the adequacy of contract clauses and to ensure required documentation is in the file to support the acquisition. RECOs must use a 6 part folder for all acquisition files.

Contract Review Process (Space)

RECOs must fill out and sign the appropriate Contract Review Checklist and determine if the contract requires secondary review in accordance with ISO 9001 Real Estate Contract Review Work Instructions. If secondary review is required, the RECO must submit the contract to the designated reviewer prior to sending it out for signature. Any changes made to the contract

after the initial review must also be reviewed. A copy of the secondary review, signed by the reviewer, must be placed in the file.

File Review Process (Space)

The File Review is intended to provide a quality control check of the file for completeness. The review is not intended to replace the judgment exercised by the contracting officer. RECOs must fill out and sign the appropriate File Review Checklist and determine if the file requires secondary review in accordance with ISO 9001 Real Estate File Review Work Instruction. If secondary review is required, the RECO must submit the file to the designated reviewer. A copy of the secondary review, signed by the reviewer, must be placed in the file.

2.2.10 Award

Legal review of leases is recommended where there is deviation from AMS clauses. Legal review is required on all purchases. The Department of Justice rules and requirements must be followed for condemnation and title review.

After negotiations and when all FAA criteria have been met, the RECO will prepare three original leases for signature by the offeror. Prior to the RECO signing the returned lease document it should be compared to the copy retained in the file to ensure that no changes have been made by the offeror. The RECO will execute all originals leases.

After execution, the RECO should ensure that all information is entered into the real property database, i.e. REMS.

2.2.11 Condemnation **Added 1/2008**

When negotiations reach an impasse and FAA has a need for real property, the FAA may initiate eminent domain proceedings. Generally, protracted negotiations are not in the best interests of either party. Legal participation is required on all condemnations. The Department of Justice rules on condemnation and requirements for title must be followed when real property is acquired through purchase or condemnation proceedings.

The FAA almost exclusively uses Declarations of Taking (DT) when it acquires property by eminent domain since the majority of FAA acquisitions involve property that the FAA currently leases and which already support FAA facilities. Since it would clearly be impractical to vacate the property while the condemnation case is pending, the FAA utilizes a DT to acquire immediate title to the property, which permits the agency to continue operating the facility on the property. The Agency should avoid using condemnation for short-term acquisitions.

The RECO must follow the FAA procedural guide on “Acquisition of Real Property by Eminent Domain” see 1.1.19.1. When preparing the condemnation file, the RECO must use the condemnation checklist see 1.1.19.2.

For further information on condemnation please see guidance under section 1.1.19.

2.3 Post Award Real Estate Process

2.3.1 Inspection and Acceptance Revised 7/2016

The RECO should arrange to inspect the space sufficiently in advance of the required occupancy date to ensure that it is ready for the customer. The Lessor must provide evidence of a valid occupancy permit at this time unless the local jurisdiction does not issue occupancy permits, in which case the RECO can accept a certified copy of the FAA Safety and Environmental Checklist in lieu of an occupancy permit.

Acceptance may be provided in writing or verbally with any discrepancies or unfinished items noted in the lease file. In most cases the FAA and the Lessor will agree to discrepancies in writing. However when large deficiencies remain it is often advantageous to delay acceptance until they are completed. The lease should be amended to reflect the actual commencement date.

Minor deficiencies are often referred to as "punch list items". These items need not prevent acceptance of space and commencement of rent. A follow-up inspection should be scheduled to ensure that the deficiencies are corrected. The results of the follow-up inspection should be documented in the file.

2.3.2 Alterations and Improvements Revised 7/2016

Alterations or improvements done by the Lessor may be amortized over the term of the lease, made by lump-sum payment, or other method determined appropriate by the RECO. Alterations and Improvement under an existing lease generally are considered single source and do not require competition.

1.) *Alterations*

It is normally in the FAA's best interest to have the Lessor perform alterations in his/her own building, thereby eliminating any question of liability on the part of the FAA.

Alterations performed under an existing FAA lease by the Lessor should be at a fair and reasonable cost. Determination of fair and reasonable may be made by 1.) formal appraisal, 2.) construction data, 3.) cost to build publications, and 4.) independent government cost estimate.

2.) Improvements

The FAA can make permanent improvements to private facilities under the provisions of the lease agreement. The ability to make permanent improvements using a third party is governed by 1.) 49 USC Section 44502 (a)(5) and the decision by the Comptroller General B-239520 (8/16/90).

The Lessor should be considered first in providing improvements. Improvements should be evaluated for their value using FAA accounting practices. Determination of fair and reasonable

cost may be made by 1.) formal appraisal, 2.) construction data, 3.) cost to build publications, and independent government estimate.

If the Lessor is unwilling or unable to provide the means to complete the improvements, then the FAA can exercise the authority under 49 USC Section 44502(a)(5).

For all alterations and improvements dealing with construction of leased space, the RECO may use the engineers/architects from Design and Construction, ALO-300, to verify the cost estimates.

2.3.3 Tenant Improvements / Tenant Improvement Allowances for Space Acquisition

Revised 7/2016

It should be noted that the key component of any lease is negotiating the tenant improvement (TI) and the tenant improvement allowance. Commercial building owners often offer a TI allowance as an inducement to signing a long term lease. The longer the firm term of the lease, the larger the TI allowance. The TI allowance is often tied to the firm term, as the Lessor wants assurance that his investment in fronting the TI allowance is "paid back" by the stream of rent over the firm term of the lease. The TI allowance allows for the possibility for the tenant to achieve savings in construction cost and reduce rental consideration. The TI allowance is often quoted as $X dollars per square foot leased. When conducting a space acquisition, the Real Estate Contracting Officer (RECO) must negotiate a TI allowance for space improvements, ranging from a cold dark shell to a warm lit shell (see glossary below for definition). As mentioned in the Standard Space Lease, it should be noted that no costs associated with the building shell (either dark cold shell or warm lit shell) whichever is negotiated by the RECO, shall be included in the TI pricing. It is important to make sure the Lessor TI Allowance is sufficient to bring the Shell Space to a "Warm Lit Space" condition prior to expending any tenant improvement funds.

It is important for the RECO to maintain control of the process when the TI pricing is being used by the Lessor. The RECO should be in contact with the Lessor to ensure that progress of the TI build-out is being conducted in accordance with the lease and receiving information on the use of the TI allowance from the Lessor. As part of the TI pricing process, the Lessor should provide the RECO with a detailed construction schedule.

2.3.3.1 Questions and Answers **Revised 7/2016**

Q1: What is a Tenant Improvement (TI)?

A1: Tenant improvements are the finishes and fixtures that typically take space from the "shell" or as-is condition to the desired finished, usable condition. The Government, at its sole discretion, will make all decisions as to the usage of the TI. In addition to construction costs, tenant improvements include associated costs such as preparation of construction plans, construction management fees, city fees and permit costs or penalties, certificate of occupancy, applicable taxes, and engineering fees.

The following represent some examples of tenant improvements:

- ☐ Keyed switches to elevators to restrict after-hours access; special location indicators and controllers
- ☐ All initial wall finishes on TI partitions
- ☐ All fittings and fixtures within designated rentable areas, e.g., millwork and tenant signage counters
- ☐ Work for heating, ventilation, air conditioning, and rebalancing systems to suit tenant floor layouts and usage, including re-arrangement of existing zones and adding new zones and controls (including diffusers; branch duct reallocations/alterations)
- ☐ Upgrade to fire protection systems (e.g., specialized applications such as systems or laboratory protection) to comply with specialized tenant requirements and building code
- ☐ Plumbing for additional refreshment areas and washrooms, showers to support job functions, and plumbing for laboratory or special areas
- ☐ All electrical power distribution in tenant's partitions and within tenant areas, such as service poles, power and controls for all TI equipment
- ☐ Additional lighting and controls to suit tenant space layout and usage
- ☐ Upgrade of light fixtures and diffusers in excess of those provided in base building, as well as specialty lighting such as pot lights and track lighting
- ☐ Adjustment to the location of "EXIT" and emergency lights to suit tenant layouts and exit routes
- ☐ Office tenant security, communication, public address and general wiring systems, excluding removal and replacement and new mandatory operating equipment which are intrinsic to the building

Q2: What is a TI allowance?

A2: Leases allow the Lessor to give the Lessee a TI Allowance for improvements to the leased premises:

- ☐ The Government uses the TI to build-out its area
- ☐ The Government's TI will be performed by the successful Offeror as part of the rental consideration and/or lump-sum payment
- ☐ Improvements must meet the quality standards and requirements of the lease and attachments
- ☐ The Government, at its sole discretion, shall make all decisions as to the usage of the TI allowance. The Government may use all or part of the TI allowance.

Q3: What if we do not spend the full TI Allowance provided by the Lessor?

A3: The Government may return to the Lessor any unused portion of the TI Allowance in exchange for a decrease in rent according to the amortization rate over the firm term.

Q4: What if we spend in excess of the allowance provided by the Lessor?

A4: If it is anticipated that the Government will spend more than the allowance, the Government reserves the right to:

- ☐ Reduce the TI requirements;
- ☐ Pay a lump sum for the overage upon completion and acceptance of the improvements; and
- ☐ Increase the rent according to the negotiated amortization rate over the term of the lease.

Q5: What is the purpose of the Improvements and Tenant Improvement Allowance clauses in the Standard Space Lease Template?

A5: The purpose of the Standard Space Lease Template is to define and describe the processes which both the Lessor and the Government shall complete in order to design and build-out the TI. This process is based on generally accepted commercial building practices. This allows the RECO to maintain control of the process when the allowance is being used. Furthermore, if you look at the Standard Space Lease Template as being flexible (in a continual state of flux and not static) to fit the goals of the design and build- out for each project - then it will be easier to work with and will become a useful document/tool.

Q6: Can I make changes to the clauses? Who needs to approve the changes?

A6: The clauses in the Standard Space Lease Template are considered "recommended" which allows the RECO the flexibility to make changes based on the type of space requirement that is being built out, however, all changes to the Standard Space Lease should be reviewed and approved from the appropriate channels (i.e., legal counsel).

2.3.3.2 Examples of the Standard Space Lease Template in Practice Revised 7/2016

The RECO can refer to these examples to see the flexibility of the Standard Space Lease Template in meeting requirements.

1. Flight Standards District Offices Relocation (FSDO) Build-to-suit. The purpose of the Standard Space Lease Template for this project was to provide for an Architect to represent the FAA and provide a viable method for both parties to complete the design and construction processes for a build to suit project. We looked at the page and half document General Services Administration (GSA) used at the time, we talked to Architects, and we drew from experience - to prepare this document for Legal approval. Legal checked for clarity and to make sure the process was legal but since it was a Real Estate document - they mostly left the structure up to Real Estate.

The most unique thing about this project was that the Shell (and the Tenant Improvements in that shell) had to be constructed on vacant land - and the Standard Space Lease Template was structured accordingly.

2. FSDO Relocation for 20,000 sq. ft. The Standard Space Lease Template was revised to fit the goals of this project of approximately 20,000 sq. ft. of TIs in a new empty shell building. It became a more complete document but many concepts were different than the FSDO project - and at eleven pages - it became longer.

3. System Support Center (SSC) Relocation for 3,000 sq. ft. The Standard Space Lease Template was reduced to just a few pages because this was smaller space (which also included warehouse space) and the design and construction process was not nearly as involved as the projects named above – and was almost entirely handled by the Lessor.

4. Certificate Management Office (CMO) and ATO relocation for co-location. The Standard Space Lease Template was revised to fit these two very different and unique projects. Louisville had incremental space challenges - and the FAA used an FAA Contractor as its Architect to interact with the Lessor's Architect and Contractor. The ATO project had timing challenges, Heating, Ventilation, and Air-Conditioning (HVAC) challenges, and at almost 79,000 sq. ft. was simply a large project to deal with overall. The Standard Space Lease Template for the ATO lease had significant revisions for the Regional Office Facilities Manager and the FAA Architect to deal with the design and build-out.

2.3.3.3 Glossary Revised 7/2016

1. American National Standards Institute (ANSI) / Building Owners and Managers Association (BOMA). Industry standards offered by the building owners and managers association for measuring floor area in office buildings (Current ANSI/BOMA Z65.1). Example: Corridors and restrooms on a multi-tenant floor are generally prorated and added to each tenant's rental space. Shafts such as elevator shafts and vertical ducts are generally not allocated to any tenant.

2. Build-to-Suit. Built-to-suit means building a property to the specifications of the tenant/line of business requirements.

3. Change Order(s). Requirements not captured in the original price proposal are documented and agreed to by formal submission of change order request. This request must be detailed in writing and include the cost. It is required that these change orders are approved by the RECO and the line of business prior to the work execution.

4. Construction/Working Drawings. The document that explains all phases of the construction for the Lessors contractors. The drawings will include: Demolition plan, Mechanical plan, HVAC, Door Schedule, Reflected Ceiling Plan, Power and Communication Plan, Furniture Plan, Interior finishes, and any other information required to complete the Tenant Improvements (TIs).

5. Design Intent Drawing (DID) (also known as "Preliminary Drawings" or "Prelims"). Describe the architectural design and technical requirements. DID"s establish an early understanding between the FAA and the project architect on the desired design approach and detailed design assumptions to help work through design decisions early in the process before the development of construction documents (CDs).

6. Heating Ventilation and Cooling System (HVAC). Buildings heating, ventilation and cooling system designed to regulate the building atmospheric conditions.

7. HVAC Air Balance Report. Is a certified report provided by the HVAC technician to insure the HVAC system is functioning in harmony, at their optimum performance, providing total

occupant comfort (Be sure to request the report prior to space acceptance).

8. Price Proposal. Is the proposed cost by the Lessor to complete the tenant improvements needed to fulfill the requirements for the FAA.

9. Shell costs vs. Tenant Improvement Costs. Are items that are required of the Lessor to have in place to meet the minimum "Warm lit Space" condition before any TI (Agency) cost are expended. TI costs are the amount paid by the agency over and above the Allowance offered by the Lessor to complete the requirements.

10. Shell Space (Cold Dark Shell). Is a commercial or residential building with an unfinished interior and lacking heating, ventilating, and air conditioning (HVAC), and usually without lighting, plumbing, ceilings, elevators, or interior walls.

11. Shell Space with some improvements (Warm Lit Shell). In a commercial or residential building with a minimally finished interior, usually with ceilings, lighting, plumbing, heating and cooling (HVAC), interior walls, electrical outlets, elevators, rest rooms, and a concrete floor. A warm lit shell is considered ready to lease and ready for TIs.

12. Tenant Improvement Allowance. Is the amount of money offered to the Government by the Lessor to refresh or bring prospective space up to a finished usable condition which may be included in the offered rental rate. The Government at its sole discretion will use the allowance to meet its requirements. The amount depends on many factors, including, but not limited to, the length of the term of the lease and the total amount of square footage of the space. TI allowances may be in the form of a dollar amount per square foot or in a one lump sum amount for the entire space. For existing space previously improved for a prior tenant, the offered TI allowance will typically be enough to replace worn carpets and wallpaper, paint walls, freshen up some cabinetry, and move a minor number of walls and doors. For brand new space the TI should cover all or most of the cost of all new TI designs and components (except that of tenant specific or special requirements). Expenses in excess of the TI allowance must be paid by the tenant.

13. Reconciliation. Final reconciliation of the total project cost from the original price proposal to the final invoice which should contain the paid receipts for all contractors and sub-contractors and release of lien notice from all contractors.

14. Unamortized Tenant Improvement Allowance. Provision in the Standard Space Lease Template for dealing with early termination by the government when agreeing to a TI allowance based on the full term of the lease. The RECO creates an amortization schedule based on a negotiated rate on which the TI allowance is treated like a "loan" payment schedule. The unamortized TI allowance declines as the FAA pays the agreed upon rent and should the FAA exercise a right to terminate prior to the full term then the Lessor is compensated for the TI allowance.

2.4 Appendices

2.4.1 Appendix A: Administrative Space Guidance Revised 7/2016

I. General:

All FAA owned, leased, and GSA space must follow the FAA Order 4665.4A Federal Aviation Administration (FAA) Administrative and Technical Space Standards. This order provides standards for the construction, reconfiguration and consolidation of administrative and technical spaces; promotes workforce mobility and workplace flexibility; and improves the Agency's space utilization rate. This order supersedes all prior space orders, notices and approved exceptions pertaining to Federal Aviation Administration (FAA) occupied facilities and new space acquisition.

II. APPLICABILITY:

This order applies to those responsible for planning, procuring, implementing, maintaining, or occupying administrative and technical spaces in the FAA. It also applies to all RECOs who are entering into lease contract for space. RECOs must ensure that the LOBs space requirements are approved and meet the standards set forth in the order.

For all other information on definitions, exemptions and standards, please see the 4665.4A - Federal Aviation Administration (FAA) Administrative and Technical Space Standards.

2.4.1.1 Chief Financial Officer Review of GSA Space Request over $10 Million Revised 7/2016

The Administrator, in a memorandum dated August 11, 2005, directed the Chief Financial Officer (CFO) to exercise greater control and fiscal oversight over FAA contracting, specifically by giving the CFO approval authority over all proposed procurement actions of $10 million or more. To accomplish this greater control and fiscal oversight, FAA program offices must submit their proposed procurement actions for CFO review to the Office of Financial Controls early enough in the acquisition process so that the CFO can effectively participate. Reviews of potential commitments are required before negotiation and finalization. The CFO requires an effective contribution; therefore, the Office of the Assistant Administrator for Regions and Centers (ARC) requests that all proposed procurement actions requiring the CFO review to be submitted to ARC prior to commitment with the General Services Administration.

The CFO's approval is required on all original actions of $10 million or more that would result in the following: other procurement actions or any other binding commitment, such as a lease.

The Assistant Administrator for Regions and Centers (ARC) internal approval process is outlined below to assist in planning a new GSA lease, renewal, continuing need, renovation or expansion.

- The business case package is presented to the Real Estate Contracting Officer (RECO) from the Line of Business (LOB).
- The RECO reviews the business case package and provides comments that include one-time cost, i.e. alterations, furniture, etc., related to the project that must be approved by the RECO and concurred by Logistics Service Area Managers. If another LOB is paying for part of the procurement, a memorandum of agreement will be part of the business case package to be forwarded to the Headquarters Facility Management Division (ALO-100).
- The RECO will forward the business case package to ALO-100 for final review and

approval.

- The business case package must include at a minimum, with the Regional Administrator's concurrence on, the following information:

  - o Chief Financial Officer Acquisitions Form
  - o Business Case & Executive Summary
  - o GSA Market Survey Price Methodology document o Occupancy Agreement from GSA
  - o Memorandum of Agreement from LOB, if required

- ALO-100 will forward the business case package to the ARC Resource Management Staff (ARC-10) for review and approval of other cost outside of the GSA Rental cost
- ARC-10 will provide comments and concurrence and forward to ALO-1
- ALO-1 approves and signs the Request for Approval form for submittal to the Chief Financial Officer (CFO)
- Once the CFO approval process occurs, the CFO's office forwards the approval to ARC-1
- ARC-1 notifies ALO-1 of the approval, who forwards the package to ALO-100
- ALO-100 provides the RECO the authorization to sign the Occupancy Agreement (OA). A copy of the OA is forwarded to ALO-100 to be made part of the real estate lease file.

2.4.1.2 Occupancy Agreement Checklist for GSA-Owned and GSA-Leased Space Revised 7/2016

A significant portion of the FAA's portfolio of space is GSA leased or owned space. The FAA's occupancy of GSA space is governed by the GSA Occupancy Agreement (OA). RECOs and Executive Operations Staff should use the FAA Occupancy Agreement Checklist for GSA-Owned and GSA-Leased Space in their assessment and review of GSA OAs.

2.4.2 Appendix B: Vehicle Parking Guidance Revised 4/2012

A. Requirements:

Managers responsible for implementing the provisions of this policy on vehicle parking should assess the parking requirements of their workforce, the available parking at the facility and in the vicinity, the requirements established in FAA Order 1600.69 (FAA Facility Security Management Program), the requirements of both the Uniform Federal Accessibility Standards (UFAS) and the Americans with Disabilities Act (ADA), and the cost of implementing this policy to the maximum extent possible. The FAA has determined that both UFAS and ADA apply to all FAA facilities; where there is an overlap in parking requirements, the FAA shall implement the more stringent requirement. Be sure to include requirements for accessible parking spaces in the assessment and the requirement sent forward to the RECO.

B. Parking at GSA-Controlled Buildings:

In new or existing space provided for FAA use, GSA parking policies will be followed. Requests for new leased space or requests for renewal of existing leased space should include FAA's parking requirements for official and employee vehicles. Special requests for accessible parking must be clearly delineated. GSA is currently billing parking at a per-space rate and will break out

the cost of parking as a separate line item in the GSA rent. Although accessible parking spaces are larger in area, GSA attempts to negotiate the same rate for accessible and regular parking spaces.

C. Parking at FAA Owned or FAA Leased Buildings

Adequate parking for official and employee vehicles should be provided at the time a facility is initially constructed or leased. If parking requirements subsequently change, the requiring activity shall identify the new requirements and funds for the additional parking. At some FAA facilities and duty stations, especially at airports, adequate on site employee parking is not available and commercial parking is exceedingly expensive. In these instances, every reasonable effort shall be made to obtain free employee parking that is at least equivalent to the parking accommodations provided to employees at the airport or commercial entities in the nearby area. The cost the FAA negotiates for these parking spaces should be at or below market value (e.g. if the airport has negotiated a lower than market rate for its employees, the FAA should attempt to negotiate an equivalent below market rate). In some instances this may result in employees parking at satellite parking facilities located some distance from their facility or duty station and utilizing a shuttle bus service to reach their workplace. In order to determine the adequacy of parking facilities of this type, facility managers should carefully evaluate the frequency of the shuttle service, the safety of employees at satellite parking facilities, and the costs of acquiring alternative parking accommodations located closer to the FAA facility or duty station. If accessible parking cannot be provided at the facility, the shuttle transportation to and from the remote lots must be equipped with accessible boarding equipment so that FAA employees with disabilities can reach their duty station during working hours.

D. Allocation of Parking Spaces Available at Facilities:

1. Accessible parking spaces [as defined in UFAS and/or ADA] shall be provided for FAA employees with disabilities. All visitors parking shall also meet the requirements of ADA and/or UFAS. Since the FAA may not be able to provide one hundred percent of the desired non-accessible parking spaces, the available FAA parking spaces (exclusive of accessible spaces) at both FAA owned and leased facilities shall be allocated in accordance with the following priorities:

2. Government-owned and Government-leased vehicles used for criminal apprehension, firefighting, and other emergency functions (Official Vehicles)

3. Government-owned and Government-leased vehicles for general use (Official Vehicles)

4. Visitor parking (required number of spaces must take into account the accessible spaces required by UFAS and/or the ADA Accessibility Guidelines).

5. Vanpool/carpool vehicles (State statutes may affect this priority.)

6. Executive personnel and employees working unusual hours. Employees who are periodically called back to work outside their normal duty hours are considered to be working unusual hours. Employees who periodically or regularly work second and/or

third shifts are not considered to be working unusual hours.

7. Employee-owned vehicles that are routinely used for Government purposes at least 12 days per month and that qualify for mileage reimbursement and travel expenses under Government travel regulations

Other employee-owned vehicles

NOTE: ONLY 1. AND 2. ABOVE WILL BE DESIGNATED AS RESERVED PARKING.

E. Electrical Outlets for Engine Block Heaters:

Parking facilities owned or leased by the FAA and located in geographic areas with sustained low temperatures, zero degrees Fahrenheit or below, should be equipped with an adequate number of electrical outlets for official and employee-supplied vehicle engine block heaters. When electrical outlets for engine block heaters are required by climatic conditions, all accessible parking spaces will be equipped with accessible outlets. Electrical outlet installations shall be in accordance with all applicable codes and ordinances. As a guide for determining whether electrical outlets for engine block heaters are required, a survey of local area businesses, private employers, and other facilities in the area may be undertaken and a decision reached based on whether the survey shows that electrical outlets are being provided at the facilities surveyed. This requirement for electric outlets for engine block heaters does not apply to unattended technical facilities or those facilities visited only on a periodic basis for maintenance and/or service.

F. Funding

Initial FAA leases should be negotiated so that the rental payment includes parking costs. When negotiating for FAA leased space, the RECO should negotiate the best price for both the required square feet of building space and the required number of parking spaces (for official Government vehicles and employee vehicles) as determined and justified by the requiring activity. The lease should clearly document the number of reserved and unreserved parking spaces that are included in the rent. If it becomes necessary to install electrical outlets for engine block heaters at existing leased parking facilities, the RECO should have the lessor install the electrical outlets and either amortize the installation costs over the term of the lease or pay for the installation costs in a lump sum. Payment of the additional utility costs generated by the use of the electrical outlets will be negotiated by the RECO as either an increase in rent or as a separate utility contract. If installation of electrical outlets is necessary at FAA-owned facilities, funding for the installation should be obtained through the normal budget process by the parent division of the field office that will benefit from the installation. At collocated offices and facilities, a proportional share of the cost to install electrical outlets should be agreed to by the parent divisions of the collocated offices and facilities. Where the FAA is getting “Rent Free” Space (under grant provisions), from an airport sponsor, the parking for “official Government vehicles” shall also be provided at no cost to the Government.

G. Responsibilities

1. The Manager, Facilities Management Division, at Headquarters is responsible for

determining the adequacy of parking within the FAA Headquarters buildings and for implementation of all regulations and requirements. Suitable parking accommodations may be acquired as a result of new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities. Funding for parking requirements will be acquired through the normal budget process.

2. Regional administrators and center directors are responsible for overall implementation of this order at the regional, center, and field facilities under their respective jurisdictions.

3. Regional division managers are responsible for determining the adequacy of parking at field facilities that fall within their operational jurisdictions. When parking accommodations are found to be inadequate, regional division managers will initiate requests for any funding needed to correct the parking inadequacies through the normal budget process. Upon receipt of funds, regional division managers will initiate requests to the Regional Logistics division managers. Logistics managers are responsible for acquiring adequate parking accommodations through new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities.

4. The Program Director, Office of Facility Management, at the MMAC, is responsible for determining the adequacy of parking at the MMAC. When parking accommodations are found to be inadequate, the Program Director will initiate requests for any funding needed to correct the parking inadequacies though the normal budget process. Upon receipt of funds, the Program Director, Office of Facility Management, will initiate requests to the Program Director, Office of Acquisition. The Program Director, Office of Acquisition, at the Mike Monroney Aeronautical Center (MMAC), is responsible for acquiring adequate parking accommodations through new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities.

5. The Manager, Logistics Division at the FAA Technical Center, (FAATC) is responsible for providing adequate parking at the FAATC. Suitable parking accommodations may be acquired through new leases or modifications to existing lease agreements, through new construction contracts, or through contracts with commercial parking facilities.

6. Managers at field facilities are responsible for assigning parking spaces at their individual facilities in accordance with paragraph D above of this Parking Guidance. Facility managers at collocated facilities shall confer and agree on the allocation of parking spaces. Facility managers are also responsible for reporting on the adequacy of parking accommodations to their respective division managers and ensuring that electrical outlets for engine block heaters are installed only after coordination with appropriate offices in accordance with existing regional procedures.

7. RECOs are responsible for acquiring the required parking spaces at the lowest cost.

2.4.3 Appendix C: Rural Development Act Guidance Revised 4/2012

This section provides general guidance for the application of the Rural Development Act (RDA). In accordance with the Rural Development Act (RDA) of 1972 (P.L. 92-419, 86 Stat. 670, 7 U.S.C. Section 2661) and DOT Order 4320.1A (Location of New Federal Offices and Other Facilities in Rural Areas), the FAA must give first consideration to rural areas when locating new space, land, and other facilities (i.e. research and development facilities, warehouses, labs, clinics, etc.) unless mission or program requirements call for urban areas.

This guidance applies to all new and lease renewals for space and land acquisition as of January 2003. However, this guidance does not apply to unmanned and on-airport facilities such as VORTACS, RCAGS, GS, LOC, MALSR, etc.

Frequently Ask Questions:

1.) After giving first consideration to rural area, what should the RECO do?

- ☐ If rural area location is not selected, the RECO must document why not. For example the mission or programmatic requirements may require an urban location. Document the acquisition file to show the consideration given to rural options.
    - o For example, the FAA can consolidate TRACON sites in either an urban or rural area. The mission of the program office is dependent on having fully operational functions for the TRACON site. Therefore, if a rural area does not meet functional needs, the RECO has adequate justification to locate in an urban location.
        - ☐ The decision to not consider rural area cannot be made arbitrarily. The acquisition file must document the consideration given to rural areas and provide the data that supports the decision to locate in an urban area. The RECO can fill out the Checklist for RDA and add this to the acquisition file, to meet the documentation requirement.

2.) How do you define rural area?

- ☐ As per Federal Register/Vol. 67, No. 240(Friday, December 13, 2002, pg 76820, final rules for the Real Property Policies Update - 41 CFR Parts 102-71, et al.) rural area means a city, town, or unincorporated area that has a population of 50,000 inhabitants or less, other than an urbanized area immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants, as specified in the Rural Development Act, as amended.

3.) Which should the RECO consider first the central business district (urban areas – Executive Order (EO) 12072 and EO 13006) requirement or the rural areas (RDA)?

- ☐ If an acquisition can be <u>either</u> urban or rural, then the rural location must be given <u>first</u> consideration. If the mission or programmatic requirements and the justification state that the space, land and/or other facility be located in an urban area, then rural areas

would not be selected.

- The acquisition file must document the consideration given to rural areas and provide the data that supports the decision to locate in an urban area.

4.) If the FAA is using General Services Administration (GSA) to acquire new space or other facilities, is the GSA required to follow the RDA?

☐ When using GSA to acquire new office space and other facilities, our requirement to GSA must be clear that first consideration should be given to the availability of GSA space, and second consideration to rural areas. However if a rural area is not selected, GSA is required to document the acquisition file stating the reason for not selecting a rural location.

2.4.4 Appendix D: Lease Terms Revised 4/2012

A. Firm-Term Lease Consideration

As provided in 49 U.S.C., Section 40110 (c)(1) [copy attached] the FAA has authority to lease an interest in real property for not more than 20 years, without regard to FAA annual appropriations. This means the FAA has authority to enter into "firm-term" leases without violating the Antideficiency Act. ***Note: In accordance with the provisions of 49 USC 40110(c)(1), the RECO may enter into a lease with a term of up to 20 years, regardless of whether appropriations sufficient to pay the rent for the entirety of the lease term have been obligated.***

However, this does not relieve FAA from obtaining necessary budget authority before proceeding with a “firm-term” lease. Generally budget authority must be obtained for the rent for the entire period covered by the firm term, even though the funds are only obligated one year at a time. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements. FAA authority to lease real property does not allow lease terms in excess of 20 years, including all renewal options. For purposes of this guidance a firm-term lease is defined as the period or length of time the lease or portion thereof cannot be canceled without the approval of the lessor.

Each region/center will determine when and how this authority will be used within the limitations set forth below. In using this firm-term authority, FAA Order 2220.1, Legal Participation in Procurement and Contracting, or its replacement order, must be followed.

Caution must be exercised in implementing firm-term lease authority. A firm-term lease commits the FAA to future rental payments. The FAA must be willing to commit future annual appropriations for the term of occupancy. If funding is not committed, the FAA would be in default of the lease and subject to claims by the lessor. Funding is the responsibility of the using organization and must be understood up front. The using organization must consider the budgetary impact of firm term lease funding and score the lease for proper budget authority before issuing a requisition and certifying the funds for the first year’s rent. See OMB Circular A-11, Appendix B, "Budgetary Treatment of Lease Purchases and Leases of Capital Assets" for further information on lease scoring requirements.

The cost or terms of the longer firm-term lease must be advantageous to the FAA as compared to a one-year lease with renewal options. Prior to executing a firm-term lease the real estate acquisition team should advise and provide the organization responsible for funding with an analysis of potential lease costs and/or savings. Also prior to executing the lease the real estate acquisition team should obtain a written statement that acknowledges the terms and funding requirements of the firm term lease, including future budget year requirements. This written funding statement will be maintained in the real estate lease file.

A firm-term lease shall not be entered into if, in the judgment of the RECO, there is any doubt about the long-term need of the user. The objective in leasing a facility is to obtain what is best not only for the user but also for the FAA. In some cases obtaining the lowest cost is not always the best, even though it is an important consideration**.**

Flexibility, especially in space leasing, needs to be part of the consideration for entering into a firm-term lease. As an example, if some cost savings would be realized with a 10-year firm-term space lease versus a 5-year firm-term lease, then some thought must be given to the potential for change (i.e., mission or operational need) at this facility in years 6-10. In this situation, it may be more advantageous to the FAA to lease for 5 years firm with an option to renew for an additional 3-5 years firm. It should be remembered that in the past, if space was requested for 5 years (based upon projected need) the FAA could lease for 10 years, without adverse ramifications, because the lease had an option to renew each year.

There is no requirement to use firm-term authority. Firm-term leases are a tool in obtaining what is best for the FAA. If firm-term authority is used, the manner in which contract documents are written must be consistent. In establishing consistency Regions/Centers should consider establishing, at least for some interim period, an appropriate level of firm-term lease review above the RECO.

1.) Real Estate Firm-Term Considerations:

1) How long is the end user prepared to commit, in writing, to stay in this location? How comfortable does the real estate acquisition team feel about this time frame?

2) Does any savings or benefit obtained in a longer firm-term justify the potential risk to the FAA?

3) Can two shorter firm-term periods serve almost the same purpose as one longer?

Firm-term period?

4) Does the firm-term period selected provide the FAA with the appropriate flexibility?

5) Is the FAA offering a firm-term lease because of a true market need or because one offeror has requested a longer firm-term?

6) Will the firm-term period allow amortization of the cost of alterations or construction in the rental payments instead of making a lump-sum payment? (The majority of commercial rental

rates include a square footage allowance for amortizing the cost of initial space alterations over a specified period.)

2.) Firm-term authority for space leases only:

Regions/Centers:

1-5 Years Firm-term

> Usual firm-term period. Most real estate markets can provide a competitive rental rate with 3 to 5 years firm. Consider using two or more 1-5 year firm periods instead of a longer initial firm-term period. *For example, 9 year lease, 3 years firm, with 2 renewal options of 3 years firm for each or 10-year lease, 5 years firm with renewal option for 5 years firm.*

6-10 Years Firm-term

> May be needed for new lease construction. Typically 10 years firm is utilized when only lease construction will satisfy the FAA needs. Again, consider offering two shorter firm-term periods. as shown in the example above.

Regions/Centers with Headquarters Approval:

11-15 Years Firm-term Usual situation. The real estate market should clearly indicate that little or no competition would be obtained unless a firm-term of 11-15 years is offered. Should only use in unusual situations.

16-20 Years Firm-term Rarely used. Firm-terms of 16-20 years should only be used for very large (regional office building size, large towers, etc.) or costly blocks of space. Use of 20 years firm should be rare in the FAA and used only after careful consideration. Typically, used for a prospectus level project.

To insure that required prospectus packages and other legal requirements are appropriately considered, regional requests for firm-term leases that exceed 10 years require the review and concurrence of the Real Property Planning, Policy and Budget Division ALO-200. However, all FAA leasing actions in Headquarters organizations in Washington D.C. must be coordinated through the Real Property Planning, Policy and Budget Division ALO-200, in order to insure that all relevant planning and policy issues are taken into consideration prior to using this authority. All requests shall be sent through channels to the attention of the Real Property Planning, Policy and Budget Division ALO-200. The requests should be no more than 2 pages (exclusive of any transmittal memo or other attachments) and include the following:

- ☐ Current location, square feet, annual lease costs, including any services or unusual features.
- ☐ Proposed location or area, square feet, estimated annual lease costs, including any services or unusual features and explanation of how competition will be obtained.
- ☐ Justification of the need to exceed 10 years firm and how will it benefit the FAA.
- ☐ Any additional relevant facts.

- ☐ Attach a memo signed by the customer indicating their intent to remain for the firm-term period requested.
- ☐ A signature and date line at the bottom of the transmittal memo for concurrence by the Real Property Planning, Policy and Budget Division ALO-200

B. Other Lease Considerations:

To provide some protection to the FAA, the lease should include a clause allowing the FAA to sublease the premises in whole or in part. Additionally, the lease should allow the FAA rights to alter the premises to suit a new tenant.

C. Examples Of Clauses For Space Lease Documents:

15 year lease, 5 years firm, with termination after 5th year.

> *"To have and hold the said premises with their appurtenances for the term beginning on* January 1, 1990, *through* December 31, 2005, *inclusive; subject to termination and renewal rights as may be hereinafter set forth. The Government has the right to terminate this lease on 120 days notice on or after* December 31, 1995"

15 year lease, 5 years firm, with termination after 5th year OR renewal for 3 years firm with termination after 5th year.

> "*To have and hold the said premises with their appurtenances for the term beginning on* January 1, 1990, *through* December 31, 2005, *inclusive; subject to termination and renewal rights as may be hereinafter set forth. The Government has the right to terminate this lease on* December 31, 1995, *with 90 days notice. In the event the Government elects not to terminate this lease on* December 31, 1995, *the Government may terminate this lease on 90 days notice on or after* December 31, 1998"

2.4.5 Appendix E: Rent-Free Guidance Revised 4/2014

Since Fiscal Year 2001, Congress has inserted a provision in FAA's Annual Appropriations Acts that limits dramatically FAA's ability to obtain no-cost space on Sponsor-Owned Airports. That provision states as follows:

FAA Appropriation: None of the funds in this Act shall be used to pursue or adopt guidelines or regulations requiring airport sponsors to provide to the Federal Aviation Administration without cost building construction, maintenance, utilities and expenses, or space in airport sponsor-owned buildings for services relating to air traffic control, air navigation or weather reporting. The prohibition of funds in this section does not apply to negotiations between the Agency and airport sponsors to achieve agreement on ``below-market'' rates for these items or to grant assurances that require airport sponsors to provide land without cost to the FAA for ATC facilities.

1. What does this mean for the FAA?

The appropriations provision states that the FAA is not allowed to expend appropriated funds, e.g. salaries, travel expenses; etc., to implement the requirement that Airport Sponsors provide no-cost space in sponsored-owned buildings on airport. However, FAA may expend appropriated funds to negotiate and to secure space at below-market rents from Airport Sponsors. In addition, nothing in the Act prohibits an airport sponsor from providing rent-free space for any new leases or renewal leases if done so voluntarily and as a condition for receiving an Airport Improvement Program (AIP) Grant B. None of the above is needed, and it doesn't read very well.

2. Does the language apply to both old lease renewals and new lease negotiations?

This language applies to all existing lease renewals and new leases after October 1, 2000.

2.4.6 Appendix F: Short-term Conference and Meeting Space Revised 10/2016

Conference or meeting space requirements may range from the rental of a room for a one-day meeting or training session to a large conference of several days. As in all procurements of commercial space the requiring organization must first seek the availability of Government-owned or controlled space. The FAA is required to make inquiries regarding the availability of Government-controlled space to GSA regional offices and to document such inquiries. For additional information on short-term conference and meeting space planning, please see the Planning Meetings, Conferences, Workshops, Training Events, and Award Ceremonies in the FAA (FAA only) website.

The selection of commercial meeting space may be based on a location, which provides the most advantageous solution to the FAA's needs. Procedurally, the organization requiring meeting or conference space must first check on the availability of Government or FAA controlled space with the Office of Regions and Center Building Services office, or the Technical Center Facilities Management Office, or the Aeronautical Facilities Management office, or the Washington Area Facilities Management office to determine local procedures and restrictions. FAA personnel are required to use "no-cost" space for events if adequate space is available. "No-cost" space may include:

- Event space within your organization's control;
- Internal Line of Business (LOB)/Staff Office (SO) controlled event space;
- Event space controlled by FAA;
- Contractor owned event space located at a contractor's office that the FAA has rights under an existing contract to utilize; and/or
- General Services Administration (GSA) controlled event space at other Federal buildings owned by GSA.

The event planner as part of the LOB must document and verify that they have determined that there is not adequate "no-cost" event space available.

If GSA controlled space or other Government or FAA controlled space is not available, the requiring organization may initiate a request in accordance with local procedures. A vendor/hotel may be contacted to acquire an estimated cost; however, no commitments are authorized until approved by one of the above offices. Upon receipt of authorization to procure the commercial meeting space, you may proceed in accordance with federal and local procedures as provided by

one of the above offices. Any contractual agreements between FAA and vendor/hotel should be reviewed and approved by warranted contracting officer and legal office.

If the cost of the conference space is within the limits of cardholders purchasing authority, see AMS Section 3.2.2.5. If the cost of the space exceeds the limits of a cardholder you should check with the appropriate Acquisition Office/Group located in one of the above offices to determine local procedures. The space should not be utilized or occupied until an authorized person with procurement authority has approved the transaction and finalized the agreement.

2.4.7 Appendix G: Security Revised 4/2012

The FAA will comply with FAA Orders: 1) 1600.69, Facility Security Management Program, and 2) 1600.72A, Contractor and Industrial Security Program, and 3) 1600.73, Contractor and Industrial Security Program Operating Procedures. These FAA Orders establishes standards, procedures and techniques for the protection of FAA employees, agency personal property, and security of the FAA facilities (leased or owned), contractors, and the public. Under these FAA Orders mentioned above, the FAA reserves the right to restrict access to FAA facilities.

1. The RECOs should seek consultation support from the local Servicing Security Element (SSE) for security issues for all new, succeeding or renewal lease location. The SSE contacts in the Region are as follows: AXX-710's, AMS-700, and AWA AIN-100.

2. During the Pre-Award process, the RECO needs to work with the SSE in meeting the end users requirements. Below are the processes to be followed and the services to be provided by the SSE to the RECOs for all new or existing locations.

- ☐ Schedule a meeting between the end user, i.e. the Line of Business (LOB), the RECO and the SSE. If the end user is moving to a new location the RECO should work with the SSE as soon as they learn the end user is moving.
  - o During the meeting the RECO, the end user and the SSE should discuss the following:
    - ☐ Review the end user security planning and budgeting.
    - ☐ Review the solicitation for offers (SFO) security requirements (Facility and Personnel) and provide additional requirements as needed.
    - ☐ The SSE should provide the baseline Facility Security protective measures, which match the security level with the facility. This is an opportunity for the SSE to ask questions to the RECO or the end user to assist in the determination of the security requirements for the SFO by determining the security level. Below are the types of questions that may be asked by the SSE.
      - ☐ What is the physical address location(s) [if known such as a renewal lease] of the prospective lease sites?
      - ☐ What types of FAA work functions will the leased space accommodate/perform?
      - ☐ How many FAA personnel will there be at the facility? What will be the maximum/peak number of FAA personnel at the facility at shift change?

- ☐ Will this be a 24/7 facility?
- ☐ How many parking spaces required?
- ☐ Are there any other government tenants at the facility being considered? If so, would any of them be considered "high risk"? The RECO can check with the SSE to determine the "high risk" status of the other federal tenants.
- ☐ Is this is an ATC facility? What is the ATC facility level rating?
- ☐ If this is an ATC facility will there be a requirement for a childcare, credit union, or other services offered by the FAA at the facility?

- ☐ Provide security consultation during the market survey when required.
- ☐ Provide, review, and comment of lessors proposal of security requirements to include examination of lessors recommended alternatives and/or plans.
- ☐ Provide support to facility manager in formulating requests for exception to security policy prior to lease award. (Formal FAA memorandum to AIN-100)
- ☐ Provide security technical support to the RECO if required during negotiations and evaluations if security is considered evaluation criteria.
- ☐ Provide support to RECO during the space acceptance from the lessor by reviewing lessors drawings to ensure that the security requirements in the SIR/SFO were met.

3. The SSE can provide the following services after the lease award:

- ☐ Provide recommendations to facility manager when the Security Order is not met and examination of lessor's recommended alternatives to meet the FAA Order.
- ☐ Conducts facility security assessment after occupancy, which will confirm the lessor is meeting security requirements per the lease. The RECO will provide the SSE with Lessor plans and drawings to assist with the assessment.

4. Contractor and Industrial Security Facility Program for Leased Facilities (Revised 10/2003)
FAA reserves the right to restrict access to FAA facilities. Depending on the terms of the lease agreement, any person or individual employed or hired by the lessor, or requiring access to perform work or provide services in or upon the leased premises may receive the same level of security investigation requirements as do FAA employees as determined by the FAA personnel security specialists.

There is a sequential process by which suitability and security determinations must be completed before any person(s) or individual(s) employed or to be hired by the lessor can perform work or provide services under the terms of the lease agreement. Each step is essential to the process and must be conducted in a specific sequence in order for the process as a whole to succeed. The RECO must be familiar with the process prior to initiating negotiations with the prospective lessor. It is also essential that the RECO work closely with the FAA SSE and the operating office or the LOB tenant organization so that the best interests of the Government and the FAA are protected. The primary role of the RECO is to ensure that the security investigative program in leased facilities is established between the lessor and the FAA. Establishing a Contracting Officer Representative (COR) to assist with monitoring and maintaining the security requirements for leased space should be considered. Establishing a Trusted Agent in locations where the SSE is not available to assist with monitoring and maintaining the security requirements for leased space will be required.

Individuals employed or to be hired by the lessor to perform work or provide services in leased space typically fall in low-risk positions. These positions may include janitorial, construction, maintenance, property management, and repair workers. It may also include delivery personnel and repair technicians. The first step in the investigative process is for the operating office or LOB tenant organization to assess the level of access that may be required by the various positions to provide the services specified by the lease. This requires the completion of FAA Form 1600-77, Contractor Position Risk/Sensitivity Level Designation Record [see Order 1600.73 for each type position]. The RECO should assist as needed in completion of the 1600-77 by the LOB tenant organization for submission to the FAA SSE. The SSE will determine the risk level and possible exemptions for each type of position and advise the RECO and the LOB.

During negotiations and prior to lease award the RECO needs to ensure that the lessor understands the requirement for the security investigations and takes time to review the prescribed lease clauses and lease performance expectations. The types of positions required to meet the terms of the lease should be confirmed with the lessor during negotiations.

The prescribed standard clause, V. Section E –Security Requirements (December 2006), Security Screening of Persons or Individuals Employed or Hired by Lessor/Contractor (April 2003), Attachment A, used in all new leases where the lessor, or person(s) and individual(s) employed or hired by the lessor will perform work or provide services in or upon the premises leased by the Government.

The RECO will coordinate with the FAA SSE to obtain the following personnel security information forms for non-exempt positions:

a. FD-258, FBI Fingerprint Card. Fingerprints will be taken by those individuals who have been identified, as either a Trusted Agent or a Personal Identity Verification (PIV) Registrar (SSE).

b. SF 85P, Questionnaire for Public Trust Position, as designated by the FAA Form 1600-77.

c. DOT Form 1681, Card/Credential Application, needed to obtain PIV card.

d. Form I-9, Employment Eligibility Verification. In locations where the contractor employee cannot go to the FAA SSE office, a Trusted Agent will have to be appointed to perform the duties of the SSE's Registrar. The Trusted Agent needs to be someone on location and can be an FAA or contractor employee. The Trusted Agent will also go through the background suitability investigation process. The purpose of the Trusted Agent position is to verify the applicant's identity with two forms of identification that are listed on the I-9 Form and to take fingerprints when needed.

The RECO will send the forms to the lessor with instructions that they are to be completed by each employee within five (5) business days, not to exceed a maximum of 30 days after acceptance and execution of the lease or modification. The completed forms are to be returned to the FAA SSE or the Trusted Agent, and then sent in a sealed envelope containing a memorandum identifying the name of the lessor, address and FAA lease contract number of the premises leased, and list the full names (alphabetically), social security numbers, date and place

of birth (city, state or country), and position title of all person(s) or individual(s) employed or to be hired by the lessor to perform work or provide services in or upon the leased premises for both exempted and non-exempted positions. The contractor employees will be required to take pictures (passport photo-type) or send them in jpeg format to the SSE. The employee(s) will also have the registrar or Trusted Agent verify their identity and complete their portion of the I-9 Form, and take their fingerprints. Non-exempt positions will require some or all of the forms above for investigative screening by the FAA SSE. The operating office or LOB tenant organization occupying the FAA leased premises will be responsible for funding the costs for security screenings for all persons or individuals employed or hired by the lessor, with the exception of fingerprinting. The lessor will be responsible for all expenses associated with fingerprinting any person(s) or individual(s) employed or to be hired by the lessor.

The FAA SSE must conduct the security screening investigation for those persons and individuals identified and employed by the lessor. The FAA SSE will notify the lessor (through the designated Government representative) of any individuals determined to be unsuitable for access to the leased premises. The lessor will be required to immediately remove any unsuitable persons or individuals from the leased premises and not permit the individual to perform any work or provide any services under the terms of the lease.

The FAA shall request, upon lease award or contract modification, the lessor to provide the required information prior to FAA occupying the leased premises. The lessor will be directed to notify within five (5) business days, the designated FAA representative of any persons or individuals newly hired or currently employed during the term of the lease. Newly hired persons or individuals currently employed by the Lessor must be escorted at all times until background investigations are completed.

The FAA SSE has determine if any person or individual employed or hired by the lessor is exempted from the investigative screening that person shall be escorted at all times in or upon the leased premises by FAA personnel located on-site or by an individual or person employed or hired by the lessor, who has been properly investigated, favorably adjudicated, and authorized to escort exempted individuals. The escort must keep the escort-required contractor employees or other persons in plain view at all times. The lessor shall provide to the designated Government representative the full names (alphabetically), social security numbers, and date and place of birth (city, state or country) of all exempted personnel to be escorted while performing work or services in or upon the leased premises.

Foreign Nationals: All persons or individuals employed or to be hired by the lessor to perform work or provide services in or upon the leased premises shall be a citizen of the United States of America, or an alien who has been lawfully admitted for permanent residence as evidenced by Alien Registration Receipt Card Form I-151, or who presents other evidence from the United States Immigration and Naturalization Service that employment will not affect his/her immigration status. Aliens and foreign nationals who perform work or provide services under the terms of the lease must meet the following conditions in accordance with FAA Order 1600.72A, chapter 5, paragraph 7 & 8.

> a. Must have resided within the United States for three (3) years of the last five (5) years unless a waiver of this requirement is requested and approved in accordance with the requirements stated in FAA Order 1600.72A, chapter 5,

paragraph 9;

b. A risk or sensitivity level designation has been completed for the position; and

c. The appropriate security screening has been conducted.

Interim suitability requirements may not be applied unless the position is low/moderate in risk, and/or temporary, and/or is not in a critical area position.

The standard clause and alternate clause prescriptions include language for aliens and foreign nationals employed or hired by the lessor.

The lessor will have an ongoing requirement to advise the RECO, or the designated Government representative, of changes to the lessor/contractor list. The contractor must notify CO within one (1) business day after an employee has been terminated from the contract. The contractors are also responsible for immediately notifying the SSE if a Contractor employee is arrested for any reason other than minor traffic offenses. Quarterly/bi-annual reports to the CO and SSE are required on or before the 5th business day following each reporting period. These listings must include a complete alphabetical listing of current employees working on the contract, and a separate list of terminated employees. The RECO must coordinate with the SSE, the LOB tenant and the lessor on an ongoing basis. The RECO should, whenever possible, delegate day to day management of the contractor security program at a leased facility to a responsible on-site representative.

When others contract for services (e.g., janitorial, construction, maintenance, etc) separately for FAA leased premises, personnel security investigations shall also be conducted. It is the responsibility of the CO for that service contract to coordinate with the SSE and LOB tenant organization regarding contractor screenings. In accordance with FAA Order 1600.72, paragraph 204, the operating office or LOB tenant organization occupying the FAA-leased space will be responsible for funding the costs for security screenings for all person or individuals employed or hired by the lessor.

If FAA occupies GSA controlled leased space, the designated FAA representative will request GSA to include the prescribed FAA security clause in the GSA lease requirements. GSA will be responsible for conducting the security investigations on any person or individual employed or hired by the GSA lessor to perform work or provide services in or upon premises occupied by FAA personnel. Funding for security screenings in GSA controlled space are covered under the GSA rental costs, unless FAA requires a higher level of security than the standard established by the GSA Building Security Committee, or if current FAA occupancy agreements with GSA require something different than the standard established.

Sensitive Unclassified Information (SUI) must be restricted to specific contractors who: have a “need to know” to perform contract tasks, meet personnel suitability requirements to access sensitive information, and successfully complete a non-disclosure agreement (NDA). The contractor must develop and implement procedures to ensure that sensitive information is handled within accordance with FAA requirements and at a minimum, must address

a. Steps to minimize risk of access by unauthorized persons during business and non-business hours to include storage capability.

b. Procedures for safeguarding during electronic transmission (voice, data, fax) mailing or hand carrying.

c. Procedures for protecting against co-mingling of information with general contractor data system/files.

d. Procedures for marking documents with both the protective marking and the distribution limitation statement as needed.

e. Procedures for the reproduction of subject material.

f. Procedures for reporting unauthorized access.

g. Procedures for the destruction and/or sanitation of such material.

Government Issued Keys, Personal Identity Verification (PIV) cards, and Vehicle Decals may be issue to contractor employees. Prior to or upon completion/termination of work the contractor must return all Government issued items to the issuing office. When employees are terminated or are no longer required the work, the Government issued items must be returned to the Government within three (3) business days or upon termination of the contract or employee. Improper use, possession, or altercation of FAA issued keys, PIV cards and/or vehicle decals is subject to penalties under Title 18, USC 499, 506, and 701.

In the event that the Government-Issued items are not returned the contractors understands and agrees that the Government may, in addition to any other withholding provision of the contract with hold [CO to enter appropriate amount] for each key, PIV card, and vehicle decal not returned. If such items are not returned within 30 calendar days from the date the withholding action was initiated, any amount withheld must be forfeited by the contractor.

2.4.8 Appendix H: Seismic Revised 10/2014

Buildings, or space, acquired for the FAA or constructed on FAA property must meet current seismic safety requirements as provided in E.O. 12699, E.O. 12941 & P.L. 101-614.

The standard for seismic safety in Federally Owned or Leased Buildings is found in National Institute of Standards and Technology (NIST) RP-8, Standards for Seismic Safety for Existing Federally Owned or Leased Buildings, December 2011. RP-8 requires a "Seismic Safety Certification" to be executed by a qualified structural engineer prior to signing any new lease or renewing existing leases. The requirements for the Seismic Safety Certification are found in RP8. In addition, Section 1.3 of RP-8 lists a number of *exemptions* and one *exception* that may relieve the Agency of the Seismic Safety Certification. Any exemption or exception **must** be applied on a case-by-case basis.

Guidance on compliance requirements for leased space or buildings is set forth below.

The FAA is required to implement a program to mitigate seismic hazards in buildings occupied

by FAA. It is FAA's policy to ensure the safety of its employees. Accordingly, every effort should be made in the space acquisition process to ensure that FAA employees are housed in seismically safe buildings. In this regard, and to the extent practicable, any new leases or succeeding leases in existing locations are to be for space in buildings that comply with seismic standards.

There are several levels of seismic performance. For leasing purposes, RP-8 requires that, at a minimum, all buildings and space occupied by FAA personnel must meet the "Life-Safety" performance objective. A RECO may request a higher seismic performance objective if LOB requirements dictate a need for a performance objective higher than "Life Safety." The other performance objectives are "Immediate Occupancy," which requires that a building be constructed so that it could sustain a level of damage during a seismic event that is sufficiently minimal that employees could re-enter the building immediately after a post-event inspection, and "Continuous Performance", which requires that a building be constructed so that no damage would occur during a seismic event , and that, consequently, employees would not be required to leave their duty stations during or after a seismic event.

Leased Facilities

A licensed structural engineer hired by the Lessor **must** certify on the Life Safety Compliance/Seismic Certification (Form 2.6.4) the level of seismic compliance. The structural engineer's certification is to be kept in the lease contract file. An alternate document such as a letter from the Lessor stating the building meets the seismic compliance does not take the place of the required certification form.

Life Safety Compliance/Seismic Certifications do not expire. If the building owner provided a signed certification for the building under a previous lease, it is still valid. The RECO is to ensure the original signed certification is placed in any succeeding lease file and a copy kept in the previous lease file.

The RP-8 Standards shall apply to all or portions of a building leased by the FAA, unless an exemption or exception applies under the provisions of RP-8.

Section 1.3 of RP-8 provides several exemptions and one exception to the standard. Below are examples of the exemptions and exception, which cite the applicable RP-8 section.

Exemptions (RP-8 Section 1.3)

The following are common exemptions from the RP-8 standard:

- The building is in a low seismic risk zone (SDS<0.33g and SD1<0.133g) as shown in the green areas on the map from the U.S. Geological Survey dated May 2012. (Attachment to Form 2.6.4.1)
- The total area in the building leased by the Federal Government is less than 10,000 sq. ft. and is located in the yellow area as shown on the map from the U.S. Geological Survey dated May 2012. (Attachment for Form 2.6.4.)
- The remaining useful life of the building or the agency's requirement for the building is less than five years (short term lease).
- The building is one story, constructed of a light steel frame or wood, and is less

than 3,000 sq. ft.

- FAA's use of the building is intended only for incidental human occupancy of less than 2 hours per day.

If a building selected for lease award meets one of the exemptions above, the RECO is to fill out and sign Exemption/Exception from Seismic Compliance (Form 2.6.4.1) and place it in the lease file.

Benchmark Buildings (RP-8 Section 1.3.1): Some buildings may qualify as benchmark buildings, designed or retrofitted with seismic provisions deemed suitable at the time of construction or renovation, and thus could be deemed to meet minimum seismic requirements. The application of the RP-8 standard for benchmark buildings is very complex and requires technical expertise to interpret. The Lessor must provide a Life Safety Compliance/Seismic Certification (Form 2.6.4), signed by a Structural Engineer, if claiming benchmark building status.

Best Available Leased Building Exception (RP-8 Section 1.3.2): If no seismically conforming space is available, otherwise acceptable space with the best seismic resistance shall be pursued.

The distinction between an exemption and an exception is that an exemption allows a presumption to be made that the building is life safe based on research by the Government and industry. Use of the best available space exception does not allow a presumption of life safety. It indicates acceptance of the reality that the Agency cannot perform its mission without occupying that particular space.

The LOB manager may choose to modify the space requirements or expand the delineated area to allow for more space options that could meet the minimum seismic requirements, or the LOB may choose to expend Agency funds to have the space evaluated by a Licensed Structural Engineer for life safety according to the requirements of RP-8.

The term of any lease under this exception should be limited to that time necessary for the tenant LOB to budget for and fund relocation to compliant space.

The decision to use the best available space exception must be made in writing and concurrence obtained by the Line of Business (LOB) that occupies or will occupy the space. RECO is to use Exemption/Exception to Seismic Compliance (Form 2.6.4.1) to document the lease file.

Privately Owned Buildings on Federal Land (RP-8 Section 1.3.3): The Standards shall be applied to all privately owned buildings located on Federal land. Application of the Standards to evaluate and rehabilitate buildings for seismic risks shall be the responsibility of the building owner. The RECO must include the seismic lease clauses in any outgrant agreement or other agreement that allows the privately owned building to be located on FAA property to ensure the structure complies with the Standard.

Lease Clauses

Unless one of the exemptions or the best available exception applies to the space, the RECO is to

insert the seismic safety clauses, 7AA "SEISMIC SAFETY FOR EXISTING BUILDINGS, and 7AB, SEISMIC SAFETY FOR NEW CONSTRUCTION into all new and succeeding space leases, as well as to the construction of new buildings to be leased by the FAA, and to any outgrant license, permit, or other such agreement that may allow for the placement of a privately owned building on FAA or other federal property.

The seismic safety clause(s) are not be inserted in the lease if one of the exemptions or the best available exception applies to the space.

2.4.9 Appendix I: Accessibility Revised 4/2012

Architectural Barriers Act Accessibility Standard (ABAAS) Guidance

I. Architectural Barriers Act Accessibility Standard (ABAAS)- Background On November 8, 2005 the Federal Register included a section from the General Services Administration amending 41 CFR Parts 102–71, 102–72, et al; Federal Management Regulation; Real Property Policies Update; Final Rule. Subpart C of this amendment pertains to the Architectural Barriers Act, and states that GSA has adopted the ADA / ABA Guidelines (Part II ABA Application and Scoping and Part III Technical Chapters) issued by the Access Board on July 23, 2004 as the Architectural Barriers Act

Accessibility Standard (ABAAS) as the accessibility standard for all Federal facilities (See Q&A section for additional information on using the Guidelines as the Standard). Copies can be ordered from the Access Board or electronic copies are available on the Access Board website (www.access-board.gov). ABAAS replaces the Uniform Federal Accessibility Standards (UFAS) as the accessibility standard for federal facilities.

II. Applicability
This guidance applies to all FAA leased, owned, and GSA controlled facilities.

A. To all FAA Owned, Leased, or GSA controlled leased facilities
All FAA leases awarded prior to February 6, 2007 will continue to use the UFAS. ABAAS requirements will be included in all leases solicited, renewed, or otherwise entered into after February 6, 2007. In addition, any 41 CFR Parts 102-71, 102-72 alterations or improvements to FAA leased space made, or contracted for, after February 6, 2007 must be ABAAS compliant.

Facilities for which leases are entered into must comply with F202.6 of the Architectural Barriers Act Accessibility Standard, without regard to whether the costs of alterations to comply with F202.6 are disproportionate to the costs of the overall alterations. The FAA is required to provide an "accessible route of travel" for leased space. This includes at a minimum: (a) An accessible route and an accessible entrance; (b) At least one accessible restroom for each sex or a single unisex restroom; (c) Accessible telephones; (d) Accessible drinking fountains; and (e) Accessible parking spaces. In complying with ABAAS, the entire leased area should be considered as being required to be fully accessible unless limited by the ABAAS Scoping (Chapter F2) requirements, which are included below.

Areas of Primary Function

For FAA leases, an "area of primary function" would be the entire facility, except for the following. Note: For purposes of ABAAS compliance, an Area of Primary Function is defined as follows: A primary function area is an area that contains a major activity for which the facility is intended. Primary function areas include areas where services are provided to customers or the public, and offices and other work areas in which the activities of the Federal agency using the facility are carried out.) The "Area of Primary Function" concept is more fully explained in the Question and Answer Section.

Exceptions for Leased Space

1. Elements in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973;
2. In air traffic control towers, an accessible route shall not be required to serve the cab and the floor immediately below the cab;
3. Limited Access Spaces. Spaces accessed only by ladders, catwalks, crawl spaces, or very narrow passageways;
4. Spaces frequented only by service personnel for maintenance, repair, or occasional monitoring of equipment (Machinery Spaces);
5. Where a two story building or facility that has one story with an occupant load of five or fewer persons that does not contain public use space, that story shall not be required to be connected to the story above or below;
6. Structures and equipment directly associated with the actual processes of construction;
7. Alterations to Qualified Historic Buildings and Facilities (limited exceptions);
8. Buildings or facilities leased for 12 months or less provided that the lease may not be extended or renewed;
9. Buildings or facilities leased for use by officials servicing disasters on a temporary, emergency basis; and
10. Alterations and additions in multi-tenanted building (non-FAA exclusive use) to joint use areas serving the leased space shall not be required to comply with F202.2, F202.3, and F202.5 provided that the alterations are not undertaken by or on behalf of the Federal government.

B. ABAAS Standard Reporting

All new and renewal leases entered into after February 6, 2007 are required to meet ABAAS; however, If the Lessor certifies that it is not compliant, lessor is required to bring the facilities into compliance within a reasonable date (i.e., not to exceed a year from the date of award of the lease). With some exceptions, design and new construction begun after May 8, 2006 are required to meet ABAAS. (Note: Per F203.2 Existing Elements, Elements (An Element is defined in ABAAS as "An architectural or mechanical component of a building, facility, space, or site") in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended, shall not be required to comply with these requirements unless altered.);

C. Required Documentation

The RECO must approve the completed the "ABAAS Compliance Report" and place in lease contract file for all space leases entered into after February 6, 2007. Documentation is also required on each contract, grant or loan for the design, construction or alteration of a facility to ensure that the facility complies with ABAAS.

This documentation must include the following:

Lessor must certify the property is or will be made compliant with ABAAS by a specified date.

The "ABAAS Compliance Report" is attached to the lease and placed in the file for record purposes.

If the lessor has certified that the space will be compliant by a certain date, the Real Estate Contracting Officer must ensure the space has been made compliant through inspection and certification by the FAA facility manager, or designee, or a site visit. If the lessor fails to meet the standard, a cure notice is sent, and if the Lessor fails to cure the facility to meet ABAAS requirements, then the FAA will fix (under the "Changes" Clause or "Alterations" Clause) the subject facility to meet the ABAAS standard and reduce the rent in an amount equal to the cost of the alterations paid by the FAA.

III. ABAAS Waiver

No FAA employee is authorized to waive or modify ABAAS. If the FAA requires a waiver or modification to the ABAAS, the process should be coordinated through the Access Board.

Waiver determinations will be made on a case-by-case basis; the GSA "Administrator determines if the waiver or modification is clearly necessary." Additional information is available in the Question and Answer section. Cost is generally not a valid reason for a waiver.

IV. Questions and Answers

a.) When does the Architectural Barriers Act Accessibility Standard (ABAAS) become effective? As of May 8, 2006 ABAAS became the standard for construction, alterations, and modernizations, unless design was complete or substantially complete on that date. If design was complete or substantially complete, then UFAS is allowed if the construction starts by May 8, 2008. The ABAAS is effective for leases entered into on or after February 6, 2007.

b.) How do the ADA and ABA standards relate to each other within the Guidelines / Standard?

The diagram shows the ADA Scoping and ABA Scoping both connecting with the Technical Chapters but not intersecting. This is to illustrate that the ABA Scoping (applies to FAA as a federal entity, adopted by GSA), chapters F1 and F2, are joined to the Technical chapters (applies to FAA as a federal entity, adopted by GSA) but separate from ADA.

The Scoping section explains the definitions and requirements. The Technical Chapters explain how the requirement from the Scoping Section is implemented. By way of example: To determine if parking is required to be accessible, you would determine from sections F201 - Application and F202 - Existing Buildings and Facilities- if the parking is new or existing and which compliance or exceptions apply. Then refer to section F208 to find how many parking spaces and which types are required to comply. Once the number of compliant spaces required is determined, refer to Technical Chapter 502 - Parking Spaces- to determine the technical requirements. In summary, review the Scoping Section to determine how many, and the Technical to review how to, fulfill ABAAS requirements.

The ADA Scoping section applies to State and Local governments and private industry. It does not apply to the federal government.

c.) If the space is UFAS compliant, do I have to change it to meet ABAAS?

The answer is “No” and “Yes”.

In complying with ABAAS, review the Scoping Section. With respect to Existing Elements, Section F203.2 - General Exceptions, states that “Elements in compliance with an earlier standard issued pursuant to the Architectural Barriers Act or Section 504 of the Rehabilitation Act of 1973, as amended shall not be required to comply with these requirements unless altered."

In other words, if the facility meets UFAS, then it complies with ABAAS.

The second part of that provision means that elements altered to provide "Program Access" per section 504 of the Rehabilitation Act, or to provide an individual "Reasonable Accommodation" per sections 501 and 504 of the Rehabilitation Act do not have to meet ABAAS, as long as the modification is needed to meet an individual accommodation. When the individual accommodation is no longer required, the element is required to be modified to meet ABAAS.

The last part of the statement means that if a UFAS compliant element or area is altered, then the altered or modified element or area must meet ABAAS.

d.) What does “enter into” mean?

When both parties sign a new lease or renew an existing lease. When “exercising an option” to extend a lease you are not creating a new lease as long as you are only extending the term of the lease , and are not changing or revising any other terms of the lease. In those instances, UFAS compliance is sufficient.

e.) If a facility (leased or new construction/alteration) will be altered to meet the standards, will a schedule and budget be required as part of the file documentation?

Yes. The lessor will develop the schedule and budget for lessor-completed alterations. FAA will develop the schedule and budget for FAA alterations.

f.) What are disproportionate costs (20% Rule)?

If an alteration to an FAA owned facility requires the FAA to provide an accessible path of travel, the cost would be disproportionate if it exceeds the cost of the alteration or addition by 20%. If a series of small construction projects were completed, then the calculation consists of the total costs of all of such projects over a three-year period.

For leases entered into after February 6, 2007 there is no disproportionate cost clause. The leased facility must be ABAAS compliant (see Required Documentation question), without regard to whether the costs of alterations completed to bring the facility in compliance with F202.6 are disproportionate to the costs of the overall alterations.

g.) What are the new documentation (certification) requirements for compliance with ABAAS?

The head of each Federal agency must ensure that documentation is maintained on each contract, grant or loan for the design, construction or alteration of a facility and on each lease for a facility subject to ABAAS. The documentation will contain one of the following statements:

(1) The standards have been or will be incorporated in the design, the construction or the alteration.

(2) The grant or loan has been or will be made subject to a requirement that the standards will be incorporated in the design, the construction or the alteration.

(3) The leased facility meets the standards, or has been or will be altered to meet the standards.

(4) The standards have been waived or modified by the Administrator of General Services and a copy of the waiver or modification is included with the statement.

h.) What is an area of "primary function"?

Per F202.4, an area of "primary function" is (a) n area of a building or facility containing a major activity for which the building or facility is intended". There can be multiple areas containing a primary function in a single building. Primary function areas are not limited to public use areas. For example, both a bank lobby and the bank's employee areas such as the teller areas and walk-in safe are primary function areas. Also, mixed-use facilities may include numerous primary function areas for each use. Areas containing a primary function do not include: mechanical rooms, boiler rooms, supply storage rooms, employee lounges or locker rooms, janitorial closets, entrances, corridors, or restrooms."

i.) How can we get a waiver from ABAAS and who can authorize it?

No one in the FAA can waive ABAAS requirements. The Administrator must request a waiver from the GSA Administrator. Only the GSA Administrator can waive ABAAS requirements. The waiver should be processed through the Access Board.

Waiver determinations will be made on a case-by-case basis; the GSA "Administrator determines if the waiver or modification is clearly necessary."

The FAA would be required to show that there is a compelling justification for a waiver to be approved. A waiver will not be granted if complying with ABAAS is inconvenient or if ABAAS compliance was not incorporated in the design or construction process. Generally project cost or budget shortfalls are generally not considered a basis for a waiver.

j.) What happens if we are in the negotiation process and February 6, 2007 passes? If you are in the negotiation process you will need to go back and amend the SIR to include ABAAS and reopen the process. For new leases you should include provisions in the SIR and provide notification to prospective offerors/respondents about ABAAS when the SIR is issued.

k.) Since there is no dollar limit on required ABAAS renovations for leases entered into after February 6, 2007, what options do we have if the lessor cannot make the retrofits due to cost?

This is resolved on a case-by-case basis. The FAA can:

1. Negotiate to spread the costs out or pay a lump sum;
2. Make the changes and withhold rental payments for that amount;
3. Make the changes (zero or one dollar leases);
4. Commence Condemnation proceedings;
5. Relocate;
6. Consider using the waiver process (waivers are generally not given on a cost basis only).

In addition, the FAA does have statutory authority to improve leased space in certain situations. If the lessor is unwilling or unable to complete the improvements, then the FAA can utilize its authority under 49 USC Section 44502(a)(5) to renovate the leased space.

The FAA cannot spend money that it doesn't have, so we need to subject any action to the availability of appropriations. The RECO should also check with regional or headquarters counsel on any question of authority to make alterations or improvements to a leased facility. In addition, the FAA does have statutory authority to improve leased space in certain situations. If the lessor is unwilling or unable to complete the improvements, then the FAA can utilize its authority under 49 USC Section 44502(a)(5) to renovate the leased space.

l.) How does a RECO determine what needs to be done to bring a facility into compliance with ABAAS?

The lessor is required to state whether the leased facility is compliant with ABAAS or will be made compliant. If the facility will be made compliant, then a schedule of the work required should be provided and the FAA facility manager or designee can verify if the work is complete and report the status to the RECO. If there are additional questions, contact the Regional Accessibility Focal Points from Technical Operations or Logistics, who are the regional SME's or the national Facility Accessibility Program Office is available for additional information.

m.) How is the information forwarded to the Administrator for reporting to GSA?

When GSA requests the information from the FAA, the appropriate office will provide the reporting format. Since lessors entering into leases with FAA after February 6, 2007 are required to complete the "ABAAS Compliance Report" as to the compliance status, this requirement can be met by reviewing the lease files.

n.) Who will maintain the documentation?

The RECO must include the "ABAAS Compliance Report" in all space lease files after 9/1/06.

o.) Who pays to bring a leased facility into ABAAS compliance?

If the facility is ADA compliant, the FAA will have to fund the upgrades from ADA to

ABAAS. If the facility is not ADA compliant, the lessor is required to pay the costs of making the space ADA compliant, and the FAA would pay for ABAAS compliance. Remember, if an element or area is UFAS compliant it complies with ABAAS.

2.4.10 Appendix J: Outgrant Revised 4/2015

Outgrants, formerly known as outleases, are used when there is a secondary need for unused unutilized or underutilized FAA leased/owned land or space by either another government entity or third party and such use does not interfere with current or known future FAA needs for the property.

Maximum Term: Starting October 1, 2014, outgrants, new or succeeding, are not to exceed a 5-year term. If the FAA does not own the underlying land or building/structure, but is leasing it from someone else, the term of the outgrant cannot exceed the term of the underlying FAA contract or 5 years, whichever is less. Unexercised options are not to be included when calculating the remaining term of the underlying contract. For instance, if FAA is leasing land for a Very High Frequency Omni-directional Range (VOR) and the underlying lease has 3 years remaining on the original term and one unexercised 5 year option, the maximum term for any outgrant shall not exceed 3 years.

Cancellation Rights: Starting October 1, 2014, outgrants, new or succeeding, must contain the right by the FAA to cancel at will -- at any time and for any reason. Cancellation rights by the grantee are allowed, but should require sufficient notice to the FAA to inspect the property and to determine if any restoration is required.

Outgrant Application Form (1.3.18 for land or 2.6.31 for space): Requesting parties will be required by the RECO to fill out an Application for Outgrant Form found in the Real Estate Template Library for all outgrant requests, including new uses, modification to existing uses, or to request a succeeding outgrant. The RECO will review the request against current real estate records to determine the status of the property, including whether FAA holds sufficient legal interest in the property, and real estate restrictions, if any, on FAA's ability to grant the use. The RECO will forward the Application for Outgrant, along with pertinent information identified during the real estate review, to the head of the line of business (LOB) or LOB designee responsible for the property for review.

LOB Concurrence: The LOB shall conduct a thorough review and analysis to ensure the secondary use will not interfere with FAA's primary use of the property and that the benefits from the secondary use outweigh the cost and potential for increased liability. Prior to issuing a new outgrant, revising an existing outgrant, or issuing a succeeding outgrant, the RECO must obtain, in writing, concurrence from the LOB, along with any stipulations imposed by the LOB as a condition of issuing the outgrant.

LOB Non-Concurrence: If the LOB does not concur with the outgrant request, the LOB will provide the reason for non-concurrence to the RECO in writing. The RECO will send a letter to the requestor denying the request.

Retention Period and Document Location for Denied Applications: Letters of denial for new requests and the initial application form shall be kept in a central file location within the Real

Estate office for a minimum of 1 year after denial. After 1 year, the documentation can be destroyed. All letters of denial to modify existing outgrants or to enter into succeeding outgrants shall be filed in the official outgrant project file.

Permit and License (Outgrant) Forms: The RECO must use the Outgrant Permit Form or the Outgrant License Form. The Permit form is used solely for Federal government entities. The License form is used for all other entities, including State or Local governments and third parties. Any modifications to the standard template must be approved by the Office of the Chief Counsel or the appropriate Regional Counsel.

Provisions for Use of FAA Space or Other Stuctures: Granting others use of space in FAA buildings or on FAA structures is unusual. The RECO will need to use the Outgrant Permit or License Form and tailor them on a case-by-case basis. This includes adding any additional provisions from the standard space or antenna templates that are applicable and deleting any that apply to land use only. The same care taken to craft the contract when FAA leases space and other structures should be used when FAA leases its space and other structures to other parties. Early coordination with the LOB and Legal when drafting the outgrant for space or structures is highly encouraged. All modifications to the standard outgrant templates must be approved by the Office of the Chief Counsel or the appropriate Regional Counsel.

Questions and Answers:

Q1. Outgrant vs. Reimbursable: How is cost captured in an outgrant (either license or permit) and is it different from a reimbursable?

A1. An outgrant license or permit is not considered a reimbursable agreement because it does not result in the direct provision of a supply or a service by the FAA. Rather, an outgrant gives the grantee permission to utilize an FAA real property asset. Utility, janitorial, or other services that may be provided because of the outgrant, are incidental to the use of the subject real property. The RECO must use the award letter designation of J under the PRISM system for an outgrant award number.

A signed original outgrant document is sent to the Accounts Receivable department in accounting. With respect to amounts paid as consideration for the outgrant, FAA may retain all outgrant proceeds in the account established pursuant to 49 USC 45303(c). Please check with ALO-200 for the account number. The RECO must make every effort to negotiate a payment amount that is equal to the Fair Market Value (FMV) of the outgrant, which should represent a fair market value for use of the property and the cost of any additional services and overhead costs provided by the FAA.

Q2. Cost Structure: How can the cost be structured in an outgrant?

A2. The RECO will structure the cost of the outgrants in the following order of preference:

- Based upon fair market value along with any additional services and overhead provided to grantee;
- Based upon the FAA cost and overhead only; or
- A no-cost outgrant that specifies the non-monetary consideration of both parties.

Q3. Waiving Rent: Under what circumstances should a RECO waive rent 1) collecting the fair market value for an outgrant and only charge for services provided or 2) collect no monetary consideration at all?

A3. If the grantee is providing non-monetary consideration to the FAA that is of a direct benefit to the National Airspace System and the cost of any services provided by the FAA to the grantee are minimal, then the RECO may waive collecting monetary consideration with LOB approval. The value of the non-monetary consideration should be of equivalent or greater value than the fair market value waived. The RECO should not waive the cost of the services and related overhead in the outgrant if the FAA is providing more than minimal services to the grantee.

Q4. Specify Use: Should outgrants specify the use of the property?

A4. Yes, the outgrant must state the specific use of the property. Examples: agricultural use including type of crops and maximum height of crops allowed; grazing use including type and maximum number of animals; mining rights, including what is being mined and exactly how it will be extracted; communication site, including type, maximum number of frequencies, etc.

Q5. Options: Can outgrants have options?

A5. No.

Q6. Termination: Must outgrants be revocable by the FAA?

A6. Yes. The FAA must be able to terminate an outgrant at any time and for any reason during the term of the outgrant. All outgrants will contain an FAA revocation clause. Outgrants are considered a form of temporary disposal until the property is needed by the FAA or the FAA elects to permanently dispose of the property. FAA must be able to regain control of the property at any time. A grantee looking for a more permanent use should seek other property. For outgrants on property that the FAA does not own (e.g. leased property), the revocation clause in the outgrant must be structured to ensure the FAA can comply with all contractual termination rights of the underlying contract (lease).

Q7. Transferability: Can the licensee or permitee transfer the rights of the outgrant?

A7. No. Outgrants are issued exclusively to the licensee/permitee for limited time and for a specific purpose, the licensee/permitee has no rights under license/permit, subject to FAA's right to revoke the outgrant at will.

Q8. Emergency Service Providers: Can we waive the fee for an emergency service agency that requests an outgrant from the FAA?

A8. The criteria to charge rent to an emergency provider is not whether they provide emergency services but whether the grantee is a state or local government or the grantee is a private entity. If the emergency services or 911 party is another government entity, such as a state, county, or city government, the RECO can waive the rent for use of our property.

However, the government entity should make their own improvements, be liable for what it does on the property, and pay for any FAA-provided services based on actual costs and overhead (i.e. utilities, pro rata share of road maintenance, and any other services that FAA renders for the grantee).

If the emergency services party is a private entity, then the RECO will need to charge fair market value for use of the property along with any FAA-provided services. The FAA must not give an unfair advantage to one private entity over another. Further, if other private property is available nearby, the emergency service provider should go to the private property and not the FAA.

Q9. Liability Insurance: Is the grantee, as a condition of the outgrant, required to carry general liability insurance?

A9. It depends on whether the grantee is a Federal agency, a State or local government entity, or a private entity (all others). As a general policy, the FAA requires that any use of FAA property by a grantee is adequately covered against potential liability and/or damage caused by the use. In addition to general liability insurance, this must include coverage of costs due to potential damage to the environment (e.g. wetlands, endangered plants, etc.) or through the release of hazardous substances or petroleum products on the property. RECO's must obtain a copy of the Certificate of Insurance prior to allowing any new or continuing use (in the case of a succeeding lease) of the property and place the copy in the real estate file. Since insurance policies are generally written for only 1 year, the RECO is to obtain a copy of any successive insurance coverage period from the grantee during the term of the outgrant.

- Other Federal Agency: Federal agencies are self-insured and are generally prohibited from paying for insurance. In lieu of insurance, the Federal agency agrees to pay for any damage caused to the property subject to the availability of appropriations.

- State/Local government: All State and local government entities are required to provide insurance; however, if the government entity is prohibited from providing insurance due to state or local law, the RECO will need to work with the government party, the LOB, and FAA legal counsel to develop an acceptable alternative liability clause.

- Private Entity: Effective October 1, 2014, all private entities must obtain and maintain a general liability insurance policy as a condition of use of FAA property. All outgrant licenses with private entities shall contain the standard general liability insurance clause found in the Outgrant License Form for non-Federal entity.

2.4.11 Appendix K: Supplemental Lease Agreement (SLA) Revised 10/2015

Supplemental Lease Agreements (SLA)

The RECO **must** use an SLA for modifications to existing lease requirements to (1) document changes in lease ownership, (2) exercise an option provided in the lease, e.g. renewal, early termination, etc. (3) extend a lease prior to expiration, and (4) change or modify any aspect of the lease. The RECO must use Form 2.6.13 to execute an SLA.

An SLA must include all updated clauses to the base lease, except when exercising a lease renewal option, where the price and all other terms of the option have been previously negotiated and agreed upon in the lease.

All modifications to the existing requirements must be within the scope of the lease (e.g., the requirements the lessor has to perform on the lease).

No SLA may extend the term of an existing cost lease beyond twenty (20) years unless approved by Legal.[1] This restriction does not apply to no-cost leases.

Unilateral SLAs

A unilateral SLA is one that is executed only by the RECO, and no consent of the Lessor is required. As examples, a unilateral SLA is appropriate under the following circumstances:

- Exercising a lease renewal option where the price and all other terms of the option have been previously negotiated and agreed upon in the lease
- Exercising a termination right in accordance with the cancellation clause in the lease
- To document a change in rent previously agreed to in the lease that requires an event in the future in order to determine the rent change, e.g. the operating cost escalation clause or tax adjustment clause
- To document a change in ownership where the RECO has supporting documentation in the real estate file provided by the new owner

Bilateral SLAs

A bilateral SLA is one that must be signed by the RECO *and* the Lessor. Any changes to the lease *not previously negotiated and agreed to in the lease* require a bi-lateral SLA. Below are examples of where a bilateral SLA would be required:

- To identify or change the rent commencement date
- To modify square footage and associated rent based on actual measurement upon acceptance of the space for FAA occupancy
- Extending the lease term
- Terminating a lease that does not contain termination rights

2.4.12 Appendix L: Contracting Officer Representative (COR) Added 1/2007

a. Designating a Contracting Officer's Representative. The RECO may designate an individual representative, such as a COR to facilitate administration of a lease or contract. The RECO will designate a representative by written memorandum describing the specific authorities and responsibilities delegated to the representative. The RECO should ensure that the assigned representative has adequate training at the time of the assignment or will receive training within three months of being assigned the responsibility. Based on the yearly anniversary date of the

[1] [1] See Legal Coordination 7.0 for additional information.

lease/contract, the RECO should also obtain from the appointed representative, an annual validation that the representative has participated in adequate refresher training during the year. The RECO provides a delegation memorandum to the appointed COR at the time the assignment is made or changed in any way.

b. Authority of the Representative. A duly-assigned representative is authorized to perform the actions delegated by the RECO. The representative of the RECO may assume the designated authorities when appointed, provided the COR has demonstrated adequate training. If the COR does not have adequate training at the time of the assignment, the COR may assume designated authorities for a provisional period, not to exceed three months, until completion of adequate training. While performing as a representative, the COR maintains current knowledge of the COR duties and responsibilities through formal training or other means and advises the RECO annually. The RECO should consider the specific requirements and needs of the lease/contract in determining the support required from the representative and clearly enumerate the authority granted to the COR in a written memorandum of delegation. A sample delegation memorandum is included herein. One memorandum of delegation for all situations may not be appropriate since contractual situations are distinct and have varying needs. Therefore, the sample memoranda may be modified to reflect the specific needs of the lease/contract and the RECO.

c. Changing the COR. To change the COR on a lease/contract, the RECO must revoke the previous delegation and issue a succeeding delegation to the new COR, Both of these memoranda must be in writing and issued concurrently.

d. Information to the Lessor/Contractor. The RECO furnishes copies of all memoranda of delegation, revocation, changes in authority, or re-delegation to the lessor/contractor to make them aware of the authorities and limitations of the COR. A sample lessor/contractor notification letter is included herein and may also be modified to reflect the specific needs of the contract and the RECO.

2.4.13 Appendix M: Labor Standards/Davis Bacon Revised 7/2009

Labor Standards/Davis-Bacon Act

a. Davis-Bacon Act. The Davis Bacon Act (40 U.S.C. 276a-278a-7) provides that contracts of $2,000 or more to which the U.S. or the District of Columbia are a party for construction, alteration, or repair (including painting and decorating) of public buildings or public works within the U.S., will require that no laborer or mechanic employed directly upon the site of the work will receive less than the prevailing wage rates as determined by DOL.

b. Related Laws.

(1) The Copeland ("Anti-Kickback") Act (18 U.S.C. 874 and 40 U.S.C. 276c) makes it unlawful to induce, by force, intimidation, threat of dismissal, or otherwise, any person employed in the construction or repair of public buildings or public works, to give up any part of the compensation to which the person is entitled under a contract of employment. Contracts subject to the Copeland Act will include a clause requiring contractors and subcontractors to comply with regulations issued by DOL. Additionally; the Copeland Act

requires each contractor or subcontractor to furnish weekly statements of compliance regarding wages paid to each employee.

(2) The Contract Work Hours and Safety Standards Act applies to construction contracts involving laborers or mechanics.

c. Applicability.

(1) The Davis-Bacon Act and related laws apply to:

(a) Construction work to be performed by laborers and mechanics on a public building or public work site;

(b) Dismantling, demolition, or removal of improvements if construction at that site is anticipated under the same or a separate contract;

(c) Manufacture or fabrication of construction materials and components to be incorporated into the work when manufacture or fabrication is performed at the construction site;

(d) Painting of public buildings or public works, whether performed in connection with the original construction or as alteration or repair of an existing structure; and

(e) Hazardous waste cleanup contracts that require elaborate landscaping activities or substantial excavation and reclamation work (see DOL Memorandum No. 155, March 25, 1991).

(2) Davis-Bacon Act and related laws do not apply to:

(a) The manufacturing or fabrication of components or materials offs the construction site, or their subsequent delivery to the site by the manufacturer or fabricator, unless the manufacturing or fabrication facility is operated solely in support of the construction project;

(b) Contracts requiring construction work that is so closely related to research, experiment, and development that it cannot be performed separately, or that is itself the subject of research, experiment, or development;

(c) Employees of railroads operating under collective bargaining agreements that are subject to the Railway Labor Act; or

(d) Employees who work at the contractors' or subcontractors' permanent home offices, fabrication shops, or tool yards not located at the site of the work. However, when employees go to the work site and perform construction activities there, the requirements of the Davis-Bacon Act and related laws are applicable for the actual time so spent, not including travel unless the employees transport materials or supplies to and from the site of the work.

Procedures for Construction in Leases

a. Davis-Bacon Act Wage Determinations.

(1) DOL is responsible for issuing wage rate determinations for construction reflecting

prevailing wage and fringe benefits. The wage determinations apply to those laborers and mechanics employed by a contractor at the site of the work, including drivers who transport materials and equipment to and from the site. Wage determinations are issued for different types of construction, such as building, heavy, highway, and residential (referred to as rate schedules), and apply only to the types of construction designated in the determination.

b. General Requirements.

(1) The RECO should ensure that clause is contained in the lease when applicable see Labor Standards above. If a RECO receives a call about these clauses, he or she should contact DOL for guidance (www.wdol.gov and further examples are contained in DOL Memoranda Numbers 130 and 131).

2.4.14 Appendix O: Disaster or Emergency Janitorial Services Revised 4/2012

When a health related emergency (such as pandemic flu) is declared by the United States Department of Health and Human Services Centers for Disease Control and Prevention (CDC), or other authorized federal, state or local governmental official, and the FAA Real Estate Contracting Officer (RECO) is provided written notification of the declaration by the LOB or duly authorized government official, the RECO is authorized to modify the cleaning requirements of all leased facilitates in the affected geographic area, upon receipt from the Line of Business (LOB) of a purchase request to do so. The modifications to the janitorial services requirements shall be memorialized in a Supplemental Lease Agreement (SLA), and will be consistent with current guidelines for prevention of the spread of communicable diseases.

These requirements are not applicable to space that is assigned to FAA by the General Services Administration (GSA). Any modifications to the janitorial requirements at GSA assigned facilities shall be undertaken by the GSA Contracting Officer working with FAA RECO.

The costs of the revised janitorial requirements will be negotiated with the Lessor at the time the purchase request is received by the RECO, and shall be included as an adjustment to the monthly rental amounts. The SLA will be effective on a month to month basis until the RECO has notified the lessor in writing that the health related emergency has ended.

2.4.15 Appendix P: Environmental / Sustainability / Energy Revised 7/2016

During the space acquisition process, the RECOs are required to follow the requirements set forth below in the following environmental and sustainability laws, executive orders, regulations, policies, and agency orders:

1. Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
2. Energy Policy Act (EPAct) of 2005, Publ.L.No.109-58
3. Energy Independence and Security Act (EISA) of 2007, Pub.L.No.110-140
4. Executive Order 13693, Planning for Federal Sustainability in the Next Decade, March 25, 2015
5. Implementing Instructions for Executive Order 13693 Planning for Federal Sustainability in the Next Decade, June 10, 2015

6. Federal Leadership in High Performance and Sustainable Buildings Memorandum of Understanding (2006)
7. Implementing Instructions – Sustainable Locations for Federal Facilities, September 15, 2011
8. Office of Management and Budget (OMB) Circular No. A-11, June 27, 2002
9. FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions

2.4.15.1 Environmental Due Diligence Revised 7/2016

A. Question and Answers concerning FAA Order 1050.19B

Q 1: Is the RECO required to obtain a memorandum as stated in 1050.19B, paragraph 1-9b(3) or an environmental due diligence audit (EDDA) if the RECO is executing a new or succeeding lease or exercising an option to renew the space lease?

A 1: At this time and until further notice of a change to the FAA Order 1050.19B, the requirements to obtain an EDDA, EDDA waiver, or memorandum remain in place and are the responsibility of the service/office requester to provide to the RECO. See additional information below:

- No additional EDDA documentation is required when exercising an existing renewal option where the terms of the option were negotiated during the original leasing action.

- For new acquisitions (new locations or increasing the size of the existing location) or for disposals/terminations (in whole or in part), the RECO is not to finalize the real estate transaction until the appropriate documentation (EDDA report, memorandum and/or waiver) is approved by the LOB.

For succeeding leases in the same location where there are no changes in the area under lease (either increasing or decreasing in size), if the appropriate documentation (EDDA report, memorandum and/or waiver) is not provided either by the LOB or upon request by the RECO, the RECO can proceed with the succeeding lease award but must document the lease file showing evidence of the attempt to secure the documentation from the LOB.

2.4.15.2 Energy Star Buildings Revised 7/2016

As of December 19, 2010, Section 435 of the EISA mandates that all new space must be acquired in buildings having either an Energy Star label for the most recent year, or a commitment from the Lessor to earn the Energy Star label within one year of signing the lease. There are four exemptions to the requirement for the Energy Star label:

1. No space is offered in a building with an Energy Star label in the delineated area that meets the functional requirements of an agency, including location needs;
2. The agency will remain in a building they currently occupy;
3. The lease will be in a building of historical, architectural, or cultural significance verified by listing or eligibility for listing on the National Register of Historic Places; or
4. The lease is less than 10,000 gross square feet of space.

The RECO shall incorporate into the Solicitation for Offer (SFO) the provisions for Energy Star designation. The determination of whether or not a particular building meets the requirements for an exception to the requirement for an Energy Star label shall be based upon a review of supporting documentation submitted to the RECO by the Lessor/Offeror.

The acquisition of space that complies shall be considered financially feasible if the rental offered for a conforming building is no more than 10% over the market rate for a comparable conventional building in the same rental market. If unable to obtain space designated as Energy Star compliant (e.g., if a compliant space is unavailable or the acquisition would not be financially feasible), the RECO must provide a written statement for such inability in the Negotiator Report.

2.4.15.3 Sustainable Buildings Revised 7/2016

A. Federal Goals

Executive Order (EO) 13693 sets goals for federal agency compliance with the Guiding Principles for High Performance and Sustainable Buildings (Guiding Principles). The EO directs the FAA to incorporate the HPSB Guiding Principles into 15% of its existing owned building inventory greater than 5,000 square feet (it should be noted that Energy Independence and Security Act (EISA) requires Energy Star labeled buildings for 10,000 gross square feet or above) by 2025 and demonstrate annual progress thereafter toward 100% conformance.

The Guiding Principles establish building standards for:

- Integrated design,
- Energy performance,
- Water conservation,
- Indoor environmental quality,
- Environmental impact of materials, and
- Climate resilience

Note that the previous version of the Guiding Principles from 2008 applied to leased buildings, but now compliance with the Guiding Principles for leased spaces is encouraged, but not mandatory.

B. Tracking and Reporting on Sustainability

Tracking and reporting on agency progress towards reaching the sustainable buildings goals is a requirement of EO 13693 and EISA 432. To leverage existing resources related to real property management, sustainable building inventory data is reported in the Federal Real Property Profile (FRPP) database via FRPP data element #25 "Sustainability". In order to select "Yes (1)" for data element #25, the new, existing or non-GSA building must meet the Guiding Principles. The rate of building conformance to the Guiding Principles is reported by the Department of Transportation (DOT) to Office of Management and Budget (OMB) annually with mid-year progress updates via the Sustainability Scorecard.

The following are the systems and tools that must be used to report data on HPSB in order to

meet the requirements of EO 13693 and EISA:

1. Real Estate Management System (REMS) - Submit the Federal Real Property Portfolio (FRPP) annually as well as additional information on buildings that meet the criteria for HPSB. Users are assigned and managed by ALO-300.
2. Energy Star Portfolio Manager - Generates a Guiding Principle checklist for reporting HPSBs for FAA. For all leased buildings, the Lessor is required to use this tool to track progress towards meeting the Guiding Principles. The Energy Star Portfolio Manager GP checklist should be provided to the RECO.

Also, the Energy Star Portfolio Manager can help FAA track and report on its progress in acquiring leased Energy Star buildings. Federal agencies assessing their existing building inventory against the Guiding Principles for HPSBs can use the Guiding Principles Checklist. Access the Guiding Principles Checklist from the http://www.energystar.gov/ website.

2.4.15.4 D. ISO 14001 Environmental Management System (EMS) Revised 7/2016

In accordance with EO 13693 and its implementing instructions and FAA Order 1050.21A, FAA must implement environmental management systems (EMS) at all appropriate organizational levels to manage the environmental aspects of internal agency operations and activities. Accordingly, AFN has established an EMS to set targets and measure progress in meeting its environmental goals, including those associated with real property transactions, and consistent with its EMS commitments to compliance, prevention of pollution and continual improvement.

An EMS is a set of processes and practices that enable an organization to identify and prioritize current activities, establish goals, implement plans to meet the goals, evaluate progress, and make continual improvements to the AFN EMS. The AFN EMS reflects accepted management principles and is based on the "Plan, Do, Check, Act" model found in the International Standards Organization (ISO) 14001.

RECOs must follow the AFN EMS Management Programs (MPs) associated with real estate. The MPs summarize EMS elements for each identified significant environmental aspect. These elements include: objectives, targets, performance indicators, legal and other requirements, roles and responsibilities, training, reporting and documentation requirements. Current Real Estate MPs with significant environmental aspects are shown in Table 1.

Table 1: Real Estate MPs and Their Significant Environmental Aspects

AFN EMS Real Estate MP	Significant Environmental Aspects
Environmental Due Diligence	Environmental risks associated with real property transactions
Sustainable Spaces	Energy consumption and other sustainability aspects of space leases

The AFN EMS also requires annual internal EMS audits and management reviews to ensure that the identified significant environmental aspects are managed in accordance with applicable procedures. The cyclical process enables management to make informed decisions regarding adapting to changing circumstances, actual performance compared with the original performance targets, and with respect to the continual improvement of the EMS.

2.4.16 Appendix Q: Managing Rent Adjustment Clauses After Lease Award Added 10/2015

A. Instructions On The Use Of The CPI And/Or Tax Escalation Clause(s):
Use of the Standard CPI and/or Tax Escalation clause requires manual processing by RECOs. For every rent adjustment, the RECO must obtain then current CPI rates or a copy of the then-current tax assessment on the leased premises; calculate the changes; obtain a Procurement Request (PR) for additional rent (CPI) or lump sum payment (taxes); send a unilateral supplemental lease agreement to the Lessor documenting the changes in rent or any lump sum payments due; and coordinate payments with the Accounts Payable team in Accounting.

B. Instructions On The Use Of Rent Adjustment Clause(s) Other Than The Standard CPI Or /Tax Adjustment Clause:
Documentation from an independent source must be submitted by the Lessor to support any increases requested , e.g. invoices showing actual costs from a 3rd party provider, such as a utility company, service company, etc. Follow instructions in lease to calculate rent adjustment; obtain P.R.; send a unilateral supplemental lease agreement to the Lessor documenting the changes in rent or any lump sum payments due; and coordinate payments with the Accounts Payable team in Accounting.

C. Tracking Rent Adjustments: Leases that include any type of rent adjustment clause must be identified in REMs and tracked by the Logistics Service Areas to ensure they are processed in a timely manner since missed adjustments can increase FAA's potential liability under the lease and may result in the payment of late fee.

D. Frequently Asked Question:
"Why does the RECO have to prepare and send a unilateral Supplemental Lease Agreement for a rent adjustment since the lease already contains the appropriate clause?"
Answer: The lease contains the provision of when and how the adjustment operates; however the lease does not show the actual calculations or amount of the new rent and/or lump sum payment. The SLA makes it easier for everyone reading the lease to know exactly how much the most current rent is and any lump sum payments paid during the course of the lease without the need to search through the lease file for correspondence. And lastly, it affords the Lessor the opportunity to raise any issues on how the new rent and/or lump sum adjustment was calculated.

2.5 Space Clause Matrix Revised 10/2014

Section 1 – Space Lease – All items under this section must be included in the lease.

Section 2 – General Clauses – Use the legend below to determine clause requirement.

Legend:

Mandatory (M) – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with

the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

Recommended (R) – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

Optional (O) – RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

Note - All space leases may be augmented with additional clauses or special provisions with region/center legal approval. If any clauses are changed with applicable concurrence, RECO must take out the parenthetical date in the clause, e.g. (10/96).

Section 3 – Closing - All items under this section must be included in the lease.

Attachment A and Attachment B Clauses - Use the legend above in Section 2 to determine clause requirement.

CLAUSE TITLE	**DATE OF CLAUSE**	**ANTENNA AND RACK SPACE LEASE**	**PRESCRIPTION**
Affirmative Action for Special Disabled and Vietnam Era Veterans	10/96	O	Insert in all leases in accordance with Vietnam Era Veteran's Readjustment Assistance Act of 1972.
Affirmative Action For Disabled Workers	10/96	O	Insert in all leases in accordance with Rehabilitation Act of 1973, 29 U.S.C. 793.
Alterations	10/96	O	Insert in all leases to provide the Government the protection to make alterations to the lease space during the term of the lease.
Anti-Kickback	10/96	M by reference	Insert in all leases in accordance with the Anti-Kickback Act of 1986, 41 U.S.C. 51-58.
Assignment of Claims	10/96	M by reference	Insert in all leases unless the terms of the lease prohibit assignment of claims.
Certification of Registration in SAM - Real Property	1/13	M by reference	Required on all cost leases, unless vendor is exempted from SAM. If RECO is referencing the clause they need to request the DUNS number from the lessor.

Compliance with Applicable Laws	10/96	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Contract Disputes Protest	11/03 11/03	M M	Insert in all leases as required by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17.
Contractor Identification Number -"Data Universal Numbering System" (DUNS) Number	1/13	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS T3.3.1.A-4 : System for Award Management (SAM). Note If vendor is determined to be exempt pursuant T3.3.1.A-4, and then exclude this clause from contract.
Contractor Payment Information - Non SAM	1/13	O	Insert in all leases where the CO has documented and granted an exception to use of SAM per provisions of Guidance Section 3.1.4.1 : System for Award Management (SAM). If this clause is used, delete the following clauses: “System for Award Management - Real Property”, “Contractor Identification Number—Data Universal Numbering System (DUNS) Number - Real Property”, and “Certification of Registration in System for Award Management (SAM)”.
Coordination	10/08	M	Mandatory for leases involving antenna and rack space
Covenant Against Contingent Fees	10/96	M by reference	Insert in all leases in accordance with 41 USC 254.
Damage By Fire or Other Casualty	10/96	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Davis Bacon Act	6/09	O	In accordance with 40 U.S.C. 276a et seq.), use for leases over $2,000

Default By Lessor	10/96	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Equal Opportunity	10/96	O	Insert in all leases in accordance with affirmative action programs, 41 CFR 60-1 and 60-2.
Examination of Records	8/02	M by reference	Insert in all leases.
Failure In Performance	10/96	M	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Inspection	10/96	M by reference	Insert in all leases in accordance with general policy for Federal Agency to provide protection to the Government and contract management.
Integrated Agreement	10/96	O	Insert in all leases to assert the lease agreement defines the agreements between the parties.
Interference	10/08	M	Mandatory for leases involving antenna and rack space.
Lessor’s Successors	10/96	M by reference	This clause must be used to protect the lease rights of the Government in case of change in ownership of the property.
Maintenance Of The Premises	10/96	M	Insert in all leases to comply with basic protection of ensuring that the lease space is in good condition.
No Waiver	10/96	M by reference	Insert in all leases to protect the Government from waiving any rights under this lease.
Officials Not To Benefit	10/96	M by reference	Insert in all leases in accordance with public contract law, 41 U.S.C. 22.
Payment by Electronic Funds Transfer	1/13	M by reference	Insert in all new "cost" leases, or bilateral modifications to existing leases IAW AMS “T3.3.1.A-3 - Electronic Funds Transfer” and RE Guidance “3.1.4.2 - Electronic Fund Transfer (EFT)”. Note: Clause is to be used in all cases, but lessor may qualify for a waiver (See instructions in

			T3.3.1.A-3). The clause allows for documentation of waiver, and providing alternate mean to receive payment, but clause is to be retained in document, as waivers are NOT permanent. Clause is not applicable to no-cost leases or no-cost MOAs.
Subordination, Nondisturbance and Attornment	1/14	M by reference	Insert in all leases to protect the rights of the FAA under this lease during a subordination, nondistrubance and/or attornment.
System for Award Management - Real Property	1/03	M by reference	Insert in all new "cost" leases or bilateral modifications to existing leases IAW AMS "T3.3.1.A-3 - - System for Award Management (SAM)" and RE Guidance "3.1.4.2 - System for Award Management (SAM)". SAM is the preferred method of contractor maintenance for FAA. CO may exempt some vendors IAW guidance provided in T3.3.1.8 & RE Guidance 3.1.4.2. If vendor is exempted from use of SAM, use clause "Contractor Payment Information - Non SAM - Real Property".
SECTION 3 – CLOSING			
Notices			
Attachments			
Name and Title of Owner			
Name of Contracting Officer			
Attachment A Clauses			
CLAUSE TITLE	**DATE OF CLAUSE**	**ANTENNA AND RACK SPACE LEASE**	**PRESCRIPTION**
Adhesives and Sealants	1/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Adjustment For Vacant Premises	10/96	O	Insert in all leases to provide the Government with protection if use of space changes during lease term.
Ceilings	10/96	O	Insert in all leases. Any changes should be approved by regional

			environmental contact.
Condition Report	4/12	O	Insert in leases where accepting space for occupancy.
Contracting Officer's Representative	10/96	O	Insert in leases where a COR is designated.
Day to Day Extension	8/02	O	This clause should be used where the requiring activity desires some flexibility for the end date of the lease. If this clause is used in a cost lease, the total term of the lease, including the total day to day extension days, must not exceed the twenty year FAA leasing authority.
Display Advertising	10/96	O	Insert in leases where Government is sole occupant.
Doors	4/12	O	Insert in leases for door requirement.
Electrical Safety	4/12	M	Insert in all leases. Any changes should be approved by service area environmental contact.
EOSH	4/12	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Erection Of Signs	10/96	O	Insert in leases where signs are required.
Facility Security	4/12	O	Insert in all leases in accordance with FAA Order 1600.69.
Fall Protection	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Fire and Safety	4/12	O	Insert in all leases to
Requirements			provide protection to the Government.
Floor Load	8/02	O	Insert in all leases. Regional engineer should approve any changes.
Grounds Maintenance	10/96	O	Insert in all leases where applicable.
Halon	4/12	O	Insert in all leases. Any changes should be approved by regional environmental contact.
Hazardous Materials	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Hold Harmless	10/96	R	Insert in leases in accordance with Federal Tort Claims Act of

			1948.
HVAC	4/12	O	Insert in all leases. RECO's should consult a service area engineer for changes to clause.
If Minimum Not Delivered	10/96	O	Insert in leases.
Indoor Air Quality	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Installation Of Antennas, Cables & Other Appurtenances	4/12	O	Insert in all leases as needed.
Interest For Late Payment	4/12	O	The AMS exempts the FAA from the Prompt Payment Act. However, the RECO may use this clause as an added benefit to the Lessor when negotiating a lease.
Janitorial Services	4/12	O	Insert in leases, which provide for janitorial services.
Landscaping	1/12	O	Insert in all new leases where conditions permit landscaping and upgrade landscaping during lease renewal. Any changes should be approved by service area environmental contact.
Lighting	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Measurement For Payment	10/96	O	Insert in leases to determine the correct amount of space to pay rent on.
Non-Restoration	10/96	O	Insert in all leases unless specific restorations are negotiated.
Occupancy Permit	8/02	O	*This clause is mandatory for new leases as required by local law to have an occupancy permit to occupy space.
Operating Costs Escalator	10/96	O	Insert in lease where applicable.
OSHA Requirements	10/96	O	Insert in all leases in accordance with OSHA standards 29 CFR 1910 and 1926.
Painting	4/12	O	Insert in all new leases. RECO should insert in all leases with lease terms of five years or longer.
Parking	4/12	O	Insert in leases where

			applicable.
Pest Control	4/12	O	Insert in all leases.
Plans	8/02	O	Insert in all new lease actions and any alterations/renovations.
Progressive Occupancy	10/96	O	Insert in all leases where applicable.
Radon	10/96	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycled Content Products (Comprehensive Procurement Guidelines)	4/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Recycling	1/12	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Refrigerants	8/02	O	Insert in all leases. Any changes should be approved by service area environmental contact.
Restrooms and Drinking Fountains	4/12	O	Insert in all leases.
Seismic Safety for Equipment	4/12	R	Insert in all leases. Any changes should be approved by service area environmental contact.
Services and Facilities	4/12	O	Insert in all leases.
Tax Adjustment	4/12	O	Insert in all leases where applicable.
Time Extension	10/96	O	Insert in leases.
Unauthorized Negotiating	10/96	O	Insert in all leases.
Utilities Not Provided By The Lessor	4/12	O	Insert in all leases.
Warranty Of Space	4/12	O	Insert in all leases.
Window and Floor Covering	4/12	O	Insert in all leases.
Wiring For Telephones	10/96	O	Insert in leases.
Attachment B Clauses			
CLAUSE TITLE	**DATE OF CLAUSE**	**ANTENNA AND RACK SPACE LEASE**	**PRESCRIPTION**
Air Balance Report	10/12	O	Insert in leases where applicable.
Amortization Schedule	10/12	O	Insert in leases where applicable.
As-Built Floor Plans After Occupancy	10/12	O	Insert in leases where applicable.
Construction Schedule	10/12	O	Insert in leases where applicable.
Construction Schedule and Acceptance of Tenant Improvements	10/12	O	Insert in leases where applicable.

Construction of Tenant Improvements	10/12	O	Insert in leases where applicable.
Construction Waste Management	10/12	O	Insert in leases where applicable.
Construction Inspections	10/12	O	Insert in leases where applicable.
Design Intent Drawings	10/12	O	Insert in leases where applicable.
High Performance Sustainable Building (HPSB) Requirements	10/12	O	Insert in leases where applicable.
Lease Commencement	7/10	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Allowance in the Event of Cancellation	10/12	O	Insert in leases where applicable.
Lessor's Recovery of Tenant Improvement Costs In Excess of The Allowance	10/12	O	Insert in leases where applicable.
Liquidated Damages	7/10	O	Insert in leases where applicable.
Measurement of Space	7/10	O	Insert in leases where applicable.
Occupancy Permit	10/12	O	Insert in leases where applicable.
Other Requirements	7/10	O	Insert in leases where applicable.
Progress Reports	7/10	O	Insert in leases where applicable.
Rent Commencement	7/10	O	Insert in leases where applicable.
Required Information Post Award: Green Label Certification for Sustainability Verification	10/12	O	Insert in leases where applicable.
Responsibility of the Lessor and Lessor's Architect/Engineer	10/12	O	Insert in leases where applicable.
Review of Working/Construction Documents	10/12	O	Insert in leases where applicable.
Tenant Improvements	10/12	O	Insert in leases where applicable.
Tenant Improvements Price Proposal Based on Construction Drawings	10/12	O	Insert in leases where applicable.
Walk-Through and Acceptance of Space	10/12	O	Insert in leases where applicable.
Work Performance	7/10	O	Insert in leases where

			applicable.
Working/Construction Drawings	7/10	O	Insert in leases where applicable.
FORMS			
CLAUSE TITLE	**DATE OF CLAUSE**	**ANTENNA AND RACK SPACE LEASE**	**PRESCRIPTION**
Vendor/Miscellaneous Payment Information Form	7/10	M	EFT Form is required in accordance with space lease paragraph 8P. Electronic Funds Transfer. This attachment becomes part of the file after lease award.

2.5.1 Outgrant Clause Matrix Revised 4/2012

OUTGRANT CLAUSE MATRIX

CLAUSE TITLE	DATE OF CLAUSE	OUTGRANT LICENSE for Non-Feds	OUTGRANT PERMIT for FEDS	PRESCRIPTION
Anti-Kickback	Jan-07	M	O	Insert in all Outgrant License.
Assignment of Outgrant	Jan-07		M	The Outgrant Permit is not assignable to a third party.
Breach of	Jan-07	M	M	The Outgrant Permit can be terminated
Contract (Otherwise known as Cancellation)				or cancelled by the FAA.
Consideration (Cost)	Jan-07	M	M	Insert in all outgrants where “fee for use” is received. If outgrant (license or permit) need to put reimbursable number in parenthesis.
Consideration (No Cost)	Jan-07	M	M	Insert in all outgrants where we do receive “fee for use”.
Compliance	Jan-07	M	O	For clauses A5 and B1 in Outgrant License, licensee is required to comply with all conditions or restrictions.
Covenant Against Contingent Fees	Jan-07	M	O	Insert in all Outgrant License.
Damage	Jan-07	M	M	No FAA property shall be damaged by the outgrant licensee or permitee.
Environmental Liability (Permit) or (License)	Apr-12	M	M	Insert in all Outgrant licenses and permits. Use the appropriately labeled version for the License or the Permit. In the past, FAA has been held financially

				responsible for environmental clean-up of sites due to the deliberate acts of Permittees/Licensees on FAA controlled property. Consequently, FAA has determined that it is in the best interests of the Agency to require inclusion of this clause.
Governing Law	Jan-07	M	M	The Outgrant License and Permit shall be governed by Federal Law.
Indemnification	Jan-07	M	O	Outgrant Licensee and Permitee agrees to hold harmless the FAA, its officers, agents and employees.
Interference with Government Operations	Jan-07	M	M	This clause in Outgrant License is referred to "common impact to a FAA facility" (clause A6) and clause #4 for Outgrant Permit.
Laws and Ordinances	Jan-07	M	O	In the Outgrant License, the licensee shall comply with all applicable State, municipal and local laws, and the rules, orders, regulations and requirements of Federal governmental departments and bureaus.
Hazardous Substances (Permit or (License)	Apr-07	M	M	Insert in all Outgrant licenses and permits. Use the appropriately labeled version for the License or the Permit.
Maintenance	Jan-07	M	M	The Outgrant License and Permit, the licensee and permitee is required to maintain the demised premises and shall schedule with the government representative any proposed installation or maintenance.
Notices	Jan-07	M	M	Insert in all outgrants. This information is needed for contract administration; all contractual communication should be done through these contacts. Changes in this information require a contract modification.
Officials Not to Benefit	Jan-07	M	O	Insert in all outgrant license.
Operations	Jan-07	M	M	The outgrant licensee and permitee shall confine activities or construction to the facility stated in the outgrant as stated in the license and permit.
Premises	Jan-07	M	M	In Outgrant License and Permit known as description of premises.
Purpose	Jan-07	M	M	Insert in all outgrants to define the FAA asset.

Contract Disputes	Jan-07	M	M	Insert in all leases to establish the FAA regulations regarding Protests and Disputes under the AMS.
Restoration – Outgrant	Jan-07	M	O	Required for all Outgrant Licenses, the licensee shall restore the demised premises.
Security of Premises	Jan-07	M	M	In the Outgrant License and Permit, the licensee and the permitee is required to provide adequate security for the demised premises (clause A8).
Signature Block	Jan-07	M	M	All outgrants must be signed by authorized parties to the agreement.
Term	Jan-07	M	M	All outgrants must have a clearly defined term.

LEGEND:

Mandatory	Clauses must be included in the lease/agreement without any changes unless other party is prohibited legally from executing the document with the provision as written. Clauses either mandated by law, set by legal precedent or established by FAA policy.
Recommended	These clauses provide protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. RECOs may tailor the recommended clause to meet a specific situation with deviations in wording approved by region/center legal.
Optional	RECO decides whether or not these clauses, or a modified version of these clauses, should be included in the lease. Deviations from the suggested wording must have the region/center legal approval.

2.6 Space Lease Templates Revised 4/2010

Real Estate Templates

3 ADMINISTRATIVE AND GENERAL ASSET MANAGEMENT Revised 7/2008

3.1 Management Guidance

3.1.1 Applicability

This document provides general guidance in administrative and general asset management areas. This document is intended to provide guidance only.

3.1.2 Background

There are certain real estate related asset management principles that are imposed on all agencies and/or have been adopted by the FAA. This asset management guidance section will generally contain information that relates to more than one type of procurement (i.e., land and space or space and utilities, etc.)

3.1.3 Guidelines

3.1.4 Budget Review and Procurement Requests Added 4/2015

Budget Review and Approval

Real Estate Contracting Officers (RECOs) must submit Budget Request Form 3.2.6 to Real Property Division, ALO-200. Once the real property transaction is ready for signature, the Budget Request and Review form should include all monetary terms negotiated.

If multiple lines of businesses (LOBs) and staff offices (SOs) will be using the facility, the RECO must identify the funding responsibility for each LOB/SO on the form. The Budget Request Form must be submitted to ALO-200 by uploading the completed form to the KSN. The KSN is located at: https://ksn2.faa.gov/arc/arc/Logistics/realproperty/Funding%20Request/Forms/AllItems.aspx (FAA only). ALO-200 will acknowledge receipt of the request within 24 hours of submittal.

Procurement Request in PRISM

In addition to Budget Review, prior to awarding the contracting action in PRISM, the RECO must obtain an approved Procurement Request with sufficient funding. If the contract needs to be signed in advance of the fiscal year needed for funds, the RECO must obtain approval from the appropriate budget office.

3.1.5 Contract Management Revised 4/2015

3.1.5.1 System for Award Management (SAM) Revised 4/2015

1. Effective immediately the RECO is responsible for implementing the System for Award Management (SAM) requirements in AMS Procurement Toolbox Guidance T.3.3.1 A-4, System for Award Management. SAM is an E-government initiative to standardize how vendor information is maintained across all federal agencies. The standardization of maintaining vendor data benefits both the Government and the vendor. The new system streamlines the processing of vendor information changes by requiring the vendor to make the changes. The use of SAM assists compliance with EFT payment requirements.

2. The new clauses "**System for Award Management - Real Property,**" "**Contractor Identification Number - Data Universal Numbering System (DUNS) Number,**" and "**Certification of Registration in System for Award Management (SAM)**" are mandatory for all new cost contracts and for modifications to existing awards, unless the vendor qualifies for an exception under AMS Procurement Guidance T3.3.1.A-4. If a vendor is granted an exception,

the alternate clause, "Contractor Payment Information - Non-SAM - Real Property" is included in the contract.

3. Guidance in the AMS Procurement Toolbox T3.3.1.A-4 requires all prospective contractors to be registered in the SAM database prior to award of a contract or agreement. The referenced guidance provides the only authorized exceptions to this requirement. They are the only ones that apply to real estate transactions:

> Exception# 3 - "Contracts awarded by-(b) conducting emergency operations, such as responses to natural or environmental disasters or national or civil emergencies, e.g., Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121)…"
>
> Exception #4 - "Contracts to support unusual or compelling needs. A compelling need is where FAA would be seriously injured if the contract is not awarded." Examples: 1) When a utility vendor refuses to register in the SAM and there is no feasible alternate supplier. 2) When the facility is critical to the FAA's mission, and the only alternative is to relocate the facility to a less effective site at great expense to the FAA.
>
> Exception #6 - "One time/single payment contracts or agreements, such as Real Property purchase and sales agreements, where the seller of the property is not in the practice of offering real property to FAA as a commercial practice and does not anticipate acting as a vendor to FAA in the foreseeable future." Example 1) One time purchase of real property," NOTE this does not apply to leases paid annually or to contracts/agreements with exercisable options (both are recurring payments).
>
> Exception #7 - "Long term leases and utility contracts where a SAM clause is not currently in effect and it is determined by the CO that forcing compliance is impractical." This exemption may be used for utility contracts or leases of any duration. The RECO must make every effort to negotiate compliance with SAM on these existing contracts. However, the enforcement of this requirement is not mandatory and would be prohibited in cases where the enforcement would result in any of the following:
>
> 1) Forced relocation of an existing facility essential to the FAA mission, 2) Loss of a mission critical service, facility or utility or, 3) An unacceptable increase in the cost of maintaining a mission requirement.

4. The rational for all RECO granted exceptions to SAM must be documented in the contract file.

5. Frequent Vendor Concerns and Reponses:

> a. Concern: Lessor/Vendor is concerned about posting personal/banking information on an Internet web site (SAM is web-based). Response: The SAM Website and database are well encrypted. Use of the SAM database actually means that less government or contractor personnel see the vendor's sensitive data. Fewer people have access to the encrypted website, than to paper files of the vendor's data.
>
> b. Concern: Lessor prefers to submit changes via the old Vendor Miscellaneous

Form. Response: Processing of manual forms wastes both vendor and government resources and is far less secure than the encrypted database.

c. Concern: Lessor doesn't have a computer or Internet access. Response: It is easy to register in SAM through mail or by calling 866-606-8220.

3.1.5.2 Electronic Fund Transfer (EFT) Revised 4/2015

1. Effective immediately the Real Estate Contracting Officer (RECO) is responsible for implementing the EFT requirements in AMS Procurement Toolbox Guidance T.3.3.1.A-7 Electronic Fund Transfer.

2. The new clause **"Payment by Electronic Fund Transfer - Real Property"** will be included in all new cost leases, utility contracts, agreements, and other awards for real property. The new Electronic Funds Transfer (EFT) clause will also be included whenever a contractual action that on its own would result in a change to the terms and conditions of existing cost leases, utility contracts or agreements. If a vendor is granted a waiver from receiving payments by EFT, the approved waiver request serves as documentation for the file. An alternate payment clause is not required, as the EFT clause contains provisions for non-EFT payment if a waiver is granted. Waivers are considered temporary, so the RECO should consult with vendors from time to time to determine whether the circumstances that justified the waiver is changed.

3. For existing real property and/or utility contracts and agreements where the FAA does not currently make payments by EFT to the vendor, and the vendor does not have a current EFT waiver on file, the RECO will make every effort to include the EFT clause via bilateral contract modification by September 30, 2007. If the lessor/vendor is unwilling or unable to execute a contract modification implementing EFT payments, and the RECO determines it is in the best interest of the government, the RECO will assist the lessor/vendor to apply for a waiver as contained in AMS Section T3.3.1.A-7.

If the lessor/vendor is unwilling or unable to execute a contract modification implementing EFT payments, and the RECO determines it is in the best interest of the government, the RECO will assist the lessor/vendor to apply for a waiver as contained in AMS Section T3.3.1.A-7.

4. Application of waivers to common Real Estate situations. – Procurement guidance in AMS found at T3.3.1 A-7 contains the following waivers that are the only waivers applicable to real property and utility transactions:

#5. "Contracts executed by any contracting officer in the conduct of emergency operations, such as responses to natural disasters or national or civil emergencies may provide for payments by other than EFT where:

a. EFT payment is not known to be possible; or

b. EFT payment would not support the objectives of the operation."

#6. "When the FAA does not expect to make more than one payment to the same

recipient within a one-year period and the payment is non-recurring." Real property purchases will generally qualify for this waiver. Land leases with annual payments will not qualify, as the payments are recurring.

#7: "Where the Agency's need for goods or services is of such unusual and compelling urgency that the FAA would be seriously injured unless payment is made by a method other than EFT." The RECO will provide sufficient information on the urgent and compelling need to accounting operations, as outlined in Paragraph # 3 of this guidance, for new acquisitions or existing contracts.

#8: "Contracts where the contractor claims that payment by electronic funds transfer would impose a hardship due to a physical or mental disability or a geographic, language, or literacy barrier, or would impose a financial hardship."

5. If the vendor has a U.S. bank account, they can and should receive payment by EFT. So this exemption will seldom be needed. Good business judgment should be used by the RECO when deciding whether or not to seek a waiver.

6. For the waiver request process, the RECO will document the availability of other vendors and costs associated with changing vendors and relocation costs, to the Accounting Operations Division manager. The RECO will document any and all factors supporting the acquisition (e.g., technical location requirements, or single-source vendor), and what **injury** to FAA would occur by not continuing with the current vendor. This will support justification for a waiver under #7 for urgent and compelling need of the government. This documentation will remain part of the contract file, together with the completed waiver request. If the FAA Accounting Operations Division disapproves the waiver, the RECO will consult further with the Accounts Payable Branch Manager and document the file with the resolution reached by the parties. NOTE: The resolution of EFT payment issues should not result in the premature relocation of FAA facilities, or loss of mission critical services/utilities.

7. The assertion that a waiver is required because EFT does not provide sufficient payment data to vendors receiving payment on multiple government contracts is not a valid basis for a waiver. A US Treasury system provides this data to registered vendors delineated by contract. The system is web-based and is provided at no cost to the vendor.

3.1.6 Capitalization Revised 4/2015

Capitalization is not to be confused with accountability. In general, capitalization is the method of treating an asset as it relates to an agreed upon set of accounting principles. Accountability is keeping track or being aware of assets or items determined important because of their use, value, or significance. Capitalization and accountability of assets will overlap but should not be considered synonymous.

The FAA Financial Manual establishes the threshold value for capitalizing assets. Assets that fit the Financial Manual definition of "capital assets" must undergo a process to ensure that they are properly "capitalized" in agency financial and property records. As of October 1, 2008, FAA Financial Manual Volume 5, Chapter 3 "Property, Plant and Equipment", section 030202 "Capitalization Criteria", requires capitalization of assets meeting certain criteria. Land is always

characterized as a capital asset. Generally, a non-land asset must be capitalized if it has an estimated useful life of at least two years and has a total unit cost of $100,000 or more (e.g., roads, perimeter fences, etc.) The FAA is required to capitalize certain improvements in both owned and leased space (See The Accounting Capitalization Desk Guide). Also, the FAA is required to make a determination as to whether leases (including real property leases) are capital or operating leases and insure they are reflected correctly in the financial system. Documentation relating to capital improvements and determinations of capital versus operating leases is to be retained in the appropriate lease file. Documentation, as a minimum, should consist of the form "Evaluation of Real Property Lease to determine Accounting Treatment". Specific information and guidance relating to capitalization and capital leases is contained in Accounting Capitalization Desk Guide and the PRISM/DELPHI Business Process: Capital Lease any conflicts in capitalization guidance will use Accounting Capitalization Desk Guide as the final authority. The Project/Material Management Desk Guide also contains information pertinent to the capitalization of real property asset.

Typically, the determination of whether a lease will be a capital lease is accomplished well in advance of site acquisition because of the possible budget score-keeping (OMB Circular A-11, Appendix B) that may be required. Consultation with the requesting Line of Business (LOB) regarding OMB Circular A-11 requirements should be done prior to any commitment on the part of the FAA. *Land-only leases that do not provide a bargain purchase option and do not result in FAA ownership during the term of the lease are not capitalized. FAA owned land is always characterized as a capital asset*.

There are six criteria to determine whether a lease is capital or operating. Because such phrases as “long duration” and “high payment” are subjective, OMB Circular A-11 sets forth which six criteria listed below to be used by Federal agencies in distinguishing between an operating lease, a capital lease, or a lease-purchase. If either of the first two criteria is not met, the lease is classified as a *lease-purchase.* If the first two criteria are met and one or more of the other four criteria listed below are not met, the lease is classified as a *capital lease*. If and only if all six criteria are met is a lease classified as an *operating lease.*

> *1. Ownership of the asset remains with the lessor during the term of the lease and is not transferred to the Government at or shortly after the end of the lease term.*
>
> *2. The lease does not contain a bargain-price purchase option.*
>
> *3. The lease term does not exceed 75 percent of the estimated economic life of the asset.*
>
> *4. The present value of the minimum lease payments over the life of the lease does not exceed 90 percent of the fair market value of the asset at the beginning of the lease term.*
>
> *5. The asset is a general-purpose asset rather than for a special purpose of the Federal government and is not built to unique specification of the Government as lessee.*
>
> *6. There is a private sector market for the asset.*

Bargain-price purchase options

The test for bargain-price purchase options contains no time restrictions as to when the option

might be exercised, whether prior to or years after the expiration of the lease. This can be particularly critical in situations where the improvements themselves are leased for, say, 20 years, but then revert to the Government at little or no cost upon expiration of an associated ground lease after 50 years.

Leases that contain such options are classified as lease-purchases.

<u>90 percent test</u>

For purposes of the 90 percent test, the *minimum lease payment* is the annual net rent (full service rent less all fixed and operating expenses) and specifically does not include real estate taxes. The discount rate to be used in doing the present value computations is specified in the annual update to OMB Circular A-94 Appendix C, as typically published each February. Discount rates are specified for terms of 3, 5, 7, 10, and 30 years, and are used over the next 12 months independent of interest rate fluctuations. Discount rates for lease terms other than 3, 5, 7, 10, and 30 years are established through straight-forward interpolation. The real discount rates appearing in OMB Circular A-94 Appendix C are to be used in conducting the 90 percent test and the subsequent impact on budget authority, as well as for calculating net present values needed to identify the lowest cost space alternative available to the Government. For cost-benefit analyses involving alternative (third-party) financing, however, the equivalent cost of capital for Government funding is to be based on the yield rates for Treasury obligations of similar durations that are published weekly by the Federal Reserve Board in Bulletin H-15 (available online). The lease term used in performing the 90 percent test is to include the firm term of the lease plus all options and extensions

Special Purpose

Any project constructed or located on Government owned land is presumed to be for a special purpose of the Government, and is therefore ineligible for classification as an operating lease. However, as part of the 2003 amendment to OMB Circular A-11, if the Government ground leases property to a non-Federal party and then subsequently leases back the improvements, the leaseback may be treated as an operating lease if it otherwise meets the criteria for an operating lease.

<u>PRISM/DELPHI</u>

In the PRISM/DELPHI procurement and financial system, tests 5 and 6 are generally considered to be met and that normally is the case with FAA leases. However the CO should be aware of the criteria in the event of a rare circumstance, where those criteria may apply. Any questions regarding tests 5 or 6 should be referred to Real Property Policy for a determination. The CO completes the “Evaluation of Lease to Determine Accounting Treatment” form and submits to their accounting office with their lease package. NOTE: There is a form for both real property and personal property leases). The form is designed to screen out certain leases that can automatically be considered operating leases or capital leases, and provide necessary information for performing the remaining tests. Also in the DELPHI system, the determination must be completed in DELPHI Fixed Assets Module by the servicing accounting office, unless it is automatically classified as an operating lease. See the PRISM/DELPHI Business Process Solution: Capital Leases for further information on processing of lease evaluations, operating

and capital leases.

Fair Market Value

Fair Market Value – The highest priced in terms of money which a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and sell, each acing prudently, knowledgeably and assuming the price is not affected by undue stimulus.

☐ **Determining Fair Market Value (FMV) for Lease Evaluation Purposes**

The lease evaluation must be as of the date of lease inception and use the FMV as of lease inception date. For new leases, FMV is best determined during the market survey. The CO will also need to determine the FMV of certain modifications that change the term and/or scope of the lease, since they must be evaluated separately from the original lease.

Per OBM Circular A-11, the market approach is most preferable, followed by replacement cost. Circular A-11 does not discuss income approach but this is also an acceptable approach per real property appraisal practice. Property tax assessment can be used to help establish FMV if it is tied directly to a reasonable fair market value – with the caveat that some adjustments may be needed, depending on the taxing districts policies. Discussions with real estate brokers in the area can reveal correlations between tax-assessed value and fair market value.

When determining FMV of the real property under lease, remember that this is a reasonable estimate of FMV to be used for internal accounting purposes only – so do not contemplate using this estimate for formal appraisal/legal purposes. There is no one single method to arrive at this estimate, and COs should remember the three approaches to estimating FMV – Market, Replacement Cost and Income approaches. The CO should make an effort to make an estimate using at least two of these approaches and then make a judgment (**do not average**) as to *the appropriate* FMV when comparing the values arrived at by different approaches. It should be noted that the full value of the building or asset being leased is used for lease evaluations, even when the FAA is only leasing a portion of the building/asset.

☐ **Accepted Method for Retroactive Determinations of FMV:**

The accepted process for estimating FMV in those cases where there is not sufficient documentation available to establish original FMV on retroactive evaluations of existing leases, is to establish FMV for the property under lease as of the new evaluation date (now), and then discounting the FMV using the Consumer Price Index (CPI). Use the same CPI Index used for Lease Services and Utilities CPI Adjustment. Utilize CPI schedule for Wage Earners and Clerical Workers, Not Seasonally Adjusted, US City Average. Base Period 1982-84=100. Multiply current FMV x Inception CPI value /Current CPI value to arrive at an adjusted FMV for lease inception. This shall be the standardized method of estimating the FMV for prior years in absence of actual documentation of FMV at lease inception.

☐ **Estimated Useful Life For Capitalization:**

In determining whether a lease is operating or a capital lease you will need to know the estimated useful life of a particular asset. The FAA has made a determination for the following types of assets:

- ☐ 40 yrs. Offices and Warehouse buildings (including commercial, governmental, air traffic control towers and enroute air traffic control centers) and residential properties.
- ☐ 20 yrs. Mobile Homes
- ☐ 15 yrs. Other Structures (i.e., Roads, Sidewalks, Parking Lots, etc.)
- ☐ 10 yrs. Capital improvements, Facility Modifications, Leasehold Improvements (or expiration of lease, whichever comes first).

☐ **Amortization**

When a lease is considered capital because FAA will during or at the end of the lease term take title to the property or the lease contains a bargain purchase option, the asset is amortized over the estimated useful life of the asset, not the lease term.

When a lease is considered capital because the 75 percent of the estimated useful life or 90 percent of fair value criteria is met, the asset is amortized over the term of the lease.

Leasehold improvements are amortized over:

- ☐ The remaining term of the lease OR
- ☐ The useful life of the asset (the improvement), which ever is less.

All capital leases and capitalized improvements will need to be reported to your local accounting organization.

☐ **Liquidated Damages**

If lease contract requires some form of liquidated damages clause (where the FAA agrees to pay some form of damages for ending the lease early) the Real Estate Contracting Officer must coordinate with the LOB to ensure they understand that funds for any potential liquidated damages must also be scored in the LOBs budget, to ensure there would be no shortfall of funds, should the FAA terminate early. Information on Liquidated Damages is contained in: OMB Circular A-11, Appendix B.

☐ OMB Review Certain Requirements

Effective with publishing of this document, the RECO must be aware that OMB now requires review of certain Leases, as outline in OMB Circular A-11, Appendix B long before they are awarded. The types of projects are shown below as follows:

- ☐ Any proposed lease where total Government payments over the term of the lease (including any options) will exceed 50 Million dollars.
- ☐ All Non-Routine financial proposals, such as:
    - o Outlease-Leaseback arrangements
    - o Establishment of public-private partnerships
    - o Issuance of debt by a 3rd party that includes an explicit “full faith and credit” guarantee of the United States of America.
    - o Special purpose assets for which there is no real market.
    - o Enhanced –use leases with leasebacks, with manual payments that exceeds the

following annual rent threshold:
  - ☐ 2006 - $2,410,000
  - ☐ 2007 - $2,600,000
- Projects constructed on Public land
- Service Contracts that require the contractor to acquire or construct assets greater than $50 Million.
- Share in Savings proposals that result in the acquisition of real property.
- Any financing proposal for which requires OMB approval of the scoring or compliance with OMB Circular A-11.
- Arrangements that grant special tax status
- Leases that involve options that can be conveyed to a third party in exchange for future consideration.

3.1.7 Real Property Physical Inventories and Records Revised 4/2015

This section is to provide guidance and outline responsibilities for conducting real property inventories and for updating real property records to reflect the inventory results.

Authority
Conducting physical inventory is necessary to achieve appropriate accountability and control over the FAA's real property assets. The physical inventory establishes a direct relationship between actual and recorded assets and ensures that asset transactions have been properly recorded in the real property records database. In compliance with the President's Management Agenda initiative and the Federal Real Property Council (pursuant to the Executive Order 13327), the Department of Transportation is required to submit valid real property data at the end of each fiscal year to the Office of Management and Budget.

Standard
A physical inventory of 1/3rd of a service area's (legacy regions under them)/center's real property assets (defined as Properties and Improvements) should be conducted annually. The first cycle (FY 2008) Inventory was performed beginning with the most valuable facilities defined by the total Value of that Facility (the Facilities needed to have at least one Property valued at $200,000) – this Value being defined as the Plant Replacement Value for Owned Assets and the Annual Rental for Leased Assets - then pick up subsequent assets for years 2 and 3. Additionally, all assets on any location (defined by the ATID) should be inventoried simultaneously so that there are no repeated visits to the same location. This will result in a 100% inventory of all FAA's owned and leased assets every 3 years in the Real Estate
Management System (REMS).

Responsibilities
The FAA organizations/personnel involved in the annual physical inventory effort should include:

Applications and Inventory Division (ALO-300) at Headquarters initiates the annual physical inventory and assigns a national real property inventory coordinator (NRPIC).

National Real Property Inventory Coordinator (NRPIC) coordinates the overall physical

inventory, issues detailed instructions to the service areas (legacy regions under them)/centers, supports the service areas (legacy regions under them)/centers real property inventory coordinators, reports on the final results, and coordinates with ATC Facilities Office (AJW-2) regarding ATO inventory tasks.

ARC Service Areas (legacy regions under them)/Centers Logistics Division appoints a real estate staff member as Service Area (legacy regions under them)/Center Real Property Inventory Coordinator (RPIC).

Service Area (legacy regions under them)/Center Real Property Inventory Coordinators (RPIC) coordinate the physical inventory effort in their area/region/center with ARC's Business Services Group Team member, distribute inventory asset lists and instructions to Business Services Group Team Member, follow up on results, adjust the real property records database to reflect the results, and verify results from a sample of 10% of inventoried assets for accuracy.

ATO Headquarters Real Property Inventory Coordinator (AJW-24) identifies ATO offices involved with inventory validation, coordinates with NRPIC on inventory tasks, and provides Inventory Taker/technician support.

ATO Service Center (AJV2-E/AJV2-C/AJV2-W) designates a Business Service Group real property inventory team member.

Business Services Group (BSG) Team Member (AJV-E4/AJV-C4/AJV-W4) identifies contacts to ARC Service Areas/Centers Real Property Inventory Coordinators, distributes inventory asset lists and detailed instructions to Program Operations Group (POG) NAS Logistics Managers and District Office (DO)/System Support Center (SSC) Managers, collects inventoried asset lists results from Logistics Management Specialist / Logistics Program Coordinator assigned to assist and advise the Custodians in the District Offices / System Support Centers, and follows up on issues related to getting the job done.

Program Operations Group (POG) NAS Logistics Managers (AJW-W23 / AJW-C23 / AJW-E23) assigns a Logistics Management Specialist (LMS) / Logistics *Program Coordinator (LPC)* to advise and assist the District Office/System Support Center Manager, who are the custodians, in validating, researching and documenting any changes to the asset records. Once an assignment is made, the BSG, ARC and custodians work with that designated LMS/LPC on any issues. The LMS/LPC reviews the inventoried list for clarity and completeness and returns it through the BSG to ARC. In some cases, the LMS/LPC may also be the Inventory Taker.

District Office (DO) / System Support Center

Representatives (SSC) (i.e., the real property custodians in their field facilities): distribute inventory asset lists to their designated inventory taker(s) that will physically observe the sites to be inventoried; and return the inventoried asset lists results to BSG Team Member. In some cases, the SSC Manager might be the inventory taker, or they may request assistance from the Program Operations Group Manager to have an LMS or LPC take the inventory.

Inventory Recorders (authorized and trained on the REMS Inventory Module System) in the regions record observations from the inventory data collection sheets received from Inventory

Takers. It is possible that the Inventory Recorder and the Inventory Taker is the same person. In that regard, the Inventory Recorder will record their inventory results directly in the Inventory Module System.

Inventory Takers in the regions physically observe the inventory sites and record observations on the inventory data collection sheets. The inventory data collection sheets are then returned to the assigned LMS/LPC, who reviews for accuracy, and forwards through the BSG to ARC for processing.

Facility Management Staff at the Mike Monroney Aeronautical Center (AMC) and William J. Hughes Technical Center (ACT) physically observe the inventory sites and record observations in the REMS Inventory Module.

Office of Financial Management - Property Control and Analysis Division (AFM-500) updates the real property records in Delphi to reflect inventory results.

Procedures

The annual inventory should be comprised of the following five key procedures. The first three procedures are the responsibility of the service areas (legacy regions under them)/centers, lead by the ARC Real Estate organization in each service area (legacy regions under them)/center. The final two processes are the responsibility of the Applications and Inventory Division in Headquarters (ALO-300).

1. Conduct a physical inventory of 1/3rd of a service area (legacy regions under them)/centers real property assets.
2. Conduct an internal verification of the inventory results.
3. Verify updates of the real property records in the REMS database and Delphi database, when requested, to ensure inventory results are reflected.
4. Coordinate with the Office of Financial Management – Property Control and Analysis Division (AFM-500) to ensure those found-on-site assets, and other assets requiring DELPHI recordation assistance are updated in Delphi.
5. Consolidate and report on the results and initiate corrective action where necessary to address opportunities identified as a result of the inventory.

Each of these key procedures is described in detail, in order of occurrence, below.

Procedure 1

Inventory Takers (and where applicable, Inventory Recorder) for each site in the region (facilities management staff at the centers), follow the instructions and determine if the listed land, buildings and other structures still exist, and if they do, whether they are in use. If the Inventory Taker/Facilities Management Staff determines that an asset status needs to be changed to excess, because it is no longer in use or that an asset should be deleted because it has been removed or sold, then the name of a contact person that could provide the appropriate paperwork should be listed in the remarks column. And when possible, forward the supporting disposal form with the completed inventory spreadsheet. The Inventory Taker/Facilities Management Staff also indicates on the list (or REMS Inventory Module) any corrections to the information for each asset. The Inventory Taker/Facilities Management Staff looks to see if there are any buildings, land assets, or other structures on the site that are not on the inventory list. If (found) assets are identified, they are added to the bottom of the list, if spreadsheet is provided (or to the appropriate section in

the REMS Inventory Module) and with as much information known about the asset as outlined on the list's data elements (e.g. installation date, etc.) The Inventory Taker/Facilities Management Staff will forward the completed inventory list through the DO/SSC to the Service Areas (legacy regions under them)/Centers Real Property Inventory Coordinators. The Facilities Management Staff at the AMC and ACT forward the completed inventory list -- via the REMS Inventory Module -- directly to the National Real Property Inventory Coordinator.

Procedures 2 and 3
Service Area (legacy regions under them)/Center Real Property Inventory Coordinator then updates REMS to:

1. validates and records corrections to asset/improvement information;
2. retires assets/improvements that no longer exist;
3. changes the status of assets no longer in use to excess;
4. adds assets/improvements found on inventory;
5. forwards documentation, if necessary, to support adjustments to the accounting records; and
6. ensures quarterly milestones of completed inventory are met.

Procedures 4 and 5
National Real Property Inventory Coordinator at headquarters:

1. tracks responsiveness
2. reviews and summarizes the results of the physical inventory;
3. identifies opportunities to improve the inventory taking process;
4. identifies opportunities to improve asset management practices; and
5. issues a report to ALO management and the service areas (legacy regions under them)/centers administrators, commenting on the apparent strength of current management control processes and recommending changes, if deemed appropriate.

3.1.8 Accountability Revised 4/2015

Objectives

This guidance is to assist in the accountability of real property assets (inventory). This further provides guidance that augments FAA Acquisition Management System (AMS) Real Property policy found at AMS Section 4.2.

The primary objectives of the real property inventory system are to:

a. Maintain the official agency accountability records for real property assets;
b. Maintain electronic records for all real property assets that the FAA leases, owns, occupies, or outleases using the Real Estate Management System (REMS);
c. Provide detailed data to augment the FAA's subsidiary real property accounting system;
d. Provide FAA program, financial managers, and others the ability to manage and account for real property assets;

e. Provide the means to produce reports to satisfy requirements of regulating agencies, the Department, and intra-agency management; and
f. Report annual inventory to Federal Real Property Profile as mandated under the President Management Initiative and in compliance to Executive Order 13327.

General

Accountability for real property is the process of ensuring the recordation of real property assets for all FAA owned, leased, and utilized real property assets. Functions of real property accountability may include, but are not limited to, the documentation, verification, and confirmation of the existence of real property records and are to be documented in an automated information system.

Please note: Accountability is not to be confused with capitalization as described in Real Estate Guidance, Management, Section 3.1.5 Capitalization. Nor is this section to be confused with Inventory as described in Real Estate Guidance, Management, Section 3.1.6 Inventory

Roles and Responsibilities

Program managers and/or their designee(s) must manage FAA inventory (real property assets). Management will be accomplished by ensuring the integrity of the data. Data management will enable managers to formulate sound financial decisions. This includes the ability to collect accurate, timely, complete, reliable and consistent information; to provide for adequate reporting to support government and agency decision-making; to support the preparation and execution of agency budgets, and to facilitate the preparation of financial statements providing a complete audit trail. Aviation Logistics Organization (ALO-300) under the Administrator for Regions and Centers (ARC) has been mandated by the Office of Management and Budget to report the Department of Transportation's Real Property inventory through the REMS system.

Provided below are the roles and responsibilities for ARC Headquarters (i.e., ALO-300), Service Areas, and Centers.

A. ALO-300 will:

a. Manage REMS nationwide.

b. Provide advice and assistance to Service Areas (legacy regional offices under them) and Centers regarding functions of REMS.

c. Monitor the REMS database and periodically report findings as needed or requested.

d. Maintain oversight and control of the REMS database reflecting the content, and recommend corrective actions.

e. Identify systemic weaknesses through review of reported deficiencies and recommend policy and/or guidance actions to be taken.

B. Service Areas (legacy regional offices under them) and Centers will:

a. Conduct and document by electronic input in the REMS database all relevant acquisition, management, and disposal of real estate.

b. Ensure that REMS data are consistent with data housed on DELPHI

c. Monitor data periodically for accuracy.

d. Enter corrective actions for inaccuracies.

e. Provide data and information to Headquarters as needed.

f. Conduct annual rolling inventory.

g. Where assistance is required or desired, request assistance from ALO-300.

REMS Roles and Responsibilities

ALO-300 has overall responsibility for the REMS application. As such, ALO-300 has designated a Headquarters' System Administrator. Additionally, Service Areas (legacy regional offices under them) and Centers have designated System Administrator for local automated data processing (ADP) issues. The Service Areas (legacy regional offices under them) and Centers System Administrators are responsible for maintaining information about their regions or centers including, but not limited to:

1. Assign User level capability.
2. Issue (or remove) user access to REMS.
3. Make global changes to the REMS data that affects multiple Assets (transferring Properties or merging Facilities, etc.)
4. Make other significant changes to a Property (like Property Code change) that results in a further effect on the Value of the Property.
5. Merge facilities.

To effectively manage the overall functioning and to keep REMS as useful as possible, a workgroup has been formed which also functions as the configuration control board.

This workgroup is headed by the ALO-300 HQ management and comprises of REMS technical personnel and Regional REMS System Administrators. This workgroup meets fortnightly to discuss the immediate data issues, decide the functionality of REMS, and the future course of action for REMS technical team.

Real Estate Management System (REMS)

REMS is a web-based, consolidated nationwide database and complies with all requirements from Federal Real Property Council. The REMS database contains detailed information for all FAA real property assets. The web page offers other related databases, a log on screen, contacts, and the REMS User Guide. This information, "REMS Online", can be found at https://rems.faa.gov/ (FAA only). All FAA real property assets are recorded and managed in a database identified as REMS. REMS captures all FAA leased and owned real property (land,

buildings, and structures), all GSA owned or leased real property utilized by the FAA, and all Property owned by other Federal Government agencies but controlled by FAA.

Owned FAA Assets

- ☐ All FAA real property assets are initially populated in DELPHI if the asset is owned. FAA owned assets are first documented in DELPHI by the User and then downloaded to REMS through an automated interface.
- ☐ Data management for DELPHIprocedures for owned assets has been developed in consultation with ALO and AFM and disseminated by AFM. DELPHI maintains the financial data for assets. DOT/OIG auditors review DELPHI financial data.

FAA Leased Assets

- ☐ FAA leased assets are populated by the User directly into the REMS application.
- ☐ Improvements to Owned or Leased Assets.

  For all purposes, Improvements are 'child' owned assets attached to a 'parent' Asset (owned or leased). All improvements to real property assets (either owned or leased) are initially populated in DELPHI. Improvements (including leasehold) are first documented in DELPHI by the User and then downloaded to REMS through an interface.
- ☐ Data Management for DELPHI procedures for all improvements has been developed in consultation with ALO and AFM and disseminated by AFM. DELPHI maintains the financial data for improvements. DOT/OIG auditors review DELPHI financial data.

REMS Data

Data Elements

- ☐ Data standards for REMS are established by ALO-300. Users must supply established minimum data standards as identified by the mandatory fields in REMS for each asset.
- ☐ The data elements are reviewed quarterly and approved changes are affected which include, but are not limited to, removing redundant elements, addition of new elements and keeping the data definitions current.

Data Accuracy

- ☐ Data accuracy requires constant review. Data accuracy control responsibility lies with Service Areas (legacy regional offices under them) and Centers Logistics Divisions. The real property inventory is to be modified as necessary to reflect accurate findings. Real property physical inventories are conducted annually for verification. See Real Estate Guidance, Management, Section 3.1.6 Inventory for guidance on conducting real property inventories and for updating real property records to reflect the inventory results.

Procedures for data management in REMS are found in the REMS User Guide. REMS Online, containing the REMS User Guide, can be found at https://rems.faa.gov/ (FAA only)

Quality Assurance

The following procedures have been established by ALO-300 for the REMS application.

- ☐ Costing Data – Costing data for FAA owned real property is located in DELPHI. The Office of Financial Management (AFM) will validate this data within DELPHI before non-financial data are uploaded into REMS.
- ☐ Data Elements – A data dictionary containing all the REMS data elements is available in the REMS User Guide found at website https://rems.faa.gov/ (FAA only). The REMS schema database is also available upon request from ALO-300.
- ☐ Data Controls – The REMS application has various validations checks built into the application to prevent the user from entering invalid data. Many data controls have been programmed for the following fields: dates, currency and numeric fields. For instance, the number of characters is limited by logic rules programmed for each field. Other such controls include: lease expiration dates must always be greater than the lease start dates; facilities cannot have the duplicate Air Traffic Identifiers (ATID), General Services Administration Number (GSA), or Facility Contractions (FC) combinations as this combination is a unique and key identifier in REMS for a facility; and, the use of codes with matching text descriptions that enable the User to verify that accurate data is being menus to select the appropriate data for entry into the fields.
- ☐ Backup Procedures – All real estate data in REMS is backed up daily. Moreover, there are complete weekly backups. Backup is done by ALO-300 REMS support. As of this date, the contingency plan includes retaining a copy of the backed up data at an off-site location.
- ☐ Security Procedures – The REMS Online version and the database reside within FAA intranet and are secured within the FAA firewall. At the application level, there are three levels of access – read-write, read only, and administrative. Only authorized Users with valid User IDs and passwords within FAA firewall will be able to access the application.
- ☐ A file transfer protocol (ftp) site has been created to share the relevant REMS documents and data with the DOT personnel. Documents are openly available to all at the ftp site ftp://rems.faa.gov/documents (FAA only). Data availability is restricted to the people having a valid access to REMS application.

REMS also provides the following services to interested DOT personnel:

- ☐ As mentioned above, User Guides and Data definition documents are updated quarterly and available on REMS ftp site.
- ☐ Flatfiles Reports and databases are posted on a monthly basis on REMS ftp site (available only after signing in REMS)
    - o Flatfile databases consist of Service Areas (legacy regions under them)/Centers data sets in MS Access and MS Excel format and a copy of the consolidated REMS database for future reference.
    - o Flatfile Reports (formatted details and summary reports) consist of Expiring Leases, On Airport No Cost Land Leases, Active Cost Leases, and other real property activity.
    - o Snapshots on the REMS homepage are available to reflect the current real property inventory numbers as well as for the activities undertaken by ALO-300 for data improvement projects like data validation, rolling inventory, and other

real property asset monitoring.

3.1.8.1 Lease Scanning and Documentation Procedure Revised 4/2015

Effective July 1, 2007

All new and renewal Lease documents must be scanned at the point of origin (i.e., region-level, etc.) once the lease has been activated. The lease must be uploaded to the REMS server, and attached to the respective lease number. The lease document will be available for viewing from REMS screens.

INSTRUCTIONS:

1. Scan the lease document
2. Save the document on a local computer as a ".pdf" file. For example, "lease1234.pdf" lease screen.
4. Select Fiscal Year on the Lease Screen for the lease period
5. Click on <UPLOAD & ATTACH> button to upload the scanned document from the local computer to REMS server
6. REMS will store the document using the "lease contract number" entered on the Lease Screen under a folder created for the Region and the selected Fiscal Year
7. <VIEW DOCUMENT> button will bring up the document for future viewing
8. *If acceptable, <ACCEPT>*

3.2 Management Forms Revised 7/2010

Real Estate Templates

4 UTILITY ACQUISITION

4.1 Utility Guidance

4.1.1 Applicability Revised 4/2008

This document provides general guidance in the acquisition of utility services. This procedure addresses the acquisition, management and termination of utility services, i.e., electric, gas, and water in support of facilities constructed, operated, and maintained in the Federal Aviation Administration.

4.1.2 Background Revised 4/2008

The utility acquisition process is to be conducted following the best commercial business practices, in a fair and equitable manner, while complying with all applicable regulations.

In most cases the Real Estate Contracting Officer will arrange for and sign any utility related documents. However, this does not preclude other FAA personnel, with authority to contractually commit the FAA to the payment of funds, from obtaining utility services using these guidelines. Any utility services obtained by personnel other than Real Estate Contracting Officers must be coordinated with the appropriate real estate office. In this document CO is used to indicate the individual with authority to commit the FAA to the payment of funds when obtaining utility services.

4.1.3 Guidelines Revised 4/2008

Utility services should be obtained from sources of supply, which are most advantageous to the Government in terms of economy, efficiency, reliability or service. Although single source is generally the method used to acquire utility services, the FAA will acquire utilities competitively whenever practical and reasonable. When competition is practical and reasonable, the selection of a source of supply requires careful and thorough study. A primary factor to consider when acquiring utility services competitively is the reliability of the service, since, in most cases, interruptions to utility service would result in serious losses to the FAA.

4.1.4 Pre-Award Contract Reviews Revised 7/2008

A single source is generally the method used to acquire utility services. When competition is practical and reasonable, the program office requesting the acquisition, must submit specifications in sufficient detail to request offers and evaluation criteria from the requesting office to make a selection that represents the best value to the FAA. Competition can only occur within designated areas that are deregulated and open to competition. There is a potential possibility for substantial savings when acquiring utilities competitively, since the Government has ability to select lowest cost provider. The problem with competitive procurements is split billing, which occurs when each point of service receives two invoices; one from the energy provider and one from the company whose lines were used to transport the energy. However, FAA Accounting will only pay invoices from the company with which the FAA has a contractual agreement. If the FAA wants to pay an additional provider, the RECO/CO will have to negotiate new contract(s) for each point of service. Consequently, it is recommended that the RECO/CO procure utilities services noncompetitively. If the possibility of energy procurements without the need for split contracts is available, the competitive procurement may be worth considering.

The RECO/CO should review and analyze utility requirements received from the requesting official in detail, including the scope of the services requested, any drawings of the facilities provided, and cost estimates, if any. The project must be entered into Real Estate Tracking System (RETS). The RECO must confirm essential funding for estimated monthly service charges are provided through the PRISM requisition.

The RECO/CO should obtain a rate schedule from the utility company and ensure that the rate charged to the FAA is the lowest applicable rate available for which the FAA qualifies. The RECO/CO establishes a new account with utility service provider designated for a service area

and arranges for service connection/transfer on specific date. The RECO/CO should also consider the use of General Services Administration Area Wide utility contracts whenever possible and available, since the Government and utility provider have already agreed to the terms of the contract. However, if, with respect to a new FAA facility, the RECO determines that the GSA Area Wide contract has expired, the RECO/CO must negotiate a new contract using FAA forms (4.3.1 Utility Application or Purchase Order).

When an agreement between the FAA and the utility provider has been reached concerning the terms and conditions of service, the RECO/CO must prepare either:

a. A Utility Contract with the form found at 4.3.1 Utility Application, which will include the FAA contract number, facility type, service address, account number, meter number, etc. or

b. A Purchase Order (PO), which must include the following clauses in the Terms and Conditions:

1. Advance Payment

2. Anti-Kickback

3. Contract Disputes

4. Covenant Against Contingent Fees

5. Central Contractor Registration – Real Property – (CCR)

6. Electronic Funds Transfer

7. Facilities Charges

8. Interest for Late Payment

9. Officials Not to Benefit

10. Protest

12. Tariffs and Rates

14. Note: Any other clauses needed to be added should be done with concurrence from your regional counsel or AGC-520.

c. If required by the utility, the RECO/CO may elect to use the state utility contract, provided it has been reviewed for legal sufficiency by the appropriate Regional Counsel, or AGC-520.

d. If the Utility Provider is military provide the Military Interdepartmental Purchase Request (MIPR) to the Military Finance Office, provided it has been reviewed for legal sufficiency by the appropriate Regional Counsel, or AGC-520. Note these an MIPR needs to be funded annually.

4.1.5 Award Revised 4/2008

The RECO/CO must complete the contract award process in PRISM, including all required financial data and full execution of the purchase order (PO) or utility contract or state utility contract. All contract awards must comply with Utility policy, AMS 4.2.3.6 and PRISM (FAA only) guidance.

The RECO/CO must send the original signed PO form or utility contract or state utility contract and one copy to the MMAC Accounting for payment processing. Also the RECO/CO should send copy of fully executed contract vehicle to the requesting office and property custodian, if the property custodian is other than the requesting office. The property custodian is the office responsible for managing and/or maintaining the facility, usually the office manager of the facility or the District Office if it is an unoccupied facility. Finally the RECO/CO must ensure that the project record is completed in RETS.

4.1.5.1 Funding Obligation Added 4/2008

The funding obligation for monthly consumption is provided through issuing a Purchase Request (PR) in PRISM. The RECO will continue to award the PO, which contains the contract number and all elements required for the obligation of appropriated funds.

4.1.6 Post-Award Actions Revised 4/2012

The RECO/CO must review any request for service modifications, i.e., reroute cable, relocate meter, etc. and any additional charges to be incurred to determine whether they have a rational basis, are reasonable, and are necessary for the fulfillment of FAA's mission. After receipt of the approved PRISM requisition with essential funding, the RECO/CO will prepare any necessary contract amendment relating to the utility contract vehicle used. It is recommended that the RECO provide the supporting OPS code from the requesting office (i.e. LMS/LPC) to the accounting office at MMAC at the initial setup. This will avoid the need in the future for the RECO to convert the funding from F&E to OPS by additional PR request and setting up a PRISM contract modification and then processing to accounting.

4.1.6.1 Payment Problems Added 4/2008

The RECO/CO must resolve any issues that arise relating to non-payment of invoices through coordination with the Accounting office to avoid any shutdown or interruption of utility services which are critical to operation of air navigational facilities. It is important for the RECO/CO to establish good communication with ATO to ensure that payments are made in accordance with the requirements of the contract/PO.

On occasion, situations have arisen whereby a utility provider would not perform specific in-scope work for FAA unless it received payment prior to commencement of work. The RECO should first consider whether the same utility provider previously accepted payments following

completion of similar work. If the utility refuses to accept post-completion payment, RECO must use the Procurement guidance T3.3.1 for allowing prepayments in extenuating circumstances (see Procurement Guidance T3.3.1).

The RECO needs to monitor the invoices for payment to the utility companies especially for cases where overpayment request are being made. The accounting office at MMAC can provide the RECO with a spreadsheet to ensure that the payments are being paid accurately.

4.1.6.2 Problems Involving Meter/Account Numbers Added 4/2008

Sometimes the FAA authorizes work at a facility that requires the removal and relocation of a utility meter especially if the service is going to be out for a period of time, or changes the number of connections. This may cause the need for a new account number with the utility service. It is recommended that a spreadsheet be agreed by both accounting and RECO's to be used to track meters with accounts and what it services and if you need to change the account number.

If a meter previously assigned to another user is assumed by the FAA, the account number will usually change even though there is no relocation of the meter itself. The RECO/CO should be aware of these instances and ensure that they have access to the COTR or someone from ATO who can read numbers off the meter in those cases when there is a problem involving which account numbers are associated with which facilities.

A power company often assigns multiple meters/account numbers to a single FAA contract. The RECO must ensure that each meter is subject to a single FAA contract. This greatly simplifies the payment process. Two meters may be placed at a single facility in extenuating circumstances. In such case, the single contract number must distinguish between the meters by appending the letter “a” or “b” at the end. A reconstruct would have to be performed and then a delivery orders applied. This may add additional workload in PRISM but will greatly reduce the confusion with paying for utility services.

If a problem arises with the utility payments, the RECO can use the spreadsheets available by Accounting office to the RECO handling utilities to ensure that the meters and the corresponding account numbers are current and correct.

4.1.6.3 Energy Cooperative Programs Revised 1/2012

Some large FAA facilities, such as Air Route Traffic Control Centers, may qualify for energy cooperative programs. Under these programs, the energy supplier requests that during peak summer demand periods, the FAA utilize its own generators in lieu of power supplied by the utility company. The FAA then receives a rebate for assisting the power company. Two distinct types of energy cooperative programs exist: peak-shaving agreements, which are financially motivated, and demand response agreements, which serve to avert power interruptions due to extreme demand (e.g., rolling blackouts). Peak-shaving agreements are generally discouraged for FAA contracts. Environmental Protection Agency rules stringently regulate engine generators (E/Gs) that operate under peak-shaving agreements or other non-emergency uses.

The Real Estate Contracting Officer/Contracting Officer managing utility contracts must ensure that new or renewed utility contracts do not include provisions for peak-shaving agreements unless specifically reviewed and approved by an FAA environmental professional. Demand response agreements are allowable and do not affect the emergency status of an E/G as long as the hours of operation are limited to no more than 15 hours/year.

4.1.7 Termination Revised 4/2008

Upon receipt of a written request from the program office occupying a facility, the RECO/CO must contact the utility supplier to terminate utility service. The RECO/CO needs to contact the utility supplier to cancel in compliance with the terms of the underlying contract. After issuing a termination/cancellation request to a utility, the RECO/CO must follow up with Accounting to make sure FAA is no longer being billed for utility services for the subject facility as of the effective date of the termination/cancellation.

Generally, contracts for utility services are not restricted to a specified term with a firm date set for termination of services. The RECO/CO must insure that reasonable termination rights are provided in the agreement. When utility services are expected to continue for an indefinite period, the RECO/CO should review the requirement periodically to ensure that the services being provided remain the most advantageous to the Government and that the services are being provided at the most economical applicable rate.

4.1.8 Disposal of Real Property effect on Utility Revised 4/2008

When a facility is decommissioned, the RECO/CO should do the following with respect to all then-existing utilities contracts:

- ☐ The RECO needs to maintain communication and to coordinate with ATO Engineers for the process of decommissioning facilities in order to ensure that FAA does not continue to pay utility charges.
- ☐ As part of the process of lease termination, the RECO/CO must ensure any corresponding utility contract is terminated/cancelled.
- ☐ Usually utility service may be terminated after a facility has been decommissioned regardless of whether funds are available to remove the facility and/or restore the real property. In such cases, the RECO/CO must ensure there are no obstruction lights on the facility which may require power even after the facility is decommissioned. In those instances where there are multiple Navids/Visaids on a single meter, the RECO/CO should only cancel the subject utility contract if all the facilities covered under that contract are decommissioned at that same time. This will ensure continued utility service to the other facilities which are still in operation.

4.1.9 Documentation Revised 4/2012

The RECO/CO must use the utility checklist (see 4.3.3 Utility Checklist) when assembling the utility file. The checklist must be filled in completely, i.e. check if it is required or not required

or in the file. Note that if an item in the checklist is listed as required under the narrative however it is not applicable for this particular acquisition, the RECO must place a N/A and a note in the file stating why it is not applicable for this acquisition. The RECO/CO establishes and maintains hard copy records of the utility contract or Purchase Order or state utility contract. The permanent file for each facility is to remain active for the life of the facility and contain documents to support the activity subject to the utility contract. RECOs must use a 6 part folder system for all their acquisition files.

4.2 Utility Clause Matrix Revised 4/2013

Legend:

Mandatory (M) – When applicable these clauses shall be included in leases/agreements without any changes unless other party is prohibited legally from executing the document with the provision as written. These clauses are either: 1.) mandated by law; 2.) set by legal precedent; 3.) and/or established by FAA policy.

Recommended (R) – In general these clauses provide useful protection to the government. These clauses, or a modified version, should be used in all applicable circumstances. The RECO may tailor the clause to meet a specific situation. Changes that have legal impact require region/center legal approval.

Optional (O) – The RECO decides whether or not these clauses or a modified version should be included in the lease. Deviations from the suggested wording must have the region/center legal approval, if there is a legal impact.

Note - All space leases may be augmented with additional clauses or special provisions with region/center legal approval.

CLAUSE TITLE	DATE OF CLAUSE	STATUS	PRESCRIPTION
Advance Payment	10/96	M	Insert in all utility contracts.
Anti-Kickback	10/96	M	Insert in all utility contracts IAW 41 U.S.C. 51-58
Billing Information	10/96	R	
Certification of Registration in System For Award Management (SAM)	1/13	M	Mandatory unless granted an exception to use of SAM by CO. If exception granted, delete this clause, and use clause "Contractor Payment Information - Non SAM".
Contract Disputes	11/03	M	Insert in all utility contracts asrequired by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17. Add language specifically addressing utility rate commission.

Covenant Against Contingent Fees	10/96	M	Insert in all utility contracts in accordance with 41 USC 254.
Contractor Identification Number - Data Universal Numbering System (DUNS) Number - Real Property	10/06	M	Mandatory unless granted an exception to use of SAM by CO. If exception granted, delete this clause, and use clause "Contractor Payment Information - Non SAM".
Contractor Payment Information - Non SAM	1/13	M	Mandatory on new awards when vendor is exempted from SAM. If this clause is used, you must delete all three SAM clauses, System for Award Management - Real Property; Contractor Identification Number - Data Universal Numbering System (DUNS) Number - Real Property; and Certification of Registration in System For Award Management (SAM).
Facilities Charges	10/96	R	
Interest For Late Payments	10/96	O	
Nonrecurring Charge	10/96	O	
Officials Not to Benefit	10/96	M	Insert in all utility contracts in accordance with public contract law, 41 U.S.C. 22.
Payment by Electronic Funds Transfer - Real Property	1/13	M	Mandatory unless a waiver request is submitted and approved by AMZ Payment office.
Protest	11/03	M	Insert in all utility contracts as required by FAA policy on contract and protest dispute resolution system from the Office of Dispute Resolution for Acquisition (ODRA) and shall be governed by the procedures set forth in 14 C.F.R. Parts 14 and 17. Longer version may be substituted for shorter version. Find version under Procurement Writing Tool 3.9.1-3
Protest After Award	8/97	O	Longer version may be substituted for shorter version. Find version under Procurement Writing Tool 3.9.1 -2
System for Award Management – Real Property	1/13	M	Mandatory unless granted an exception to use of SAM by CO. If exception granted, delete this clause, and use clause "Contractor Payment Information - Non SAM".
Tariffs and Rates	10/96	R	

4.3 Utility Templates Revised 4/2010

Real Estate Templates

5 MANAGEMENT AND DISPOSAL OF EXCESS REAL PROPERTY Revised 10/2005

Management and disposal of excess real property within the FAA is carried out in compliance with Public Law 103-272, dated July 5, 1994, and all other applicable Federal Statutes, Regulations and Orders.

5.1 Introduction Added 10/2005

5.1.1 General Added 10/2005

Identification, evaluation, reporting and disposal of excess real property are critical elements in the overall process of managing and accounting for property within the FAA. Real property is defined as land, buildings and other structures, including improvements thereto along with other associated interests and rights, such as easements and restrictions. Real property and improvements are permanent either by nature (land), or by design (permanently affixed to the land) and intent (expected to remain in place for the useful life of the property). FAA property information and accounting systems categorize real property assets as either Land, Buildings or Structures. Real property in any of the above categories may become excess as mission requirements change and National Airspace System (NAS) equipment or property is retired, replaced or updated.

5.1.2 Scope Added 10/2005

From an agency standpoint, it is important that excess property be identified, evaluated and reported to Regional property specialists so that disposition decisions may be made in a timely manner. The Real Property Custodian (RPC) and the Real Property Disposal Officer (RPDO), acting on behalf of and under the authority of the Real Property Manager (RPM), cooperate to identify excess property and to evaluate the property for possible reutilization locally or within the Region. When it is determined that reutilization is possible, the RPC and the RPDO act in concert to prepare and process transfer documents to ensure that the property is moved to the gaining entity's property account. In the event that reutilization within the Region is impractical, the RPDO will determine the appropriate disposal option.

5.2 Roles and Responsibilities Added 10/2005

5.2.1 Real Property Management Officer (RPMO) (FAA Headquarters) Revised 10/2008

The RPMO ensures that the FAA real property management program meets applicable legal and regulatory requirements. This responsibility belongs to the Senior Real Property (SRPO) Officer for the FAA. The RPMO serves as liaison between the FAA and other Government agencies. The RPMO is Mamie Mallory. She can be reached at 202-267-7369 or mamie.mallory@faa.gov.

5.2.2 Real Property Manager (RPM) Revised 10/2008

The Regional Logistics Division Manager serves as RPM for the Region and is ultimately responsible for all real property actions within the Service Area. The RPM is the Appointing Official for the Real Property Disposal Officer (RPDO) and the Internal Review Officer (IRO) and has discretionary authority to determine the number of appointed positions required, to identify the specific responsibilities of each appointee and to establish any limitations on appointee authority deemed necessary. The RPMs are as follows: Roger Lilley, Eastern Logistics Service Area (ELSA), Marcus L. Williams, Central Logistics Service Area (CLSA), and Therese Hower, Western Logistics Service Area (WLSA).

5.2.3 Internal Review Officer (IRO) Added 10/2005

This is an optional appointment within the Regional Logistics Division made at the discretion of the RPM. When appointed by the RPM, the IRO conducts routine, periodic or event-generated reviews of property activity within the Region. The IRO will evaluate actions and processes to ensure compliance with published FAA guidance and to safeguard the interests of the government as well as the welfare of the public. The IRO may serve as Report of Survey (ROS) reviewing official in lieu of a fully constituted ROS Board when fraud or negligence is not indicated as a proximate cause of any loss, damage or destruction of government property. The IRO will not be in the direct chain of accountability or custody over property subject to his/her examination or review.

5.2.4 Real Property Disposal Officer (RPDO) Added 10/2005

The RPDO is appointed by the Real Property Manager (RPM) to facilitate the Regional excess identification process, evaluate potential intra-Region real property transfers and to determine the final disposition of excess real property. When disposal activity alters real property balances shown in the Real Estate Management System (REMS), the RPDO will ensure that appropriate adjustments are made to the affected accounts. Likewise, when the disposal activity removes a facility from leased or owned property accounts or removes property rights, such as easements or restrictions, the RPDO will ensure that appropriate adjustments are made to all affected property information systems and data bases. The RPDO is appointed to act as approving official for final disposal of excess real property through demolition, dismantling, abandonment or conveyance under the provisions delineated in Public Law 103-272, dated July 5, 1994, (replacing the Federal Aviation Act of 1958, as amended).

5.2.5 Personal Property Disposal Officer (PPDO) Added 10/2005

The PPDO exercises management and control authority over personal property and real property component items (also referred to as related personal property) reported through the Utilization, Screening and Disposal (USD) system. FAA Order 4800.2c, Chapter 1, describes the responsibilities of the PPDO.

5.2.6 Real Estate Contracting Officer (RECO) Added 10/2005

The RECO is an individual authorized by warrant acting on behalf of the Government in the preparation and execution of contractual agreements between the Government and other parties. The RECO is responsible for leasing land and space to support NAS operations, for securing title to land or buildings through purchase or condemnation proceedings, and for preparing conveyance documents to transfer ownership between the FAA and outside parties both public and private.

5.2.6.1 Contracting Officer Representative (COR) Added 10/2006

a. Designating a Contracting Officer's Representative. The RECO may designate an individual representative, such as a COR to facilitate administration of a lease or contract. The RECO will designate a representative by written memorandum describing the specific authorities and responsibilities delegated to the representative. The RECO should ensure that the assigned representative has adequate training at the time of the assignment or will receive training within three months of being assigned the responsibility. Based on the yearly anniversary date of the lease/contract, the RECO should also obtain from the appointed representative, an annual validation that the representative has participated in adequate refresher training during the year. The RECO provides a delegation memorandum to the appointed COR at the time the assignment is made or changed in any way.

b. Authority of the Representative. A duly-assigned representative is authorized to perform the actions delegated by the RECO. The representative of the RECO may assume the designated authorities when appointed, provided the COR has demonstrated adequate training. If the COR does not have adequate training at the time of the assignment, the COR may assume designated authorities for a provisional period, not to exceed three months, until completion of adequate training. While performing as a representative, the COR maintains current knowledge of the COR duties and responsibilities through formal training or other means and advises the RECO annually. The RECO should consider the specific requirements and needs of the lease/contract in determining the support required from the representative and clearly enumerate the authority granted to the COR in a written memorandum of delegation. A sample delegation memorandum is included herein. One memorandum of delegation for all situations may not be appropriate since contractual situations are distinct and have varying needs. Therefore, the sample memoranda may be modified to reflect the specific needs of the lease/contract and the RECO.

c. Changing the COR. To change the COR on a lease/contract, the RECO must revoke the previous delegation and issue a succeeding delegation to the new COR, Both of these memoranda must be in writing and issued concurrently.

d. Information to the Lessor/Contractor. The RECO furnishes copies of all memoranda of delegation, revocation, changes in authority, or re-delegation to the lessor/contractor to make them aware of the authorities and limitations of the COR. A sample lessor/contractor notification letter is included herein and may also be modified to reflect the specific needs of the contract and the RECO.

5.2.6.2 Sample Notification Letter and Delegation Memorandum Revised 4/2012

Lessor/Contractor Notification

Date _

Address of Lessor/Contractor

Re: *Lease Number*

Dear _____

In accordance with the enclosed memorandum, Name , Title, is hereby designated as the Contracting Officer's Representative (COR). This delegation supersedes any and all previous COR delegations issued with respect the lease referenced below. He/She will be assisting the Real Estate Contracting Officer in the technical administration of lease # _____

For the office space at *address of leased space*. *Name of COR* may be reached at *Phone number*, *address & email of COR, for technical matters*.

Please note that the COR has no authority to issue directions or enter into agreements which may constitute a new assignment of work or which would commit the Government to a change in the expressed terms, conditions, or specifications incorporated into the lease. All technical instructions will be in writing. You will not accept oral or written instructions from sources other than the Real Estate Contracting Officer.

Contractual matters will be addressed to the Real Estate Contracting Officer at *Phone number*, *address & email.*

Sincerely,

Signature Block of RECO

Enclosure

cc: *Name of COR*

CONTRACTING OFFICER'S REPRESENTATIVE (COR)

DELEGATION MEMORANDUM

Subject: Designation of Contracting Officer's Representative for Lease #_____/Location

From: *Name of Real Estate Contracting Officer (RECO)*

To: *COR for the leased manned building*

Dear *Name of COR*:

You are hereby designated the Contracting Officer's Representative (COR) for the subject lease which commences on or about *date*. No changes or modifications to this delegation may be made unless they are in writing and signed by the Real Estate Contracting Officer (RECO).

It is your responsibility to assist the RECO in the administration of the lease. You are not authorized to change or modify any of the lease terms or conditions. Changes to the lease are not valid unless they are in writing and signed by the RECO. You will keep the RECO informed with regular updates on lease performance. If the requirements of the lease are not being met, you will contact the Lessor directly with notification of the deficiency (send the RECO copies of your notification) and what requirements of the lease are not being met. . If there is no improvement in the performance of the Lessor, you will send a written description of the problem to the RECO for the RECO to resolve. Contact the RECO if you have any questions concerning lease requirements.

AUTHORITY:

As COR **you have the authority to:**

1. Monitor contract work and conduct inspections that are necessary to assure compliance with the lease. Resolve day-to-day matters within the scope of your authority.

2. Make recommendation to the RECO concerning potential lease changes.

3. Assist the RECO in interpreting the Lease terms and provisions.

4. Update and maintain a listing of employees who will be working at the site unescorted (i.e. will be issued an FAA badge). Coordinate with the Security Office to keep this list up to date at any time a contractor employee is added or deleted from the list.

RESPONSIBILITIES:

As COR, **you have the responsibility to**:

1. Take required training for Contracting Officer Representatives, either online or through an approved course funded by your Line of Business.

2. Be familiar with and understand the lease requirements. A copy of the lease is attached for your information and reference.

3. Seek guidance from the RECO for specific situations not covered in this delegation.

4. Maintain liaison between the Lessor and the RECO.

5. Make sure that recurring services required by the lease are performed.

6. Maintain a file on all correspondence (or data) initiated or received by you in connection with the subject lease. Submit documentation to the RECO when requested.

7. Certify invoices to the RECO for payment. Date and initial all invoices upon receipt before forwarding to the RECO. Return improper invoices to the Contractor within 7 days of receipt.

8. Notify the RECO prior to relinquishing your position as COR. (The COR is designated by RECO.) As a departing COR, you may nominate a replacement person's name to the RECO.

9. Be cognizant of ethical requirements in conducting all business, so you perform your duties in a manner that is above reproach and at arms length at all times.

As COR, you are required to consult with the RECO when there are questions about your authority. This delegation will remain in effect for the duration of the lease unless revoked, in writing, by the RECO. You are not authorized to redelegate your authority. If you have any questions concerning your role as COR, please contact me at *RECO's phone number* and/or E- MAIL

ADDITIONAL RESPONSIBILITIES for BUILD OUT:

As COR during a build out, the RECO may ask you to:

- ☐ Responsible for the review of all required permits, and notify the RECO with respect to whether the Lessor has obtained all required permits.
- ☐ Review proposed materials for tenant improvements and monitor expenditures against schedule. Notify RECO of any potential cost overruns as soon as possible.
- ☐ Perform periodic inspection of build-out to check progress and keep RECO informed of progress.
- ☐ Attend Lessor building, construction, and progress meetings. Report to RECO all issues related to cost, schedule, and quality of tenant improvements.
- ☐ Review Lessor build out invoices and forward to the RECO with payment recommendation. Date and initial all vouchers or invoices upon receipt before forwarding to the RECO.
- ☐ Inform the RECO via email when the build out is complete.

LIMITATIONS:

As COR, **you will not**:

1 Make, or give the appearance of being able to make, any commitments outside the Lease, or to execute or agree to modifications in the Lease terms and requirements, or take actions that would commit the Government to a change in the Lease requirements..

2. Make determinations, or give the appearance of being able to make determinations regarding issues of Lessor or Government liability that may arise during Lease performance. (Such contract issues must be reported to the RECO).

3. Direct or supervise the Lessor, his contractors or subcontractors, on how to perform.

4. Issue stop work orders, make decisions outside of your official delegation or compromise your independence and objectivity.

5. Lose independence or impartiality.

6. Make a Government decision outside of official channels.

The duties and responsibilities included in this memorandum are not intended to be all – inclusive. As COR, you will consult with the RECO when there are questions about your authority.

ATTACHMENT

5.2.7 Logistics Program Coordinator (LPC) Added 10/2005

The LPC is assigned to the System Management Office (SMO) and serves as the SMO Manager's staff logistician. The direct involvement of the LPC in property management is at the

discretion of the SMO Manager, however, the LPC should be involved in the evaluation of excess real property for possible intra-SMO transfer and reutilization before the excess is reported to the Regional level.

5.2.8 Real Property Custodian (RPC) Added 10/2005

The RPC is the first level of management for both real and personal property. Typically, the RPC has assumed signature accountability for specific property assets assigned to one or more cost centers located in reasonable proximity to one another. By virtue of his/her duty position, the RPC is responsible for all activities associated with property assigned to his/her care to include security, routine record-keeping, periodic inventory and status reporting. When it is determined that real property or a real property component item is no longer mission-required at its original facility, the RPC initiates the evaluation and reporting processes.

5.3 Identification of Excess Real Property Added 10/2005

5.3.1 Mission-Related Excess Added 10/2005

Real property becomes excess as a result of facilities being decommissioned, displaced by new construction, or subjected to system upgrades. Under such circumstances, the determination as to which assets are considered excess occurs early in the planning phase of a decommissioning or construction project. Depending on the project's scope, this determination may lead to the development of a formal disposal plan, complete with drawings and specifications, that becomes part of the contract and which may involve significant expense. Less formal disposal plans for projects of smaller scope are formulated locally and are carried out by local personnel. Real property assets, other than land, are comprised of components that, in combination, have acquired characteristics of permanence but which may be dismantled to yield serviceable personal property items. Such items must also be identified in the disposal plan regardless of the scope of the project. Identification of the real property assets to be removed, dismantled or modified is a cooperative effort involving project engineers, property managers and the user. Guidance on the preparation of disposal plans is contained in the NAS System/Equipment Disposal Plan Guide. Though this document is geared to personal property procedures; it does provide useful insights into the identification and planning processes. This publication is a product of Technical Operations, NAS Logistics Property Management Division, and is available from the Mike Monroney Aeronautical Center's LIS/Online Requisitioning System.

5.3.2 Condition-Related Excess Added 10/2005

Real property assets may be identified by the owning entities as excess for reasons related to the condition of the property itself. The underlying intent in such cases is to ultimately dispose of and replace the assets with more suitable or more serviceable substitute items. Users must monitor the condition of property in their care and advise the RPC when they identify the following:

5.3.2.1 Safety Hazards Added 10/2005

Property whose condition constitutes a safety hazard to users and/or the public.

5.3.2.2 Unserviceable Property Added 10/2005

Property that has become unserviceable through use and whose reconditioning cost is anticipated to exceed new replacement costs.

5.3.2.3 Damaged Property Added 10/2005

Property that has sustained damage to such a degree that estimated repair costs exceed anticipated new replacement costs.

5.3.2.4 Uneconomical to Maintain Assets Added 10/2005

Property whose continued maintenance is clearly uneconomical when compared to the cost of a new replacement item.

5.4 Evaluation of Excess Real Property for Disposition Added 10/2005

5.4.1 General Added 10/2005

In evaluating excess real property, the primary goal is to determine the ultimate disposition of the property while giving full consideration to the NAS mission, the interests of the Government and the welfare of the public. Property managers at each succeeding level must decide which of the various disposal options (reutilization, demolition, conveyance by transfer agreement or making the property available to outside entities) is most appropriate on a case-by-case basis depending on circumstances. (NOTE: The term excess real property in this paragraph applies to property that is <u>excess to the user</u> - not to property that is "Excess Property" to the FAA as defined in Appendix A).

5.4.2 Budgeting for Disposal Costs Added 10/2005

Budgeting for disposal costs is an important part of the Life Cycle Cost (LCC) estimating process and to be meaningful this portion of the LCC process must begin as soon as the intent to dispose of land, land rights or real property becomes known. Typically, disposal actions are brought about by outright replacement of existing assets, generational upgrades to existing assets, or when a particular asset is removed from service. In most instances, the need for disposal action will be known. For example, a navigational aid construction project may be in the planning stage for several years before actual construction begins. Part of the planning is to identify the impact on existing assets and the attendant costs. Property managers, custodians, and technicians must coordinate closely during budget forecasting cycles to ensure that out-year

disposal costs are estimated and made part of annual projections.

5.4.3 Reutilization Added 10/2005

Reutilization of real property assets in their installed configuration is seldom possible because of transportability issues. Reutilization is the first option when considering the disposition of salvageable component items associated with real property scheduled for demolition, disassembly or conveyance by transfer agreement. These component items are often referred to as related personal property and are accounted for and treated as personal property when standing alone. Planning for any project which results in disassembly of real property assets must include an evaluation of possible uses for salvageable components as part of a disposal plan, regardless of the complexity of the project. An overriding decision factor is the potential impact reutilization efforts may have on the overall project: Reutilization is not a viable option if removal activity impedes project progress and the delay has the potential to adversely impact the NAS mission, construction deadlines or commissioning schedules, or if the removal and transfer is not economically feasible.

5.4.4 Demolition Added 10/2005

The FAA has discretionary authority to dispose of excess airway property by demolition under certain circumstances. Planners and managers must evaluate each case and decide if demolition is justified by the existence of any of the following conditions:

5.4.4.1 To Facilitate Airport Improvements Added 10/2005

Demolition is necessary to clear the way for the construction of new FAA assets or airport improvements. In such cases, the decision to demolish any pre-existing assets is made early in the planning process and a demolition schedule, based on the overall disposal plan, is routinely made a part of construction contracts.

5.4.4.2 Dismantling for Reutilization Added 10/2005

Demolition by dismantling property into its component parts is necessary to facilitate reutilization of salvageable items and circumstances permit doing so without risk to the NAS mission.

5.4.4.3 Elimination of Safety Hazards Added 10/2005

The condition of the property is such that its continued existence poses a hazard to the safety, health or welfare of FAA employees, contractors, or the public.

5.4.4.4 Uneconomical to Maintain Added 10/2005

The continued maintenance of the property is clearly uneconomical. In making this determination, property managers will consider not only the costs associated with physical maintenance of the property but also the administrative costs arising from the recording, accounting, security and monitoring processes.

5.4.5 Conveyance by Transfer Agreement Revised 1/2012

The evaluation process may lead to a decision that transfer of ownership for direct or indirect consideration is in the best interests of the government. Conveyance by Transfer Agreement may be practical in the situations outlined in the following subparagraphs. However, the real property assets to be conveyed must be screened for any environmental or safety issues that may require mitigation prior to conveyance (see paragraph 5.4.8).

5.4.5.1 To Facilitate Airport Improvements Added 10/2005

It is necessary to expedite airport improvement projects for which funding has been secured by local authorities (city, county, airport commission, etc.) and for which construction contract proceedings are imminent or in progress. Ownership of FAA assets to be demolished or displaced as a result of the new construction is conveyed to local authorities to preclude delay of the project. Demolition, disassembly or relocation in such cases would be carried out by local authorities.

5.4.5.2 Obligated by Contract Added 10/2005

It is necessary to satisfy the terms of a contractual agreement. For example, to satisfy the terms of a restoration clause in a lease, a RECO may negotiate a transfer of property ownership to the lessor in lieu of restoring the premises to its original condition. A conveyance under these circumstances may also include negotiated fair and reasonable payments by either party to the other in order to reach an equitable settlement. Another example occurs when the RECO elects to invoke the non-restoration clause contained in a standard lease (http://fast.faa.gov/docs/attachmenta.doc). In such cases, the government is under no obligation to restore the premises to its original condition and ownership is passed to the lessor through a transfer agreement between the two parties at the time the site is abandoned. The key point is that the government's interests are better served by conveying ownership for direct or indirect consideration than would be the case if another option were selected. The practical effect in both cases is that the excess property is no longer government-owned and it is removed from all government property and accounting systems.

5.4.5.3 Release of Easements, Restrictions and Other Real Property Rights Added 10/2005

Easements, restrictions and other property rights owned by the FAA may be disposed of to the owner of the land that is subject to the easement, restriction, or other rights when the continued use, occupancy or control of the easement is not needed for the operation, production, use or maintenance of property owned or controlled by the Government. Such disposition may be

made with or without consideration to the Government.

5.4.6 Abandonment of Leasehold Improvements Revised 1/2012

FAA-owned improvements to buildings or building space held under lease are frequently made to promote the health, welfare and security of government employees or to enhance NAS operations carried out at the site. Such improvements may be abandoned upon final termination of the lease in accordance with non-restoration language contained therein because removal of the improvements is impractical and abandonment poses no risk to the public. The responsible Real Estate Contracting Officer (RECO) will advise the regional real property section of the lease termination and any leasehold improvements that have been recorded in automated property systems will be retired. However, any improvements being considered for abandonment must be screened for any environmental or safety issues that may require mitigation prior to abandonment (see paragraph 5.4.8).

5.4.7 Evaluation of Legal, Safety, Security and Environmental Issues Revised 4/2009

Evaluation of Legal and Security Issues Updated 4/09 Project planners and property managers must consider legal and security issues as they make decisions on disposal of excess property. In most cases, these parties will not have the technical expertise to precisely assess the available options nor will they normally have access to the most current information available to legal and security experts. For these reasons, specific guidance on legal and security issues must be furnished by the appropriate Regional staff section. Headquarters websites are available on the employees webpage located at https://employees.faa.gov/ (FAA only) 'FAA Organizations'.

5.4.8 Evaluation of Environmental and Safety Issues Revised 1/2012

FAA real property disposal actions are subject to the requirements of FAA Order 1050.19B, Environmental Due Diligence Audits in the Conduct of FAA Real Property Transactions, in order to identify and minimize potential environmental liabilities. Recognized environmental conditions (e.g., potentially contaminated land or groundwater) will be evaluated to determine whether they need to be corrected or mitigated prior to property disposal. Notice of previous hazardous substance activity on the property will be provided in the contract per the requirements of 40 CFR Part 373.

FAA real property disposal actions are also subject to the requirements of the National Environmental Policy Act (NEPA) in accordance with FAA Order 1050.1E. Certain property disposal actions may be eligible for a categorical exclusion under Chapter 3 of FAA Order 1050.1E provided no extraordinary circumstances exist as described in paragraph 304 of the order.

Any buildings and structures being considered for conveyance, transfer or sale to another entity as part of a real property disposal action must be evaluated by Agency environmental and safety professionals (e.g., ATO Service Center Planning & Requirements Staff) for a determination that environmental and public safety considerations do not preclude transfer.

The following specific environmental and safety requirements apply to buildings and structures

being considered for conveyance, transfer or sale:

- ☐ Asbestos-containing material in buildings will be abated prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations, and standards, or if it poses a threat to human health at the time of transfer of the property (i.e., friable asbestos). Buildings with non-friable asbestos may otherwise be transferred provided the presence of non-friable asbestos is disclosed to the new owner.
- ☐ Lead-based paint in buildings and structures will be abated prior to property disposal only if it is of a type and condition that is not in compliance with applicable laws, regulations, and standards, or if it poses a threat to human health at the time of transfer of the property (i.e., peeling paint). Lead-based paint will also be abated from any buildings meeting the definition of "target housing" constructed before 1960, as required by 24 CFR Part 35. Buildings and structures with lead paint that is intact and in good condition may otherwise be transferred provided the presence of lead-based paint is disclosed to the new owner.
- ☐ Underground storage tanks (USTs) will not be conveyed, transferred or sold to another entity due to liability associated with potential releases of fuel over the life of the tank. USTs must be permanently closed in accordance with federal and state environmental regulations prior to real property disposal.

Aboveground storage tanks (AST) may only be conveyed, transferred, or sold to another entity under the following conditions:

- ☐ Prior to conveyance, FAA must perform a tank tightness test and generate an alarm history report through the fuel monitoring system. If the AST system integrity cannot be certified, the AST will not be conveyed.
- ☐ If the AST has failed tightness testing or has generated integrity related alarms during the FAA operation period, the FAA may elect to repair the tank and reconsider for conveyance. Tank integrity must be validated after repairs and prior to conveyance.
- ☐ The tank operator must provide all tank operations and history data (e.g., LM data, tank tightness test results, and monitor history data) for inclusion in the site environmental due diligence audit report.
- ☐ FAA will comply with all applicable federal, state, and local requirements for tank closure (e.g., removing FAA from registration, etc.).
- ☐ If the FST is physically removed or relocated from the site, all tank system components and accoutrements (piping, monitor system, external alarms, placarding, etc.) shall be likewise removed in accordance with regulatory requirements.

5.5 Real Property Disposal Actions Added 10/2005

5.5.1 General Added 10/2005

The FAA has been granted authority under Public Law 103-272, dated July 5, 1994, (replacing the Federal Aviation Act of 1958, as amended) to act as disposal agent for airway property. Airway property is defined as ". . . Any real property, or interest therein, used or useful, directly or indirectly in connection with the administration, operation, or maintenance of any ground installation or facility necessary or desirable for the orderly and safe operation of air

traffic, including but not limited to air navigation, air traffic control, airway communications and meteorological facilities. . . "The following policies and procedures govern the activities of FAA property managers when the FAA is acting as disposal agent.

5.5.2 Totally Decommissioned Sites Added 10/2005

Real property disposal activity for totally decommissioned sites typically involves all categories of real property - land, buildings and structures. Such sites are being completely closed down, all FAA functions are being discontinued, and there are no plans to install any other FAA facility on the same site. Assets will not be left on a totally decommissioned site without written notification to the landowner that contains provisions to absolve the government from potential liabilities arising from the continued existence of such assets.

5.5.2.1 Leased Land and Other Real Property Rights Revised 4/2009

When it is determined that a particular facility sited on leased land is no longer needed to fulfill the NAS mission, the entity owning the facility must initiate disposal actions for any real property assets that have been installed during the life of the facility. Likewise, termination action must be initiated for all negotiated surface, sub-surface or aerial rights associated with the facility (e.g., landsite leases, rights-of-way, utility easements, clear zones, joint use agreements, etc.). The responsible RECO, working in concert with the RPC, SMO personnel, and Regional Technical Operations representatives must monitor site closure activities and, at the appropriate time, notify the lessor of final site closure. Such notification will be in writing and in accordance with the time constraints provided for by the terms of the lease. The RECO must ensure that all other lease terms regarding site closure have been satisfied, that the lessor does not have any outstanding issues regarding closure and that the site poses no risk to the general public. When the above conditions have been met, the RECO terminates the land lease, requests cessation of lease payments and advises all concerned parties (RPC, SMO, Regional Technical Operations, REMS property specialists, etc.) of the termination so that affected property, accounting and budgeting systems may be adjusted. In the case of no-cost leases, FAA property managers have a like obligation to act promptly and in accordance with the provisions of the lease and applicable government standards particularly regarding any potential environmental or safety considerations.

5.5.2.2 Owned Land Added 10/2005

As a rule, the FAA will not act as the disposal agent for Government-owned land inasmuch as the FAA's interests are better served by utilizing the disposal services offered by the General Services Administration (GSA). When the GSA acts as the disposal agent, the FAA fulfills the role of the holding agent and acts in conformance with provisions of paragraph 5.7, Reporting Excess Property for Interagency Screening. When land owned by other federal entities, e.g., the Bureau of Land Management and used by the FAA is no longer required, the land is made available for return to the owning agency. The decision to accept return of the land (along with any fixed improvements thereon) is discretionary and if rejected by the original owning entity, the property should then be reported to the GSA for disposal in the same manner as land owned

in fee by the FAA. Property managers and facilities personnel must evaluate the assets installed on the site for potential FAA reutilization and take the necessary steps to facilitate transfer of those assets to other FAA facilities. In cases involving substantial buildings or structures that cannot be moved, the assets, along with the land upon which they are constructed, must be reported to the GSA.

5.5.2.3 Permanent Buildings Revised 1/2012

Permanent buildings are defined as buildings that cannot be removed from a site and transported without destroying their serviceability. Decisions on final disposition of such buildings are a cooperative effort involving property managers, Technical Operations personnel and the responsible Real Estate Contracting Officer (RECO). The handling of these buildings may vary. For example:

- ☐ A permanent building on a leased site may be conveyed by lease modification or other conveying document agreement to a lessor when doing so is more advantageous to the government than demolition and when environmental and safety considerations do not preclude transfer (see paragraph 5.4.8).
- ☐ A permanent building on a site owned by the FAA may be reported to GSA for disposal along with the land upon which it is constructed. Excess facilities may be disposed of by public bid or full removal from the site prior to excessing the land either through GSA or in accordance with AMS, leases, MOAs, etc.

5.5.2.4 Non-permanent Buildings Revised 1/2012

Non-permanent buildings are defined as buildings that can be removed from a site and transported without destroying their serviceability. When a facility is totally decommissioned, such buildings are eligible for the full range of disposal options. They may be conveyed by transfer agreement, demolished, or relocated at the discretion of property managers, Technical Operations personnel, and the responsible RECO. Relocation and reutilization is, however, the first option to be considered. A decision to relocate and reutilize a non-permanent building must be mission-based and economically sound; e.g., an immediate need exists, the asset remains serviceable, and relocation costs are less than the cost of new construction. A decision to convey or sell a non-permanent building is contingent on a determination that environmental and safety considerations do not preclude transfer (see paragraph 5.4.8).

5.5.2.5 Structures Revised 1/2012

Structures are real property assets other than land or buildings and include such items as roads, fences, external power and control systems, parking lots, fuel storage systems, communications towers, etc. Again, decisions on disposition of such assets involve property managers, Technical Operations personnel, and the responsible RECO. Reutilization is the first option to be considered. Some structures such as roads, parking areas, underground power or water systems and concrete slabs on grade have more permanence than others and are conveyed by transfer agreement to new ownership either in "as is" condition or after they have been rendered innocuous. Other structures lack real permanence and may be candidates for relocation

depending on age, condition, need, and relocation costs. A decision to convey or sell a structure is contingent on a determination that environmental and safety considerations do not preclude transfer (see paragraph 5.4.8).

5.5.2.6 Other Real Property Rights Added 10/2005

Other real property rights include easements, restrictions and other real property interests owned or leased in perpetuity or for a specified period of time. Easements may be disposed of to the owner of the land that is subject to the easement when the continued use, occupancy or control of the easement is not needed for the operation, production, use or maintenance of property owned or controlled by the Government. Such disposals may be made with or without consideration to the Government in accordance with a negotiated transfer agreement between the FAA and the property owner or in accordance with reversionary language contained in the document by which the FAA originally acquired the rights.

5.5.3 Partially Decommissioned Sites Added 10/2005

Land, buildings and structures associated with partially decommissioned sites are evaluated for retention or disposal according to circumstances existing at the time or to meet an anticipated need. Property managers, Technical Operations personnel and the responsible RECO must consider the implications of the partial decommissioning and the impact the action has on that portion of the site which contains facilities remaining in operation. For example

- ☐ As a portion of a site is decommissioned, land requirements (whether leased or owned) may diminish and allow the RECO to relinquish the excess acreage.
- ☐ Buildings or structures associated with the decommissioned facility may be useful assets for a co-located facility that will remain in operation and such property should be evaluated for transfer to the operational facility's property account.
- ☐ Buildings or structures associated with a decommissioned facility may, if left in place, impede the operation of other facilities on the site and should be considered for demolition or transfer off-site.

5.5.4 Miscellaneous Real Property and Component Items Revised 4/2009

Ancillary items installed to support operation of a facility being decommissioned but which were not recorded as stand-alone real property assets will be considered for disposition in the same way as recorded assets. In many instances, such items as electrical transformers, utility poles, external HVAC units and concrete piers or pads were considered to be integral components of larger systems and are not visible as individual line items in the automated property accounting system. Local property managers and Technical Operations personnel must evaluate these assets for reuse, demolition, or conveyance by transfer agreement (as either real or personal property) using the same standards applied to recorded real property assets. Transportable items should be reported using the USD system to ensure that their availability is made known over the widest possible area. RPCs are cautioned to check personal property systems to verify that any such items were listed as personal property when they were originally installed. Non-transportable items should be reported using Real Property Disposition Report with the "Remarks" section

being used to identify the real property asset with which the item was originally associated.

5.5.5 Preparation and Routing of FAST Form, Real Property Disposition Report (Version 12/08) Revised 4/2009

The form, preparation instructions and routing procedures described below, and in Appendix C, are intended to facilitate the disposition of assets being removed from service at their original locations. These assets may be demolished, relocated, or conveyed by transfer agreement depending on circumstances and mission requirements.

5.5.5.1 The FAST Form, Real Property Disposition Report (Version 01/09) Revised 4/2009

This form is used to request RPDO approval of real property disposal actions and to serve as a report of completed real property disposal actions. It is similar to the old FAA Form 4800-1, however, a number of features have been added to allow for greater precision in identifying assets, describing asset condition and specifying actions taken or planned. Status codes have been included that will allow this form to be used to support removal of assets from property inventory and accounting systems. Provisions have also been made to include explanatory remarks from the initiator as well as from the approving official and a signature block is provided to indicate final RPDO approval. Detailed preparation instructions are contained in Appendix C.

5.5.5.2 Initiator Responsibilities Revised 4/2009

The initiator of the action, usually the RPC or a designee, can have a significant impact on the quality of the disposal process by careful preparation of the Real Property Disposition Report. The initiator must

- ☐ Ensure that the affected facility and the individual assets listed are identified correctly and that the information is consistent with data recorded in the property accounting system.
- ☐ Assign the appropriate condition and action codes to each asset. These codes in combination constitute a recommendation to the RPDO, based on direct knowledge that a particular course of action is in the government's best interests.
- ☐ When reporting non-transportable component items, the "Remarks" section will be used to identify the real property asset with which the items were originally associated.
- ☐ Add appropriate remarks to explain situations or conditions to help the RPDO determine the most appropriate disposition option.
- ☐ Attach support documentation in those instances when it is required (e.g. Transfer Agreements) and when doing so serves to clarify or otherwise support the action.

A sample of a properly completed FAST Form, Real Property Disposition Report, is included in Appendix C.

5.5.5.3 Routing and Review of the FAST Form, Real Property Disposition Report (Version 1/09) Revised 4/2009

The initiator of the FAST Form, Real Property Disposition Report, may or may not be required to route the prepared form through the SMO LPC depending on the review policies established by the SMO Manager. If the SMO Manager directs LPC involvement, the precise nature and degree of that involvement will be as directed by the SMO Manager.

5.5.5.4 RPDO Decision Factors Added 10/2005

The RPDO must ensure that final decisions regarding the disposition of individual real property assets are made with due consideration for the overall circumstances existing at the place and time actions are to be carried out. The evaluation process described above addresses many of the factors that bear on RPDO decisions in the larger sense; however, the RPDO must also be aware of the following

- ☐ Technical Operations field personnel have the technical expertise to accurately assess the potential impact of property actions on the NAS mission.
- ☐ Technical Operations field personnel are in the best position to judge the condition of property in terms of its serviceability and suitability for current operations.
- ☐ If necessary, input can be solicited from the field to support a disposition request; e.g., if a relatively new asset is characterized as a safety hazard, the RPDO may ask for an evaluation from the local Safety Officer.
- ☐ Asset age and net book value are legitimate considerations in making decisions as to demolition, salvage, repair or transfer of individual items.

5.5.5.5 RPDO Actions Revised 4/2009

After considering all relevant information the RPDO will take the following actions

- ☐ Review the Real Property Disposition Report facility information for completeness and accuracy.
- ☐ Review the asset descriptive information contained on the form against information recorded in automated property accounting systems.
- ☐ Ensure that Condition Codes and Actions Codes are entered for each asset listed.
- ☐ Ensure that Remarks are included when required by circumstances.
- ☐ Determine Net Book Value for each capital asset listed and enter that information on the form. NOTE: Capital assets are assets having an acquisition cost greater than $100,000.
- ☐ Approve or reject the form. If rejected, the form will be returned to the initiator with remarks added by the RPDO to explain the reason for the rejection.

After determining the appropriate disposition for each listed asset, the RPDO will return a signed copy to the originator, place a signed copy in the facility real property file and retain a signed copy for his/her own files. The RPDO will also route copies of approved forms to the Regional REMS point of contact, ensure that appropriate action is taken to record the asset disposition or change in status and a copy to accounting, AMZ. If the action includes the termination of real property rights (such as easements or restrictions) or a lease (cost or no-cost), the RPDO must

ensure that the REMS property specialist provides appropriate termination documentation to accounting, AMZ.

5.6 Reutilization Added 10/2005

5.6.1 General Added 10/2005

Reutilization of real property as whole assets in their original, installed configuration is usually impractical and unrealistic. Reutilization of serviceable component parts removed from a dismantled real property asset is, however, possible under certain conditions. For example, a 60' steel tower is procured and placed in storage for use at a communications facility to be constructed in the future. This tower is accounted for as an individual personal property item or project material until it is installed. Upon installation, the tower and its ancillary items such as power, grounding and control systems become component parts of a single real property asset (a communications tower) and are no longer accounted for as individual personal property items or as project material. All costs associated with the procurement and installation of the assembled components are combined and reflected in the recorded acquisition cost of the communications tower. If the tower is subsequently dismantled and remains serviceable, it becomes a candidate for reutilization. While reinstallation is pending, the tower is accounted for by the owning RPC as personal property. Depending on local or Regional need, the tower may then be transferred to another facility, reinstalled and thereafter accounted for as real property, or reported through the USD system as available excess.

5.6.2 Criteria for Reutilization Added 10/2005

Proper consideration of potential effects of reutilization efforts must include an assessment of risk to commissioning plans, operational schedules, construction deadlines, contract incentives, etc. This assessment is a cooperative effort involving project planners (NAS Implementation, Technical Operations, and Project Engineers), regional property managers, and the owning entity. Their decisions will be reflected in a disposal plan. When the affected real property asset is dismantled, any components that are to be reutilized are set aside and processed in accordance with the disposal plan. Under no circumstances will the accomplishment of the NAS mission be impeded by attempts to salvage component items.

5.6.3 Processing for Local or Regional Reutilization Added 10/2005

Excess property that has been identified as suitable for local or Regional reutilization will be processed as follows

- ☐ The property to be transferred remains accountable property; it is secured and accounted for in the same manner as any other piece of Government property or equipment.
- ☐ If vendor services are required to prepare the property for storage and handling or to transport the property, funding responsibility will be at the discretion of the SMO Manager. If the transfer takes place between SMOs, funding responsibility will be by mutual agreement between the managers involved.

- ☐ The RPC as the losing entity prepares the property for transport. This preparation includes compiling an inventory list of real property components to be transferred. Items recorded as personal property will continue to be processed for transfer in accordance with FAA Order 4800.2c.
- ☐ The RPC as the losing entity prepares FAA Form 4800-2, Real Property Disposition Report, identifying the property to be transferred as it is recorded in REMS and provides all available information as to the property's destination. It may be necessary at this point to coordinate with the RPC at the gaining entity in order to acquire REMS data relating to the gaining facility.
- ☐ The gaining and losing facilities will be identified as they are recorded in REMS (Air Traffic Identifier {ATID}, GSA Control Number {CN} and Facility Contraction) as well as by geographical location (City, Airport, etc.).
- ☐ Copies of the FAA Form 4800-2, Real Property Disposition Report, and the inventory list will accompany the property during transport. The gaining RPC will acknowledge receipt of the property by signature on the inventory list and return a signed copy to the losing RPC. The losing RPC will forward a copy of the inventory document to the RPDO and request that appropriate adjustments are made to the affected property accounts.
- ☐ The RPDO ensures that REMS data is adjusted for both the gaining and losing entities.

5.6.4 Reutilization of Land, Land Rights or Space Revised 4/2012

In some instances, land, land rights or space (both owned and leased) associated with a decommissioned facility may become candidates for reutilization by another FAA facility. The Government's interest may be retained and transferred from the property account of the facility being decommissioned to the property account of the operational facility when doing so facilitates the accomplishment of the NAS mission. The RECO and the REMS property specialist must cooperate to ensure the appropriate changes are made to lease documents, the REMS account is adjusted, and that distribution is made on all supporting documentation.

5.6.5 Reutilization Outside the Region Added 10/2005

When a specific local or Regional need has not been identified, the RPC makes the property available for transfer through a reutilization screening process, first within the FAA and then nationwide. The screening process is described in paragraph 5.7, below.

5.7 Reporting Excess Property for Interagency Screening Added 10/2005

5.7.1 General Added 10/2005

There are two primary mechanisms for reporting excess real property and/or real property component items for screening external to the FAA - the automated Utilization, Screening and Disposal (USD) system and the manual GSA reporting system. The following paragraphs provide only an overview of these reporting systems. USD procedural details and specific reporting requirements are contained in FAA Order 4800.2c and GSA reporting procedures are detailed on the GSA website via the links described in paragraph 5.7.3 below.

5.7.2 USD System Added 10/2005

The USD system is an important property management tool when demolition or disassembly projects result in the accumulation of serviceable component items that are suitable for reutilization (such items are also referred to as related personal property). The RPC should make maximum use of the USD system both to advertise excess property for transfer and to procure property to meet his/her operational needs. USD provides electronic visibility of available excess property to all FAA entities, the Department of Transportation (DOT), the GSA, and ultimately to all Government agencies. System documents (forms, letters, notices, etc.) are automatically generated as property is processed through various levels of screening and the system includes features that allow limiting access, freezing availability, and electronically exchanging system documents. Procedural guidelines for use of the USD system are contained in FAA Order 4800.2c, dated May 31, 1996.

5.7.3 GSA Property Disposals Revised 4/2009

The FAA has been granted authority to dispose of property using the procedures described in the paragraph 5.5, above, and is exempt from most GSA reporting requirements. The FAA may, however, choose to report excess real and related personal property through the GSA when doing so is in the best interests of the FAA and is consistent with NAS mission requirements. In such instances, a copy of a Standard Form (SF) 118 report submitted to the GSA, with all supporting documentation, will be furnished to the DOT for concurrent screening throughout the DOT. From the time of reporting through the time of final disposal, the FAA, as the holding agent, remains responsible for all on-going costs (utilities, rents, etc.), and assumes responsibility for any direct property management costs incurred by the GSA that are not offset by a sale of the property. The FAA will also maintain full property accountability records related to the property until the GSA advises the property manager or RECO, in writing, of final disposition. Use of GSA services is not a viable option if adherence to GSA procedures and time-lines has the potential to delay completion of NAS construction projects, to adversely affect commissioning schedules or to cause any disruption to NAS operations. General responsibilities and actions are described in the following paragraphs. Property managers or RECOs reporting excess property to the GSA must refer to the GSA website and their local GSA Regional Office for up to date procedural guidance on a case by case basis.

5.7.3.1 Reporting Environmental Information to the GSA Revised 4/2009

All reports of excess property forwarded to the GSA must include specific information regarding environmental issues and conditions related to the property being reported. The Excess Real Property Checklist that is attached to SF 118 includes questions regarding NEPA compliance, floodplain/wetland certification, endangered species and biological resources, archeological and cultural resources, asbestos, polychlorinated biphenyls (PCBs), lead based paint, underground storage tanks, RCRA permits and landfills, mold, radon, pesticides, coastal zone management, national parks or Indian reservations, national forests or wildlife refuges. The agency must also provide a notice of any hazardous substance activity (i.e., storage, release, or disposal) at the property, based upon a complete search of agency files.

The GSA website provides guidance for environmental reporting requirements. For completeness and accuracy, property managers reporting excess to the GSA should consult with FAA environmental professionals and the local GSA Regional Office on a case-by-case basis to ensure that each submission meets current reporting requirements.

5.7.3.2 Standard Form 118 Added 10/2005

Reports of excess real property and related personal property are prepared using the SF 118 and accompanying continuation schedules SF 118A (Buildings, Structures, Utilities, and Miscellaneous Facilities - Schedule A); SF 118 (Land-Schedule B) and SF 118C (Related Personal Property - Schedule C). Submission requirements will be in accordance with GSA policies in effect at the time each report is made but will include at a minimum

- ☐ Copies of all instruments in FAA's possession which bear on the right, title, or interests of the United States in the property or the use and operation of such property. When reporting public domain land to GSA for disposal, the Bureau of Land Management (BLM) declination notice will be submitted as title information.
- ☐ Any appraisal reports indicating the fair market value or the fair annual rental of the property reported.
- ☐ The certification..."This property is being screened concurrently within the DOT and by the GSA." imprinted on the SF 118.
- ☐ Mandatory environmental information (see paragraph 5.7, below).

5.7.3.3 Excess Government-Owned Land Added 10/2005

When reporting government-owned land, a written report is prepared by the RECO in consultation with Regional attorneys and the RPDO on the Government's title to the property based upon review of FAA records. The report must include

- ☐ A title summary indicating the date title was vested in the United States, providing a complete legal description of the property and providing a description of all exceptions, reservations, conditions, and restrictions, relating to the title.
- ☐ Detailed information concerning any action, thing, or circumstance that occurred, from the date of the acquisition of the property by the United States to the date of the report, which in any way affected, or may have affected the right, title, and interest of the United States in and to the property. The report will also include copies of legal documents or opinions bearing on any of the above issues or on criminal or civil jurisdictional issues arising from Government ownership of the land.
- ☐ Detailed information regarding any known flood hazards or flooding of the property.
- ☐ The historical significance of the property and a description of fixtures and related personal property that have possible historic or artistic value.

5.7.3.4 Relinquishment of Public Domain Land Added 10/2005

Withdrawn or reserved public domain lands that are no longer required for NAS operations will be reported to the Bureau of Land Management (BLM) office to which the application for withdrawal or reservation was originally made. This report is prepared using standard agency letterhead with "Notice of Intent to Relinquish" as the subject line. Before filing this report, the RECO should contact the affected BLM office to determine the nature and scope of current reporting requirements. A Notification of Intent to Relinquish will be submitted in accordance with the guidance received from the BLM with a copy furnished to the local GSA office. If the property is suitable for return to the public domain, the BLM will proceed with relinquishment action. If the BLM finds the property unsuitable for return to public domain, BLM will advise the FAA reporting office of that fact through a declination notice and

- ☐ Advise the FAA whether any other agency claims primary, joint or secondary jurisdiction over the land.
- ☐ Advise the FAA whether the land is encumbered with any existing valid rights or privileges under the public land laws.
- ☐ Advise the FAA whether there are any minerals in the land, which are authorized for reporting to GSA for disposal with the land.
- ☐ Request the FAA report the land, building(s), and/or structure(s) to the GSA for disposal in accordance with procedures established by the GSA.

5.7.4 Withdrawal From Excess Added 10/2005

Subject to the approval of GSA, reports of excess real property and related personal property may be withdrawn in whole or in part by the FAA reporting office at any time prior to transfer to another Federal agency or prior to execution of a legally binding agreement for disposal as surplus property. Request for withdrawals will be addressed to the GSA office where the report was filed.

5.8 Real Property Reports of Survey Added 10/2005

5.8.1 General Added 10/2005

A Report of Survey (ROS) is a report of administrative action to remove assets from property and financial accounting systems and to relieve the Real Property Custodian (RPC) of responsibility for specific government property. ROSs are generally associated with personal property and in that context, processing is carried out in accordance with FAA Order 4630-3c. There are, however, rare occasions when assets accounted for as real property are lost, damaged or destroyed under circumstances that merit investigation: an example is when events (fire, flood or other natural disaster) or acts (vandalism, theft or sabotage) make it necessary to relieve the accountable individual of responsibility for the property. Circumstances may also dictate an investigation to determine culpability and financial liability associated with the
losses. In extreme cases, ROSs may lead to disciplinary or legal action seeking restitution for losses brought on by individual acts of negligence or willful misconduct when such acts are proven to be the proximate cause of the loss, damage or destruction of property.

5.8.2 Special Terms Added 10/2005

Terms used in the ROS system have very specific meanings that bear directly on results and validity of the ROS. For example, a person can be judged *culpable* and held *financially liable* for destruction of Government property only if the Survey Officer (SO) finds conduct that was not *reasonable* or *prudent* but was instead demonstrably *negligent* or attributable to *willful misconduct* and that this negligence or willful misconduct was the *proximate cause* of the destruction. In reading this section, the following definitions apply

- ☐ Personal Responsibility. The obligation of all persons to use, care for and secure all Government property in their possession. This obligation is not contingent upon an assumption of signature responsibility.
- ☐ Signature responsibility. The obligation of a person to ensure that Government property he or she has received is properly used cared for and secured and that records associated with its custody are maintained.
- ☐ Supervisory Responsibility. The obligation of a supervisor to ensure that all Government property in the possession of his or her subordinates is properly used, maintained, secured and accounted for in accordance with existing laws, regulations, policies and procedures.
- ☐ Reasonable and prudent. Describes conduct or action expected of persons in full possession of their faculties performing tasks for which they are suited by training, experience and duty position.
- ☐ Negligence. Acting, or failing to act, in a manner expected of a reasonable and prudent person with similar training, experience and resources under the same circumstances. Failure to comply with existing laws, regulations, policies or procedures may be considered as evidence of negligence but such failure is not negligence in and of itself unless it can be demonstrated that the person knowingly committed the violation.
- ☐ Gross Negligence. A reckless, deliberate departure from the actions expected of a reasonable and prudent person with a demonstrable disregard of readily foreseeable consequences.
- ☐ Willful Misconduct. A willful (knowing) violation of existing laws, regulations, policies or procedures committed by a person or persons in the absence of duress or other extenuating circumstances.
- ☐ Proximate Cause. The act or event from which loss, damage or destruction of Government property resulted as a natural, direct and immediate consequence. Without this act or event, the loss, damage or destruction would not have occurred.
- ☐ Culpability. A determination of fault arising from a finding of negligence or willful misconduct that was the proximate cause of loss, damage or destruction of government property.
- ☐ Financial Liability. The statutory obligation of an individual to reimburse the Government for property that is lost, damaged or destroyed as a result of their negligence or willful misconduct.

5.8.3 Loss, Damage or Destruction of Government Real Property Added 10/2005

5.8.3.1 Loss of Government Real Property Added 10/2005

To make a determination that property has been lost, the RPC must have definitive knowledge of

the property's existence at a particular location, and a specific point in time. Receiving Reports and inventory records are examples of documents that would serve to support the physical placement of property at a particular location. Secondly, the RPC must ensure that the "loss" is real and not due to administrative error or oversight in processing documents relating to the property.

5.8.3.2 Damage to Government Real Property Added 10/2005

Damage to real property must be attributable to specific events or acts and not to degradation in condition or serviceability brought about through fair wear and tear. In assessing any damage to real property, the RPC must evaluate the prior condition of the asset, secure estimates for repairs needed to return the property to current serviceability standards, and make a determination as to the economic viability of asset repair versus replacement.

5.8.3.3 Destruction of Government Real Property Added 10/2005

Real property assets are characterized as destroyed when damage is sustained to a degree that repair is clearly impossible and the only residual value of the property is as scrap or salvage.

5.8.4 Report of Survey Investigations, Findings and Recommendations Added 10/2005

The RPC and the SO work in concert to gather evidence, establish an audit trail and assemble the forms and documents necessary to prepare ROSs for IRO and RPM review.

5.8.4.1 Real Property Custodian Added 10/2005

The RPC prepares FAA Form 4800-4 when it has been determined that real property assigned to his or her account has been lost, damaged or destroyed. This action must be accomplished within ten (10) working days of the date the loss, damage or destruction is discovered. Instructions for the preparation of this form are contained in Appendix C and are based on the following guidelines

- ☐ The RPC must specify the date on which the loss, damage or destruction was discovered and the person or persons making the discovery.
- ☐ The affected property must be identified exactly as it is recorded in automated property accounting systems.
- ☐ Unit cost will include the acquisition cost and the cost of any improvements.
- ☐ The descriptive narrative must be complete, precise and, whenever possible, supported by documentary evidence.
- ☐ Persons having knowledge of circumstances relating to the property will be identified in the narrative. Statements from these persons will be appended to the ROS as Exhibits when doing so serves to clarify circumstances surrounding the loss, damage or destruction to property.
- ☐ Evidentiary documents (police reports, fire reports, inventory records, etc.) will be used

to support the narrative and will also be appended as Exhibits to the ROS.

- ☐ If the affected property is deemed repairable, an estimate of repair costs will be appended as an Exhibit to the ROS.

5.8.4.2 Survey Officer Revised 4/2012

The SO is appointed by the IRO to investigate incidents of loss, damage or destruction of government property. The SO may be named on a standing appointment or appointed on a case-by-case basis at the discretion of the Regional RPM. The SO will not be in the direct chain of accountability, responsibility or custody of any property being investigated. The SO will review the ROS for completeness and technical accuracy, coordinating with the initiator and other persons having knowledge of events to secure any additional statements, information or documents deemed necessary. Using the information gathered during the investigation, the SO will enter a narrative account of events and circumstances surrounding the loss, damage or destruction of the property involved in the Survey Officer Findings section of FAA Form 4800-4. The narrative will be followed by a set of findings developed by the SO after a thorough review of all available evidence. The SO is allowed thirty working (30) days from the date the ROS is received to complete the findings and recommendations portion of FAA Form 4800-4. The following entries are mandatory

- ☐ An opening finding that: "(Negligence and/or Willful misconduct) (is or is not) believed to be the proximate cause of the (loss and/or damage and/or destruction) of the Government property described in this Report of Survey". (Select the appropriate terms).
- ☐ The date the loss, damage or destruction was discovered and identification of the person or persons making the discovery.
- ☐ A statement as to the specific event, act or omission that was the proximate cause of the loss, damage or destruction of Government property. Evidence that directly supports this statement will be cited in detail.
- ☐ A tabulation of the depreciated value of lost or destroyed property.
- ☐ A comparative analysis of repair versus replacement costs when property is damaged. The age, condition and Net Book Value of the damaged asset will be considered in formulating the cost analysis.

When the SO opening finding is that the loss, damage or destruction of government property was not due to negligence or willful misconduct, no additional comment need be made in the Findings section of FAA Form 4800-4. If, however, the SO indicates that negligence or willful misconduct was a proximate cause the following is required

- ☐ Identification of any person or persons deemed culpable due to his or her negligence or willful misconduct by name, job title and permanent duty location.
- ☐ An affirmation that the person or persons deemed culpable due to his or her negligence or willful misconduct possessed the requisite training and experience to have prevented the loss incurred by the Government had they acted in a reasonable and prudent manner.
- ☐ Text citing specific instances when the person or persons deemed negligent failed to act in a reasonable and prudent manner.
- ☐ Text linking individual acts of negligence or willful misconduct to the specific property

items affected by those acts accompanied by references to the supporting ROS Exhibit.

- ☐ A statement assigning culpability to the person or persons whose negligence or willful misconduct was determined to be the proximate cause of the losses incurred by the Government.

To support a finding of joint liability, the SO must demonstrate that specific acts by the persons found culpable were, when taken in combination, the proximate cause of the loss incurred by the Government.

The SO will prepare recommendations based on the results of the investigation and record them in the Survey Officer Recommendations section of FAA Form 4800-4. In cases not involving negligence or willful misconduct the SO will recommend that all accountable persons be relieved of responsibility for the lost or destroyed property. Property remnants, if any exist, will be released for disposal. When damage to property is under investigation and no negligence or willful misconduct is involved, the SO will recommend that the property be released for repair. If, however, there is a finding of negligence or willful misconduct and a further finding that such negligence or willful misconduct was the proximate cause of the losses under investigation, the SO must identify the person or persons deemed financially liable and the amount of their liability. The SO calculates financial liability using the guidelines shown in Paragraph 5.8, below and enters the following statement

> "(Insert Name) has been found culpable for losses incurred by the Government as a result of (his or her) (negligence or willful misconduct). Further, it has been found that this (negligence or willful misconduct) was the proximate cause of the loss, damage or destruction of property described in this Report of Survey. I recommend that (Insert Name) be held financially liable in the amount of ($)."

NOTE: In those cases where more than one person has been recommended for financial liability (joint liability), this statement will be repeated with the appropriate name and dollar amount entered for each person named.

5.8.5 Survey Officer Calculations for Property Value, Repair Cost and Financial Liability

Added 10/2005

5.8.5.1 Value of Lost or Destroyed Real Property **Added 10/2005**

The amount of financial liability arising from a loss incurred by the Government is dependent in part on the value of the property at the time of its loss or destruction. The SO will calculate property value as follows

- ☐ Determine the original acquisition date and cost of the property.
- ☐ Calculate monthly depreciation by dividing the property's acquisition cost by the life expectancy of the property expressed in months. Life expectancy for "Buildings" (Property Code 2) is 480 months; for "Other Structures" (Property Code 3) it is 180 months.
    - o EX: Building Acq Cost = $12,000. Divide by 480 months = <u>$25.00 depreciation per month</u>.
- ☐ Using the original acquisition date, calculate the number of months the property was in

service prior to its destruction.

- EX: Acq Date = Jan 1980 / Destruction Date = June 2003 / Months in Service = 282

☐ Calculate accumulated depreciation by multiplying the monthly depreciation amount by the number of months the property was in service.

- EX: Monthly Depr @ $25.00 x 282 months in service = Total depreciation $7,050.00

☐ Determine current value by subtracting total depreciation from the original acquisition cost of the property. Depreciation is limited to 95% of the recorded acquisition cost; i.e., the 5% residual is considered to be the asset's scrap value.

- EX: Acq Cost = $12,000 minus Total Depr @ $7,050.00 = Building Value $4,950.00

In this example, the calculated loss to the government is $4,950.00 -- the adjusted value of this unimproved building. While this is the preferred method and the one most likely to be used, there may be instances where the original acquisition cost and/or a precise acquisition date cannot be determined. In such cases the SO may use a "comparable value" method whereby cost and date information is derived by reference to like property known to have been acquired at roughly the same time as the lost or destroyed asset. When this method is used the SO will so indicate in the Findings section of FAA Form 4800-4.

If the building in the above example had been the subject of an "Improvement" during its lifespan, the current value of the improvement would have been calculated (cost minus depreciation) and added to the current value of the building thus increasing the "loss to the Government" amount. Depreciation on improvements is determined by calculating the number of months between the "Improvement Date" and the expiration of the parent asset's lifespan. For example, this 1980 building's service life would have expired in January 2020 so a June 1998 improvement would have a 258-month life expectancy. To calculate the value of the improved building at the time it was destroyed

☐ Divide the improvement cost by the life expectancy of the improvement expressed in months.

- EX: Improv Cost = $4,000.00. Divide by 258 months. Monthly depreciation = $15.50

☐ Determine the improvement's months in service prior to destruction.

- EX: Improv Date = June 1998 / Destruction Date = June 2003 / Months in Svc = 60

☐ Calculate accumulated depreciation by multiplying the monthly depreciation amount by the number of months the property was in service.

- EX: Monthly Depr @ $15.50 x 60 Months in Svc = Total Depreciation $930.00

☐ Determine current value by subtracting total depreciation from the original improvement cost.

- EX: Improv Cost = $4,000 minus Total Depr @ $930.00 = Improvement Value $3,070

☐ Combine the building's value with the value of the improvement to arrive at a value for the improved building at the time of its destruction.

- EX: Building Value = $4,950.00 plus Improv Value @ $3,070 = Total Value $8,020.00

The calculated loss to the Government in this case is $8,020.00 - the combined value of the building and the improvement. The same method is used to establish values for "Other Structures" (Property Code 3); however, the standard life expectancy is fifteen years (180 months) rather than forty years as is the case with buildings.

5.8.5.2 Value of Damaged Property Added 10/2005

Damaged property is property that can be economically repaired and returned to service with no degradation in its capability or serviceability. The SO will coordinate with the owning property custodian to arrange preparation of a written estimate of repair costs to include time, material, travel and miscellaneous expenses involved in returning the damaged asset to service. This written estimate is the basis for determining the extent to which an individual may be held financially liable and a copy will be attached to the ROS as an exhibit. In some instances, the estimate for repairs is so high that it is in the Government's best interest to consider the property destroyed and to replace it outright. When this occurs, values will be calculated using the technique described in Paragraph 5.8, above.

5.8.5.3 Limits of Liability Added 10/2005

The following individuals/entities may be assessed liability for the full amount of the Government's loss, minus amounts charged to other parties

- ☐ States and territories of the United States - Contractors and contractor employees
- ☐ Perpetrators of criminal acts causing the loss
- ☐ Individuals or entities not federally employed

Federal civilian employees may be assessed an amount not to exceed 1/12 of the individual's annual base pay.

Using the example in Paragraph 5.8, above, and assuming that an FAA employee and a contractor have been found jointly liable

Value of the Improved Bldg	$8,020.00
Maximum Liability of FAA Employee	< $3,670.75 >
w/ Annual Base Pay of	$44,049.00
Loss to the Government	$4,349.25
Liability of Contractor	< $4,349.25 >
Loss to the Government	$0

5.8.6 Internal Review Officer Responsibilities Added 10/2005

The IRO is the Appointing Authority for SOs and may either name a single appointee to serve as SO until relieved of the duty or appoint SOs on a case-by-case basis as the need arises. The Regional RPM will establish the policy to be followed in this regard. The IRO is also the final Approving Authority for ROSs when investigation reveals that no negligence or willful misconduct was a factor in the losses suffered by the Government. The IRO is allowed five (5) working days from the date the ROS is forwarded for review to either accept or reject the ROS. In reviewing ROSs the IRO must

- ☐ Examine the ROS for completeness and accuracy.
- ☐ Direct the RPDO remove property described on the ROS from property accounting systems.
- ☐ Make any additional inquiries or request any additional documents deemed necessary to support the findings.
- ☐ Evaluate the findings and recommendations of the SO and concur or non-concur.

If the SO states in the findings a belief that negligence or willful misconduct was the proximate cause of the loss, damage or destruction of the property, the IRO will evaluate the ROS and decide whether the evidence does or does not support such a finding.

When the evidence **does not support the finding

- ☐ The IRO consults with the SO and seeks to reconcile their different conclusions by joint review of the evidence.
- ☐ If no reconciliation of views is possible, the IRO disapproves that portion of the findings bearing on negligence/willful misconduct and states the reasons for doing so in the IRO Review section of FAA Form 4800-4.
- ☐ The IRO signs FAA Form 4800-4 as Approving Authority, and forwards the completed ROS to the Regional Real Property records custodian and the owning RPC.

When the evidence **does support the finding

- ☐ The IRO indicates concurrence with the findings in the IRO Review section of FAA Form 4800-4.
- ☐ In the same section of FAA Form 4800-4, the IRO will address the SO recommendation and indicate concurrence or non-concurrence. In the case of non-concurrence, the IRO will make alternate recommendations.
- ☐ The IRO forwards the ROS to the RPM with any additional comments or recommendations deemed necessary to expand upon or clarify the findings and recommendations of the SO.

5.8.7 Report of Survey (ROS) Board Revised 4/2012

When the IRO concurs with a SO recommendation that financial liability be assessed against one or more persons, the ROS will be reviewed by an appointed ROS Board. ROS Board requirements are as follows

- ☐ The ROS Board will be appointed by the RPM who serves as chairperson.

- ☐ The ROS Board will consist of a minimum of three members, including the RPM.
- ☐ ROS Board members will not be in the property accountability chain associated with the lost, damaged or destroyed property.
- ☐ ROS Board members may be appointed as "standing members" to serve until relieved from the appointment or they may be appointed on an "as needed" basis at the discretion of the RPM.

The ROS Board will convene as soon as possible after a ROS recommending assessment of financial liability is forwarded from the IRO to the RPM. The Board will examine the ROS to determine whether

- ☐ Evidence cited to support a finding of negligence or willful misconduct is sufficient to prove the point.
- ☐ The proximate cause of the loss suffered by the Government was a direct result of the negligence or willful misconduct described.
- ☐ The assignment of culpability to individual(s) flows logically from the negligence or willful misconduct described.
- ☐ The amount of financial liability assessed is appropriate to the situation and calculated correctly (see Paragraph 5.8, above).

During deliberations, the Board may call upon persons having knowledge of events pertinent to the ROS under consideration for additional information, statements or evidence as necessary to clarify any doubtful issues. After considering all available evidence, Board members will state their individual conclusions regarding findings of financial liability to the RPM. If a majority of the board agrees with the SO findings and recommendations, the ROS is approved. If no majority is achieved, the RPM in his/her capacity as Board Chairperson will render a decision as to approval or disapproval of the ROS.

5.8.8 Real Property Manager Responsibilities Added 10/2005

The RPM, as Chairperson of the ROS Board, signs the ROS as Approving Authority on all real property ROSs that result in an assessment of individual financial liability. The RPM, acting through the ROS Board, may also disapprove any findings and recommendations whenever a ROS is found to be in error or the conclusions unsupported. In the event of non-concurrence, the RPM will direct that all action on the ROS be terminated; in the event of concurrence, processing continues as described below.

5.8.9 Review by Counsel Added 10/2005

Within five (5) working days after the RPM concurs with a finding of financial liability, a copy of the ROS (complete with all exhibits and attachments) will be forwarded to the Regional legal office for review by counsel. The reviewing attorney will advise the RPM, in writing, whether the documents presented are sufficient to justify the assessment of financial liability against the person or persons identified in the ROS. If the ROS is legally acceptable, the RPM will notify these persons, in writing, of the liability finding and allow them an opportunity to respond. If the ROS is legally unacceptable, the RPM has the following options

- ☐ Reopen the investigation if there is a reasonable prospect that additional information will be discovered that would make the ROS legally acceptable.
- ☐ Terminate the ROS proceedings.

5.8.10 Notifying Respondent(s) of Financial Liability Findings Added 10/2005

If the ROS is judged legally acceptable, the SO will notify the person or persons found financially liable, in whole or in part, for the losses incurred by the Government. This notification will be accomplished using the memorandum shown in Appendix C as "Notice of Financial Liability" accompanied by a copy of the ROS with all exhibits. Notification will be sent by Certified Mail - Return Receipt Requested. Return of the signed certified mail receipt to the SO is taken as proof of notification of liability and as an acknowledgement that the respondent is aware of his or her rights in the matter.

5.8.10.1 Respondent's Rights Added 10/2005

The respondent has the right to

- ☐ Make voluntary restitution of the total amount by setting up a collection arrangement or payment schedule.
- ☐ Inspect and copy all documents associated with the ROS.
- ☐ Obtain legal advice relating to the assessment of financial liability.
- ☐ Submit a written request for reconsideration of the liability finding to the RPM. Such a request must be based on legal error, procedural error, new evidence or extenuating circumstances.
- ☐ In the event a request for reconsideration is denied, the respondent may submit a written request for cancellation of the debt to the RPM on the basis of personal hardship.

5.8.10.2 Processing Time Added 10/2005

Thirty (30) calendar days are allowed for the exercise of respondent rights. An exception to this schedule is made when an individual submits a request for reconsideration, in which case no action will be initiated until ten working days (10) after an RPM denial of the request. This extension allows time for the respondent to request that the RPM cancel the debt on the grounds that payment would constitute an undue hardship.

5.8.11 Finalization of Reports of Survey Added 10/2005

ROSs are considered finalized when the RPM signs the original copy of the ROS. Thereafter, the action is treated as a Government claim against an individual and accounting policies governing amounts to be collected, collection periods, installment payments, appeals for relief, negotiated settlement, etc., will apply. A copy of the entire ROS packet will be retained in the Logistics Division administrative files for not less than three years after which time the file will be permanently retired.

5.8.12 Special Actions Added 10/2005

On rare occasions it may be necessary to re-visit closed ROSs in order to address substantive property issues or provide relief to an individual erroneously assessed liability.

5.8.12.1 Recovered Property Added 10/2005

In spite of an SO's best efforts, property will occasionally be deemed lost when, in reality, it was merely misplaced or not identifiable because of a failure to maintain a proper paper trail. If property subjected to ROS proceedings is found after the ROS is finalized, a Real Property Account Adjustment Report will be prepared to document the "recovery" of the property. This document supports re-entering the asset to the property accounting system and will be retained as a permanent record in the affected facility's property file. If the ROS was finalized with an assessment of liability and subsequent collection action, the amounts collected will be remitted to the person or persons erroneously charged for the supposed loss incurred by the Government.

5.8.12.2 Repayment of Amounts Erroneously Collected Added 10/2005

An individual subjected to collection action can dispute or appeal the Government's claim for damages and the ROS can be overturned after it has been closed. In such cases, the individual must file a claim with the Department of the Treasury seeking repayment of the erroneously collected amounts.

5.9 Appendices Added 10/2005

5.9.1 Appendix A - Glossary Revised 4/2009

Term	Definition
Abandon in Place	A method for disposing of excess property that involves leaving the property at its original location and relinquishing ownership to non-FAA entities. Permitted by non-restoration provisions contained in lease agreements, abandonment will be recorded on a Transfer Agreement executed between the FAA and the gaining entity.
Acquisition Cost	The original cost of an operational asset as recorded in the FAA property accounting system
Airport	Any land or water that is used as, or is intended for use as, an area for the landing and takeoff of aircraft along with any appurtenant land or water that is used as, or is intended for use as, an area for emplacement of airport buildings, structures or rights-of-way.
Airway property	Any real property, or interest therein, used or useful, directly or indirectly in connection with the administration, operation, or maintenance of any ground installation or facility necessary or

	desirable for the orderly and safe operation of air traffic, including but not limited to air navigation, air traffic control, airway communications, and meteorological facilities.
Approving Official	The individual designated by a Regional Administrator/Center Direct as having final authority for approval related to the disposal of excess real property.
Buildings	A roofed and walled structure emplaced for permanent administrative, operational, technical or storage purposes.
Component Items	Items of property that are used as integral parts of larger real property assets, systems or structures. When standing alone, such items are accounted for as personal property; when combined with other components in final configuration, such items are accounted for within the larger asset and are no longer distinguishable as individual items. See also Related Personal Property.
Condition Code	A one-character GSA code that describes the physical condition, serviceability, or repairability of an asset.
Conveyance	The formal transfer of property ownership from one entity to another. Instruments of conveyance may take the form of Warranty Deed, Bills of Sale or Transfer Agreements and other published forms used to transfer ownership of property.
Cost Center Code (CCC)	An accounting code used to identify financial and/or physical responsibility for an asset or action.
Decommission	Term used to describe a decision to permanently de- activate and delete a facility from the National Airspace System (NAS). NOTE: Decommissioning and Disposal are separate and distinct actions; facilities are decommissioned, and finally disposition occurs.
Destruction	The process by which property is rendered unusable for its original intended purpose.
Disposal	The act by which property is removed from an entity's property and/or financial accounting system(s). Disposal may take the form of, but is not limited to, destruction, disassembly and conversion to personal property, transfer to other entities, and conveyance of ownership in furtherance of government interests or abandonment pursuant to non-restoration provisions contained in a contractual agreement.
Disposal Agency	Any federal agency designated by the Administrator of the GSA to dispose of excess property.
Duplicate Count (DUP or DC) or DUP or DC)	A sequential number assigned to each real property asset. Used in conjunction with the property code and usage code to identify a specific item of real property.
Easement	This term generally means the right of one person to use all or part of the property of another person for some specific purpose. Easements can be permanent or temporary (i.e., limited to a stated period of time). The term may be used to describe either the right itself or the document conferring the right.
Excess Property	Any property that is not required to meet the mission needs of the owning entity. The term may be applied to both real and personal property and to salvageable component items associated with real property that are otherwise referred to as related personal property.
Facility Contraction	An identifier assigned to specific facility types established for and

(FAC)	engaged in FAA operations.
Fair Market Value (FMV)	The value that would probably be negotiated between a willing seller and a willing buyer within a reasonable time. It is usually determined by reviewing comparable sales in the area and is commonly used measure for the value of real property transaction. Typically, a contract for an appraiser is let and the appraiser determines the rate that is to be used for the basis for negotiation.
Federal Management Regulations (FMR)	This is the Government successor regulation to the FPMR (described below). The FMR contains updated regulatory policies originally found in the FPMR.
Federal Property Management Regulations (FPMR)	The Government regulation issued by the GSA to govern and guide federal agencies in the management of property.
General Services Administration (GSA)	The Government agency responsible for real property utilization and disposal services.
GSA Control Number (GSA CN)	The General Services Administration Control Number is a five-digit number formerly assigned by the GSA to identify a specific facility. Although GSA no longer assigns these numbers, they remain in use as a component of the three-element identification line used in the Real Estate Management System.
Hazardous materials	Property that is deemed hazardous material, chemical substances or mixtures, or hazardous waste under the Hazardous Materials Transportation Act (HMAT), the Resource Conservation and Recovery Act (RCRA), and the Toxic Substances Control Act (TCSC).
Holding Agency	The entity maintaining care and custody of reported excess property on behalf of the disposal agency pending a determination of final disposition.
Improvement	Any modification of an asset that results in an increase in the asset's performance or capacity or which increases the asset's service life by two or more years.
Improvement Cost	Cost incurred over and above original acquisition cost to enhance the capacity or performance of an asset or to extend the life of the asset by two or more years.
Leasehold Improvement	Improvements (as defined above) made to leased buildings or structures (or portions thereof) that enhance the operational usefulness, safety or security of the assets or which converts, modifies or adapts the buildings or structures to different uses.
Location Identifier (LOC ID)	A three or four character alphanumeric code assigned by the National Fight Data Center to identify a specific airport, navigation aid, weather station or manned air traffic control facility.
Maintenance	The upkeep of real property only to the extent necessary to offset serious deterioration. The operation of utilities (water, sewage, HVAC, plumbing) as is necessary for the fire protection, needs of interim occupancy, and preservation of installed equipment.
Memorandum of Agreement (MOA)	A formal agreement between two or more entities to delineate the responsibilities or actions of each party and obligating the signatories to faithfully execute the terms of the agreement.
Net Book Value	A financial term used to describe from an accounting standpoint, the residual value of a specific asset after deduction of accumulated

	depreciation from the recorded value of the asset.
No Commercial Value	This term is used to describe real property, including related personal property that has no reasonable prospect of being disposed of for a financial consideration.
Non-Permanent Building	A building that is more or less affixed to the land but which can be separated from the land and transported without rendering it unserviceable.
Permanent Building	A building that is permanently affixed to the land and which cannot be separated from the land and transported without rendering it unserviceable.
Personal Property	Property with the ability to stand alone and be accounted for as a complete asset and which is not permanently attached to or made an inseparable part of any building, structure or system. Personal property items may be incorporated as components of real property assets, lose their identities and later be separated to reacquire personal property accounting status.
Property Code (PROP or PC)	A code that identifies an asset as Land (1), Building (2) or Other Structure (3). Used in conjunction with the usage code and duplicate count to identify a specific item of real property.
Project Material	Property and material acquired for use in the construction of real property assets on a per-project basis.
Public Domain Land	Land that is reserved by the federal government for public use.
Real Property	Land and rights over or under the land along with buildings and structures affixed to the land that possess characteristics of physical or operational permanence and which at the time of construction or emplacement are not intended to be dismantled or removed.
Real Property	A report prepared on FAA Form 4800-3 to correct
Account Adjustment Report (RPAAR)	property account balances found to be incorrect due to administrative oversight or error.
Real Property Management Officer (RPMO)	An official at the FAA Headquarters who is appointed to oversee property management activities and ensure compliance with all applicable legal and regulatory requirements throughout the FAA. This person also serves as liaison between the FAA and all other agencies in matters pertaining to property management and utilization.
Related Personal Property	Personal property affixed to or made a part of a building, structure or system that is integral to the functioning of the larger asset but which may be removed and transported without becoming unserviceable. See also Component Items.
Repairs	Those additions or changes necessary for the protection and maintenance of property to deter or prevent excessive or rapid deterioration or obsolescence, and to restore property damaged by storm, flood, fire, accident, earthquake, riots, or negligence.
Report of Survey (ROS)	A report of administrative action to remove assets from property and financial accounting systems, thereby relieving the accountable individual from further responsibility over the property. The Report describes the findings of a Report of Survey Officer or Board, is supported by evidence and may or may not include a finding of pecuniary liability arising from negligence on the part of one or more parties.

Reutilization	The act of transferring property from a location where it is excess to another location where a need for the property exists. Screening for utilization takes place progressively within the FAA and DOT and then Government-wide until a requirement is identified or the property is declared surplus.
Screening	A process through which a holder of excess property advertises that property's availability for transfer to new ownership. Typically, this is a sequential process beginning at the user level and progressing upward through succeeding levels of management.
Structures	Other structures are any structures (other than buildings) that possess characteristics of physical or operational permanence, are permanently affixed or attached to the land or a building by foundation or otherwise, and that at the time of construction are not designed to be dismantled and moved for use elsewhere.
Transfer Agreement	An instrument used to transfer ownership of real property, or interest therein, between the FAA and other entities, public or private, for direct or indirect consideration in order to secure an operational or financial benefit to the Government.
Usage Code (USAGE or UC)	A code that identifies an asset's principal use. Used in conjunction with the property code and duplicate count to identify a specific item of real property.

5.9.2 Appendix B- Acronyms Revised 4/2012

AIP - Abandon in Place

ANI - Office of NAS Implementation

ATID - Air Traffic Identifier

BLM - Bureau of Land Management

CCC – Cost Control Center

CERCLA - Comprehensive Environmental Response, Compensation and Liability Act

DOT - Department of Transportation

DEMO – Condition code used to describe property to be demolished

DUP CT (also shown as DUP or DC) – Duplicate Count

EDDA - Environnemental Due Diligence Audit

FAA - Federal Aviation Administration

FAC – Facility Contraction

FMR - Federal Management Regulation

FMV - Fair Market Value

FPMR - Federal Property Management Regulation

GSA - General Services Administration

GSA CN - General Services Administration Control Number

HAZ – Condition code used to describe a safety hazard.

HAZMAT - Hazardous Material

HMTA - Hazardous Materials Transportation Act

IFAS - Interim Fixed Asset System

IRO - Internal Review Officer

LIMS - Lease Information Management System

LIS - Logistics Inventory System

LOC ID – Location Identifier. Sometimes referred to as ATID (Air Traffic Identifier)

LPC - Logistics Program Coordinator (SMO-level)

MOA - Memorandum of Agreement

NAS - National Airspace System

NBV - Net Book Value

NEPA - National Environmental Policy Act

PPDO - Personal Property Disposal Officer

PROP CODE (also shown as PROP or PC) – Property Code

Prop - Usage Code – Dup Ct – Property Usage Code and Duplicate Counter

PL - Public Law

RECO - Real Estate Contracting Officer

REMS - Real Estate Management System

ROS - Report of Survey

RPC - Real Property Custodian

RPDO - Real Property Disposal Officer

RPAAR - Real Property Account Adjustment Report

RPMO - Real Property Management Officer

RPM - Real Property Manager

RPR – Condition code used to describe Repairable property

SCR – Condition code used to describe property that is determined to be Scrap Only

SMO - System Management Office

SO - Survey Officer

SSC - System Support Center

SVC – Condition code used to describe property that is Serviceable

TRFR – Condition code used to describe property that is to be transferred

TSCA - Toxic Substances Control Act

USD - Utilization, Screening and Disposal

UNR – Condition code used to describe property Uneconomical to Repair

UNS – Condition code used to describe Unserviceable property(ies)

USAGE CODE (also shown as USAGE or UC) – Usage Code

5.9.3 Appendix C - Forms Revised 4/2012

5.9.3.1 LIS/USD Excess Personal Property Report Revised 7/2010

- ☐ Blank Form
- ☐ Sample Form

Note: This form is only to be used in the LIS system. There is no form available in the Real Estate Template Library.

PREPARATION NOTES: FAA FORM 4800-1, LIS / UTILIZATION SCREENING AND DISPOSITION EXCESS PERSONAL PROPERTY REPORT

This form is embedded in the LIS / USD software as an integral feature of the reporting and screening process for excess personal property. Instructions for the preparation and uses of this form are contained in FAA Order 4800-2c (Utilization and Disposal of Excess and Surplus Personal Property). The following notes apply to reporting available excess component items (also referred to as related personal property) formerly accounted for as real property.

1. Real property assets are constructed by assembling components that become integral parts of the parent asset. In doing so, these components lose their individual identities as accountable property items.

2. Real property assets are frequently dismantled and lose their individual identities as parent assets while leaving on-hand component items suitable for reutilization by other FAA entities.

3. The residual component items, no longer associated with a particular real property asset, revert to their original personal property classification and are reportable as excess personal property through the electronic LIS / USD system.

4. In such instances the provisions of FAA Order 4800-2c govern the reporting, tracking and final disposition of the affected components.

5.9.3.2 Real Property Disposition Report Revised 7/2010

Real Property Disposition Report

Note: This form is also available in the Real Estate Template Library.

PREPARATION NOTES: FAA REAL PROPERTY DISPOSITION REPORT

INTRODUCTION
This form replaces the FAA Form 4800. This form is entitled “Real Property Disposition Report”, (RPDR), avoiding any reference to an FAA Order Number.

The purpose of this form is as follows:

-Reporting requirements as per Executive Order 13327, Real Property Asset Management and OMB compliance.

- Reporting items as ACTIVE, INACTIVE, EXCESS, and DISPOSED OF as status codes and as part of the above requirements.

MODIFICATIONS TO THE REPORT
Status Codes and Disposition Codes are new to this form. Condition Codes remain the same. Action Codes and the Personal Property check boxes have been eliminated. Remarks remains the

same. The form is prepared as follows:

1. Header Information (blocks 1 - 6): Self-explanatory. Block 6 is now Cost Center Code/Doc Number. Please note, that the Point of Contact (block 5) need not be the initiator - the preferred POC is the person most familiar with the Property and the circumstances.

2. Property Description and Disposition Section:
- REMS ASSET NUMBER: available from REMS

- DELPHI NUMBER: available from REMS or Delphi

- ITEM NAME: available from REMS

- STATUS CODE: the Status of the Property as ACTIVE, INACTIVE, EXCESS or DISPOSED OF. Select ACTIVE if the Property is being reinstated or found on base.

- STATUS DATE: Date the Property changed Status between ACTIVE - INACTIVE - EXCESS – DISPOSED OF

- DISPOSITION METHOD: use the code that best describes the way the Property is going to be Disposed.

- CONDITION CODE: use the code that best describes the condition of the Property.

- ACQUISITION COST: the cost recorded in REMS.

- DISPOSITION VALUE: for owned Properties that are Disposed Of through Sale, enter the Sale Price. For the rest of the owned Properties, enter the Plant Replacement Value (from REMS). For Leased Properties, enter either the Annual Rental or the Annual Operations Cost (if the Annual Rental is $0).

- TRFR ASSET TO LOC ID-FAC: The new ATID and Facility Contraction to where the Asset is being transferred.

3. Property Custodian Remarks: this section is used to further describe the affected Property or to add disposition recommendations.

4. Real Property Disposal Officer Remarks (RPDO): this section is used to provide the initiator item-by-item disposition instructions.

The RPDO will provide the initiator a signed copy of the completed form for local property records and a copy will be placed with the property records maintained at the Regional Office or LSA.

5.9.3.3 Real Property Account Adjustment Report Revised 7/2010

- ☐ Blank Form
- ☐ Sample 1 Form
- ☐ Sample 2 Form

Note: This form is also available in the Real Estate Template Library

PREPARATION NOTES: FAA FORM 4800-3, REAL PROPERTY ACCOUNT ADJUSTMENT REPORT

This form will be used by property managers to adjust property account balances when discrepancies related to administrative error or oversight are discovered. It will not be used in situations where negligence or misconduct is suspected to have resulted in the loss of government property.

Block Note

1. Region: Self-explanatory.

2. Adjustment Type: One type of adjustment per form submitted.

3. Justification: "Found on Facility" refers to assets physically present but not shown on the facility record. "Asset Not Present" refers to recorded property that is not present at the facility. "Other" covers all other circumstances (quantitative errors, discrepant shipment documents, unrecorded transfers, undocumented demolition, etc).

4. Submitted By / Routing Symbol / Date: Self explanatory.

5. Point of Contact: The person most familiar with the circumstances that justify the requested action.

6. Facility Identification: Self-explanatory.

7. Local Document Number: Optional.

8. Facility Address: Self-explanatory.

9. Add to Inventory: Descriptive remarks must be as complete as possible. The information provided will be used when items are added to the property accounting system.

10. Reconfigure Assets: Use this section to correct descriptive data (dimensions, composition, etc.) asset identification information (Property Codes, Usage Codes, etc.), Facility information (GSA Control Number, Fac Cont, Fac Type,etc.). Enter information recorded in REMS in the "As Reads" portion; enter correct information in the "Is Amended To Read" portion.

11. Remove From Inventory: Self-explanatory.

12. Narrative: The narrative will explain the research done by the preparer to identify the error, when it may have originated and what may have caused it. The narrative will describe corrective

actions to be taken. Continuation pages will be used to extend a narrative if necessary. Copies of supporting documents will be attached and they will be listed in the narrative. Signed statements from persons having knowledge of events described in the narrative should be attached whenever possible.

13. Regional Office Review: The person appointed as Approving Official must not be in the direct property accountability/responsibility chain of the facility affected by the action. The Approving Official may concur or non-concur with the action as presented. If the Approving Official fails to concur, comments will be entered to explain the reasons for non-concurrence and to direct corrective measures to finalize the action.

14. Approving Official -Name / Routing Symbol / Date: Self Explanatory.

15. Signature of Approving Official: Self Explanatory.

5.9.3.4 Report Survey Revised 7/2010

- ☐ Blank Form
- ☐ Sample Form
- ☐ Memorandum - Notice of Financial Liability
- ☐ Report of Survey Roles Chart

Note: This form is also available on the Real Estate Template Library

PREPARATION NOTES FAA FORM 4800-4 REAL PROPERTY REPORT OF

SURVEY Block Note

1. Date. Self-explanatory

2. Regional Office Control Number. This number is assigned by the RO for tracking purposes.

3. Initiator's Name. The name of the person initiating the ROS (normally the Real Property Custodian).

4. Title. Initiator's duty position.

5. Property Described Below Has Been. Check one or more applicable boxes.

6. Organization. Organization to which the initiator is assigned.

7. Location. City and state.

8. Item No. Self explanatory

9. GSA CN - Prop/Usage - Dup Ct. Property identification line as it appears in the property account. Example: 48143 - 373 - 001.

10. Qty. Number of items lost, damaged or destroyed.

11. Item Description. The item name as it appears in the property account.

12. Unit Cost. The cost recorded for the item in the property account.

13. Total Cost. The extended cost arrived at by multiplying the number of items by the unit cost.

14. Loc ID. Location identifier for the property account.

15. Facility. The facility where the item was in use.

16. CCC. Cost Center Code for the property account.

17. Point of Contact. The name and title of the person most knowledgeable of the circumstances surrounding the Report of Survey.

18. Phone / FAX. Point of contact phone and FAX number.

19. Narrative. A detailed account of circumstances surrounding the loss, damage or destruction of the property shown on the ROS. The initiator will identify (by name and duty position) all persons involved in or having knowledge of events leading up to the ROS or who have provided information contained in or appended to the ROS. When dates and times used, they should be as precise as possible. If the initiator has documentary evidence bearing on the property, to include written statements provided by individuals, such documents will be appended to the ROS and identified as Exhibit A, Exhibit B, etc. Contact information (phone, fax, address, etc.) will be provided for any person identified in the ROS. The intent of the narrative is to give the Survey Officer a complete account of events that led to the loss, damage or destruction of property to facilitate his or her investigation.

20. Date. Date signed by the initiator.

21. Report of Survey Officer Findings and Recommendations. Complete the "negligence" statement by lining out the terms that do not apply. Using the information provided by the initiator, documentary evidence gathered during the investigation, and written statements secured from involved parties, the Survey Officer arrives at a specific set of findings and records them in this space. Based on these findings, the Survey Officer

formulates recommendations for consideration by the Internal Review Officer and also records them in this space. The Survey Officer will prepare a cost assessment of the damages suffered by the government attendant to the loss, damage or destruction of the property shown on the ROS. This assessment will be included in the Findings and Recommendations section. Refer to Section H of this document for detailed guidance on these tasks particularly as regards the requirements to support a finding of negligence or willful misconduct.

22. Internal Review Officer Comments. Complete the "negligence" statement by lining out the terms that do not apply. Check the appropriate boxes. Note that if no negligence or willful misconduct is involved and the IRO concurs with the SO's findings and recommendations, the ROS is closed and no further action is necessary. The IRO also has the option to non-concur and return the ROS for amendment or further investigation. If the ROS is to be forwarded to the Real Property Manager for review of negligence or willful misconduct findings, the IRO will comment on his or her reasons for doing so.

23. Real Property Manager Review. The RPM is the final authority on ROSs that include a finding of negligence or willful misconduct leading to a recommendation of financial liability. In this section, the RPM will indicate his agreement or disagreement with the findings and, when necessary, specify any further action on the part of the IRO or the SO.

5.9.4 Appendix D - GSA Headquarters and Regional Offices Added 10/2005

GSA is headquartered in Washington, DC. There are 11 regional offices. Below is a listing for states and territories. GSA Central Office, Public Buildings Service, 18 and F Streets, NW, Washington, DC 20405, 202-501-1100.

GSA Regional Offices

GSA Northwest/Arctic Region
400 15th Street
Auburn, WA 92001
253-931-7000
Serving Alaska, Idaho, Oregon, and Washington

GSA Pacific Rim Region
450 Golden Gage Avenue
San Francisco, CA 94102
415-522-3001
Serving Arizona, California, Hawaii, Nevada, the territories of Guam and American Samoa
GSA Rocky Mountain Region Bldg. 41, Denver Federal Center Denver, CO 80225
303-236-7329

Serving Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming

GSA National Capital Region
7th & D Sts, SW
Washington, DC 20407
202-708-9100
Serving the District of Columbia, Montgomery and Prince George's Counties in Maryland, Alexandria City and the counties of Arlington, Fairfax, Loudon, and Prince William in Virginia.

GSA Greater Southwest Region
819 Taylor Street
Ft. Worth, TX 76102
817-978-2321
Serving the states of Arkansas, Louisiana, New Mexico, Oklahoma, and Texas

GSA New England Region
10 Causeway Street
Boston, MA 02222617-565-7648

GSA Heartland Region
1500 East Bannister Road
Kansas City, MO 64131816-926-7201
Serving the states of Iowa, Kansas, Missouri, Nebraska

GSA Great Lakes Region
230 South Dearborn Street
Chicago, IL 60604
312-331-3200
Serving the states of Illinois, Indiana, Michigan, Minnesota, Ohio, and Wisconsin

GSA Mid-Atlantic Region
1000 Penn Square East
Philadelphia, PA 19107
215-656-5501
Serving the state of Delaware, Pennsylvania, Maryland and Virginia excluding the counties of Montgomery, Prince George in Maryland and Alexandria City, Arlington, Fairfax, and Loudon in Virginia.

GSA Northeast and Caribbean Region
26 Federal Plaza
New York, NY 10278
212-264-2600
Serving the states of New Jersey, New York, the territories of Puerto Rico, and the US Virgin Islands

5.9.5 Appendix E - Other Useful References **Added 10/2005**

GSA – Publications	www.gsa.gov/portal/content/136021
Federal Highway Administration	www.fhwa.dot.gov
FAA Acronyms	employees.faa.gov/acronyms (FAA only)

6 REAL ESTATE CAREER DEVELOPMENT Revised 7/2013

6.1 Introduction Revised 1/2015

In order to accomplish agency mission objectives and goals, FAA uses a competency-based model to provide structure and logic for the learning and development of its acquisition professionals. The competencies required to be obtained by the Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) were originally identified in 2000 and were revised in 2013 to include expanded descriptions of the performance indicators (PIs) required for successful functional performance. For more information on competencies and PIs see the RECO Acquisitions Professions Portal. These PIs have been incorporated into three progressive levels of competencies at the FAA. For more information please see the portal. Curriculum and experience requirements are aligned with the competencies to define each of the three levels of FAA RECO/Realty Specialist certification (i.e. Level I, Level II and Level III) and also in accordance with Section 5 Acquisition Career Program of AMS policy. On a limited case-by-case basis, waivers for additional time to complete certification requirements may be granted. Waivers must be coordinated with the Acquisition Career Manager.

The FAA Acquisition Executive (FAE) delegates contracting authority to procurement and real estate Contracting Officers (COs) through a warrant. This warrant authorizes the employee to legally bind the FAA. Certification serves as the foundation for awarding warrants, as it ensures competence, experience and training requirements have been met and validated; therefore warrants for Level II and III are given after the RECO's manager determines the RECO/Realty Specialist has completed the appropriate level of certification. There is no warrant issued for achieving Level I certification.

6.2 Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) Certification Revised 1/2015

RECO/Realty Specialist must meet applicable training and experience requirements to qualify for Level I, II, or III certification. A waiver for additional time to complete certification requirements may be granted for Level II or III certification.

More information on the competencies, performance indicators, training and certification requirements can be found on the RECO Acquisition Professions Portal (FAA only).

6.2.1 Attaining Real Estate Contracting Officer/Realty Specialist (RECO/Realty Specialist) Certification Revised 4/2016

FAA Realty Specialist Level I Certification - The Level I Realty Specialist competencies and certification program is designed to ensure the development of basic and fundamental qualifications and expertise by the acquisition professional. Development at the Level I is the foundation for career progression and is designed to prepare qualified personnel to progress to positions of increasing responsibility.

At Level I, RECO/Realty Specialist should be exposed to the basic and fundamental real estate procedures and documents. The employee performs a progressive range of responsibilities. For further information see RECO Acquisitions Professions Portal (FAA only) for performance indicators at each level, including a variety of basic and/or routine real estate assignments under the close direction of a more experienced professional and/or manager or team lead. There is no warrant issued for achieving Level I certification. Level 1 Realty Specialists are prohibited from signing contracts or any other document that obligates the Government.

FAA RECO/Realty Specialist Level II Certification - At Level II, the focus is on the ability of the RECO/Realty Specialist to apply specific skills and knowledge obtained previously to consummate real estate transactions. A Level II RECO/Realty Specialist performs multiple, varying, and progressively complex real estate functions with limited direction. Some projects may require competence in working across functional and/or organizational lines. The Level II RECO/Realty Specialist acts as an individual contributor and/or member of a team and may perform leadership functions for small projects/programs or other work activities. The RECO/Realty Specialist also develops experience and demonstrates progressively advanced competence in planning and completing assignments. Level II certified RECO/Realty Specialist have a limited warrant based upon the manager's assessment of competencies, experience and completed training. Level II RECO/Realty Specialists granted warrants use the official title of "Real Estate Contracting Officer" when signing contracts.

FAA RECO/Realty Specialist Level III Certification - A Level III RECO/Realty Specialist should have an in-depth knowledge of the entire real estate acquisition process. The Level III RECO/Realty Specialist is considered a subject-matter expert in the discipline of real estate who provides leadership for highly complex and challenging activities with minimal direction. The Level III RECO/Realty Specialist may act as a principal specialist to develop new and innovative approaches, methodologies, and techniques, and as a leader to define and direct challenging projects/programs/activities. The Level III RECO/Realty Specialist identifies and resolves challenging problems or issues which often cross organizational boundaries and impact the accomplishment of strategic objectives. Level III certified RECO/Realty Specialist may be issued up to an unlimited warrant based upon the manager's assessment of competencies, experience and completed training. Level III RECO/Realty Specialists granted warrants use the official title of "Real Estate Contracting Officer" when signing contracts.

6.2.2 Maintaining Real Estate Contracting Officer/Realty Specialist (RECO/Realty Specialist) Certification Revised 4/2016

All RECO/Realty Specialists, regardless of whether they have a warrant or not (Level I/II/III),

are required to maintain technical proficiency through the successful completion of a minimum of 80 hours of continuous learning points (CLP) of real property training and development during the two year recertification period. Each hour equates to a continuous learning point (CLP). The RECO/Realty Specialist may accomplish the above requirement through participation in workshops, seminars, symposiums, online and classroom training as well as developmental opportunities to accumulate accredited hours towards CLPs.

All education, training and development information relating to RECO/Realty Specialist personnel is to be entered into the enterprise Learning Management System (eLMS).

Certification must be renewed every two-years. The FAA acquisition certification renewal application can be found on the RECO Acquisitions Professions Portal (FAA only) and is required for submission to maintain certification.

6.3 Real Estate Contracting Officer/Realty Specialist (RECO/Realty Specialist) Training and Development Added 1/2015

The ALO organization views training and development as a strategic investment in the workforce and seeks to:

- Use competency based, instructionally sound, and cost-effective methods that promote organizational learning.
- Promote employee career development efforts and build the knowledge and skills of the workforce necessary to increase organizational productivity and efficiency.

6.3.1 Training for Initial Certification Added 1/2015

The Acquisition Career Management (ACM) and Aviation Logistics Office (ALO) organizations have established required training for each level of Realty Specialist certification that can be found on the RECO Acquisitions Professions Portal (FAA only). All levels of RECO/Realty Specialist must submit planned training and development activities as part of the certification application process.

6.3.2 Training for Recertification or Job Specific Development Revised 4/2016

After the initial certification is issued, the RECO/Specialist is given a recertification date. All RECO/Specialists are required to recertify every 2 years including receiving a total of 80 CLPs as outlined in 6.2.2. Requests for specialized training to support continuing competency development or job specific duties can be made using the ALO Real Estate Training Course Request form which can be found on the RECO Acquisitions Professions Portal (FAA only).

The Real Estate Group Managers will forward signed request forms to the Aviation Logistics Organization, Planning, Policy and Performance Division (ALO-200).

6.3.3 Training Prioritization and Delivery Revised 4/2015

Upon receipt of ALO Real Estate Training Course Request, ALO-200 will input the data into a

spreadsheet with all of the fiscal year training requests. ALO-200 analyzes and prioritizes the aggregate Training and Development requests based on funding availability and organizational needs. On a monthly basis, aggregate analysis of the training requests will be reviewed with Group Managers to confirm the priority decisions for each RECO/Specialist individual training request in accordance with budget constraints and organizational priorities. Any changes made to priorities will be noted in the database.

The table displayed below summarizes how training requests for RECO/Specialists will be made based upon the receipt of the Training Request Form.

	Overview	Process	Benefits
Training for Initial Certification	RECO/S is assigned training in eLMS based on Certification Level When submitting Certification Application, any missing training is documented on the RECO/S Temporary Waiver for Training and Development	1. Each RECO/S is tagged in eLMS with the appropriate certification level (L I – L III). 2. A curriculum is assigned to each employee based on the Certification Level and RECO/S Temporary Waiver Request for Training and Development, if required. 3. As employees take the required training, courses move to completed status. 4. For external courses, employees provide certificate of completion to Learning Coordinator for recording in eLMS. 5. ALO-200 periodically runs reports to know number and location of employees requiring each course.	• Employees have a list of required training in eLMS • Allows ALO to better track required courses and more effectively plan for future courses
Recertification	RECO/S completes the RECO/S Recertification Training Request Form for training related to CLPs and Job Specific Competencies	1. RECO/s completes RECO/S Recertification Training Request Form and submits to Supervisor. 2. Supervisor reviews for alignment with employee's developmental plans and sends to GM for approval. 3. GM approves and submits to ALO-200. 4. ALO-200 consolidates and prioritizes results based on funding availability and organizational needs. 5. ALO-200 reviews summary priorities during monthly Real Estate Group Manager meetings. 6. Training will be approved based on funding availability and monthly meeting input.	• Allows ALO to better track training and travel budgets while minimizing Group Manager responsibility • Provides GM and RECO transparency with monthly updates

6.4 Real Estate Contracting Officer Warrants Revised 1/2015

6.4.1 Real Estate Contracting Officer/Specialist (RECO/Realty Specialist) Warrants Revised 1/2015

As mentioned above in Section 6.1, the FAA Acquisition Executive (FAE) delegates contracting authority to procurement and real estate Contracting Officers (COs) through a written certificate of appointment, also known as a warrant. This warrant authorizes the employee to legally bind the FAA. A warranted RECO cannot further delegate their warrant authority or "sign for" the name of another RECO. RECOs/Realty Specialists must prominently display the warrant

certificate to all customers and stakeholders.

6.4.2 Warrant Levels Revised 4/2016

Individuals must be certified and meet the training and experience requirements, as outlined in AMS Policy Section 5, Acquisition Career Program, to qualify for warrants. A waiver for additional time to complete required certification training may be granted. There are two real estate contracting officer warrant levels, Level II ($250K to $1M) and III (greater than $1M to Unlimited) that apply to contracting authority and are given after the RECO's supervisor and group manager determines they have completed the appropriate level of certification. There is no warrant issued for achieving level I certification. The warrant levels align with the RECO/S certification Levels II and III. These warrant levels do not apply to purchase card delegations. The initial warrant level for Level II is set at $250,000 and can be adjusted incrementally not to exceed $1M as recommended by the RECO's supervisor who then follows the process set forth below in Section 6.3.6 Procedures for Obtaining and Increasing Warrants. The Level III warrant level is set greater than $1,000,000 and can be adjusted incrementally to an unlimited level as recommended by the RECO's supervisor who then follows the process set forth below in Section6.4.6 Procedures for Obtaining and Increasing Warrants. If a waiver for additional time to complete certification training is granted, a warrant may only be issued at the minimum level ($250,000 for Level II and $1M for Level III). See RECO Acquisitions Professions Portal (FAA only) for more information.

6.4.3 Maintaining Warrants Revised 1/2015

To maintain one's warrant, FAA acquisition professionals must maintain the appropriate RECO/Realty Specialist certification levels by earning 80 continuous learning points (CLP) of skills currency training every two years. The appropriate Real Estate Group Manager shall monitor the continuous learning requirements of employees with delegated contracting authority (i.e., warrants). If an employee does not earn 80 CLPs every two years, the FAE may terminate or modify the warrant to decrease the dollar and/or specific type of transaction authority.

6.4.4 Limitations Revised 1/2015

Each warrant defines the maximum total dollar and scope limitations of the authority to obligate the United States of America acting by and through the FAA. Warrants may be limited or unlimited. A limited warrant states a total dollar limitation for each transaction. The transaction includes the total contract value, including the base year and all option periods. An unlimited warrant authorizes a contracting officer to execute transactions at any dollar value. In addition to the dollar value, limited and unlimited warrants must expressly state any limitations to delegated authority (other than limitations set forth in applicable laws or regulations) and state the specific type of real property transaction to which the RECO is authorized to obligate the FAA.

6.4.5 FAA Federal Acquisition Executive (FAE) Approval Revised 1/2015

All warrants must be approved by the FAA FAE prior to becoming effective.

6.4.6 Procedures for Obtaining and Increasing Warrants Revised 4/2016

(1) The request for a warrant or warrant increase must be prepared using the "Real Estate Contracting Officer Warrant Request" on the RECO Acquisitions Professions Portal (FAA only) by the employee supervisor who assesses the qualifications and readiness of the employee and submits the request to the Real Estate Group Manager. The employee's eLMS learning history, a copy of the current RECO/S certification certificate and RECO/S Temporary Waiver for Training and Development, if needed, must be attached to the warrant request form.

(2) The Real Estate Group Manager reviews the warrant request form, the RECO certification certificate and the eLMS history to ensure that the employee meets the training and experience requirements commensurate with certification level. If the Real Estate Group Manager concurs, he or she forwards the nominee's request to the Logistics Service Area Manager (LSAM).

(3) The LSAM reviews the request and supporting documentation for completeness and evaluates the applicant's acquisition experience, training, and evidence of certification. If the LSAM concurs, he or she signs the request and forwards the request to ALO-200 for review prior to being sent to the Director of Aviation Logistics Organization (ALO-1).

(4) The ALO-1 will review and forward the request with a recommendation to Acquisition Career Management (ACM) and then finally to the FAA Federal Acquisition Executive (FAE) who will issue a warrant.

6.5 Real Estate Development Forms Revised 4/2016

Forms useful for Real Estate Development are maintained on the RECO Acquisitions Professions Portal (FAA only).

7 LEGAL COORDINATION Added 10/2009

7.1 Legal Review of Real Property Actions Added 10/2009

As stated in AMS policy, legal coordination is required for: 1) all **non-competitive acquisitions of real property** having a total value exceeding $10,000; or 2) **all competitive real property acquisitions, including, but not limited to, new or succeeding leases, lease renewals, and lease modifications** having a total value over $100,000; 3) all condemnations, purchases and disposals of interests in real property; and 4) all additions and revisions, other than those revisions to correct typographical errors, to the published real property document provisions/clauses.

7.2 Introduction Added 10/2009

a. FAA acquisition actions can raise significant legal issues. For example, although pursuant to 49 U.S.C. §40110, Federal acquisition statutes and regulations are not applicable to FAA, other legal authorities require FAA to demonstrate a rational basis, supported by substantial evidence, for acquisition actions. In addition, FAA acquisitions are subject to the requirements of other statutes and regulations not directly related to procurement, such as certain labor, and historic preservation statutes and regulatory provisions.

b. Therefore, the responsible logistics service organization will coordinate real property actions with FAA Region or Center Counsel on an ongoing basis throughout the real property acquisition lifecycle. It is the responsibility of agency counsel to represent FAA's legal interests within the service organization and, exercising independent professional judgment, advise the service organization concerning legal issues, including the legality and integrity of acquisition actions, and to represent the service organization in litigation and other legal matters.

c. This Guidance establishes legal coordination as the agency practice for real property acquisition, disposal, condemnation or other real property matters.

7.3 Definitions Added 10/2009

a. As used in this Guidance, the term "agency counsel" means:

1. For real property acquisition matters arising at, or referred to, Headquarters, the Assistant Chief Counsel, Acquisition and Commercial Law Division, (AGC-520).

2. For real property life cycle matters arising at, or referred to, a Logistics Service Area (LSA) or Center, the responsible Regional or Center Counsel.

b. As used in this Guidance, the term "coordinates" means: soliciting the opinion and recommendations of agency legal counsel prior to awarding real property actions, and providing agency counsel accurate and complete information in sufficient time for thorough review and comment.

c. As used in this policy, the term "represent" means: stating the appropriate legal position with respect to a real property matter to the RECO and to the service organization, and, as appropriate, presenting this position to other parties, such as in administrative or judicial proceedings, or in communications, discussions, or negotiations with the RECO with another party.

7.4 Real Property Actions Coordinated with the Office of Chief Counsel (AGC-500) or Region or Center Counsel Revised 7/2014

The following actions will be reviewed in accordance with the legal coordination policy as set forth in 1.2.15 and 4.2.3.1 of AMS policy. Legal coordination is required for all non-competitive real property acquisitions exceeding a total value of $10,000 and for all other real property acquisitions, including, but not limited to, new or succeeding leases, lease renewals, and lease modifications having a total value over $100,000; all condemnations, purchases and disposals of

interests in real property, regardless of total value; and all additions and revisions, other than those revisions to correct typographical errors, to the published real property document provisions/clauses.

a. For purposes of this policy, the following would be considered "competitive real property acquisitions;" however, this list is not all-inclusive, and RECOs are advised to consult with Counsel if they are uncertain whether a real property acquisition (e.g., lease for land or space) is competitive:

- ☐ The RECO and/or Engineering Section and/or Program Office conducts a site-selection process with initial consideration of multiple (at least 2) sites owned by different entities that are then compared to the requirements of the Program Office and are eliminated from consideration for failing to meet one or more of those requirements ("down-selected"); provided that the RECO receives a written statement from a Source Selection Authority (SSA) or Engineer in the Program Office that includes a discussion of the site needs; the sites surveyed; and the reasons why a site was selected, or conversely, eliminated from consideration; See Single Source Justification Template.
- ☐ The RECO conducts a Market Survey for either land or space, completes a cost analysis (including a cost estimate to move a facility and/or equipment), obtains a Business Case, if appropriate, and determines it is in the best interest of the government to renew at an existing location; or
- ☐ All land leases with federal entities.

b. If the Real Estate acquisition is considered non-competitive, the RECO must provide a completed Single Source Justification Form for Regional or Center Counsel to review in order to determine whether the decision has a rational basis, and is otherwise legally supportable.

- ☐ Legal review is not required when exercising an option to renew or executing a succeeding lease at the same location where the RECO is either establishing a new lease term and/or a new rental price (as agreed in the previously negotiated option or negotiated new price in the succeeding lease) and no material (impact on delivery, performance, or scope of the lease) provision is changed. In such instances, the RECO is not required to complete the Single Source Justification Form. Examples of material change include adding more land/space to the lease, and changes to access rights. For additional clarification, please consult Regional Counsel.

c. The following types of real property transactions will be submitted for legal review and concurrence in accordance with the thresholds stated in Section 7.1.

1. Land Acquisition

- ☐ All Purchases of land, regardless of dollar value
- ☐ Quit Claim Deeds or Warranty Deed-In general, the United States does not accept Quit Claim Deeds, since a Quit Claim Deed does not guarantee that the owner has good and marketable title to the real property being conveyed. However, under certain circumstances; e.g., the Owner is another government entity and has no legal authority to convey real property other than by Quit Claim Deed, FAA may consider accepting a conveyance of real property by Quit Claim Deed.
- ☐ Off-airport leases (if the acquisition is non-competitive and valued at more than $10,000

or is valued at more than $100,000 and has been acquired competitively)

- ☐ On-airport cost leases (if the acquisition is non-competitive and valued at more than $10,000 or is valued at more than $100,000 and has been acquired competitively)
- ☐ Renewals for both Off and On airport leases

Space Acquisitions (subject to the thresholds mentioned in Section 7.1)

- ☐ Standard leases
- ☐ Small leases

2. Other Real Property Actions

All Condemnation actions, regardless of dollar value

- ☐ Acquisition of Eminent Domain
- ☐ Declaration of Taking

All Disposal actions, regardless of dollar value

- ☐ All disposal actions where FAA will be selling real property assets to a non-governmental entity and/or transfer agreements.

3. Supplemental Lease Agreements ("SLA") that meet the review thresholds are required to be submitted for legal review, unless the SLA is solely for the purpose of implementing rental increases that were negotiated during the initial acquisition, or to exercise an option to extend the term of lease that was negotiated during the initial acquisition. However, no option to extend the lease term may be exercised that would result in a term in excess of 20 years. In addition, if the SLA, although primarily executed to implement a previously negotiated rental increase or term extension, includes an amendment or modification to any other provisions or requirements of the underlying lease, the SLA must be submitted for legal review and concurrence.

4. **In addition**, any proposed deviations from, or additions to, the printed templates, including, but not limited to, the MOA, Outgrant, Antenna and Rack Space Lease, Utility Contracts and the Lease forms shall be approved by the Regional or Center Counsel prior to execution by the RECO. For purposes of this provision, it is not a deviation if the instructions to the templates give the RECO discretion to remove clauses. For all Utility contracts, the RECO will use discretion in requesting reviews if the deviation would clearly impact the rights and responsibilities of the parties.

- ☐ A determination to renew a lease for land if the RECO documents that no suitable alternative exists for this site and/or the facility and/or equipment cannot be relocated without an expense to the FAA that would outweigh the benefits of relocation

Any permanent, or universal, changes to the real estate clauses or forms will require the approval of the Assistant Chief Counsel for Acquisition and Commercial Law, AGC-520 and Planning, Policy and Budget Division, ALO-200.

7.5 Coordination between the Service Organization and Agency Counsel Added 10/2009

1. Each RECO must notify the appropriate Region or Center Counsel when he/she receives a PR or other formal request to initiate a real property action. As the project proceeds, the RECO will work with the Region or Center Counsel to determine if the project is a competitive action or a non-competitive action and the type of review that is required. During the transaction process, the Realty Specialist/RECO shall keep in regular contact with the appropriate Region or Center Counsel in order to ensure that all legal issues that arise are addressed as they occur.

2. It is recommended that the RECO use the same Region or Center Counsel throughout the real estate action to ensure continuity and consistency of legal support. However, in the event that unique legal or other questions arise during a real property action, the RECO may contact ALO-200 and/or AGC-520 for advice; provided that the RECO first informs the pertinent Region or Center Counsel of his/her intent to contact AGC-520 and the Region or Center Counsel concurs in the request. Concurrence to such request shall not be withheld unreasonably.

3.a. Region and Center Counsel will respond to the requesting RECO in a timely manner, with accurate and effective legal advice that is consistent with legal mandates and consistent with the agency's business discretion. Prior to award, the RECO must submit the project package (as described below in Section 7.6) to the appropriate Regional, or Center Counsel for legal review and concurrence if it meets the criteria stated in Section 7.1 or is one of the types of real property actions described in Section 7.4. C.2.

b. Region and Center Counsel will work with the RECO to establish a deadline for the receipt of legal review and comments and/or concurrence or non-concurrence. Unless otherwise determined necessary by the appropriate Region and/or Center Counsel due to their extent or depth, comments and/or concurrence shall be provided on the Legal Review and Concurrence form.

i.) The deadline for receipt of comments and/or concurrence or non-concurrence will not exceed a total of ten (10) working days, unless otherwise agreed to by the RECO and the appropriate Region or Center Counsel. Counsel will describe and interpret legal issues involved in the matter; identify and assess the legal risk of a particular proposed decision; evaluate alternative courses of action; and identify potential illegal or improper actions. In those instances where the appropriate Regional or Center Counsel is unable to meet the established review deadline, the Region or Center Counsel in conjunction with the RECO may seek review and concurrence from the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-520).

c. If the RECO receives a concurrence with comments from the Region or Center Counsel, the RECO does not have to resubmit the review package to the Region or Center Counsel. Rather, the RECO should address the comments provided and proceed with the acquisition, disposal or condemnation.

d. If reviewing Counsel non-concurs in the proposed action, the RECO shall address the issues raised by Counsel and resubmit the matter for review and concurrence within two (2) working days from the receipt of the non-concurrence. Reviewing Counsel will have three (3) working days from the date of submission of the revised documentation to

review and provide written comments and/ or concurrence and return the submission to the RECO. Once the RECO has received the concurrence from the Region or Center Counsel, he/she may proceed with the real property action.

4. Upon the receipt of legal counsel review and concurrence, the RECO will place the Legal Review and Concurrence Form in the real property action file with agency counsel's written opinion and recommendations.

7.6 Real Property Acquisition: Documentation Required to be Submitted for Legal Review

Revised 7/2012

The acquisition package submitted for legal review should demonstrate and establish that the acquisition has a legal and rational basis, and, at a minimum, must include the following:

a. A copy of the Lease versus Purchase Analysis, if applicable;
b. A copy of the Market Survey analysis or Solicitation for Offers (SFO) evaluation data, if applicable;
c. A copy of the Chief Financial Officer (CFO) review and approval if estimated value of lease is over $10,000,000 or more;
d. A current appraisal report, land survey and title report, if applicable;
e. A detailed description of the requirement;
f. The draft, or executed final version, of the Negotiator's Report; and
g. The final draft of the Lease document, with an explanation of any revisions to the standard clauses, if applicable.

The Legal Review and Concurrence Form shall be submitted with the other review documentation. The RECO may e-mail a scanned copy of the above-referenced documents to Region and Center Counsel for review.

7.7 Representation **Added 10/2009**

1. Agency counsel will represent the logistics service organization in any protest of an award or other procurement action, and in contract claims, disputes, or controversies by and against the FAA, including all meetings, negotiations with the RECO, discussions, or communications on the matter after an action has been filed in an administrative, judicial, or FAA forum.

2. Agency counsel will represent the logistics service organization on behalf of the FAA in communications, negotiations, and meetings with other parties touching upon the legal rights and obligations of the parties, or where another party, including a government party, is expected to be represented by legal counsel.

7.8 Exceptions and Waivers **Added 10/2009**

At Headquarters, the Assistant Chief Counsel for Acquisition and Commercial Law (AGC-520), and at Regions and Centers, the Region or Center Counsel, may make **written** exceptions to this

coordination policy described in Section I, adjust dollar minimums, or in appropriate cases, waive the coordination. All blanket exceptions shall be coordinated with ALO-200 and AGC-520. All other case by case or Logistics Service Area issues shall be coordinated between the Logistics Service Area Real Estate Manager and Regional or Center Counsel.

8 Housing Added 10/2011

The purpose of the FAA Housing program is to provide housing for FAA employees supporting the National Airspace System (NAS) who are working in remotely located areas where commercial housing is not available. The guidance follows the mandate in OMB Circular A-45 and must be followed for the acquisition, management and disposal of FAA owned or leased housing facilities. These provisions are applicable to all Lines of Businesses (LOB) and organizational elements having a requirement for and using FAA housing quarters.

8.1 Applicability Revised 1/2015

The purpose of the FAA Housing program is to provide housing for FAA employees supporting the NAS who are working in remotely located areas where commercial housing is not available. These employees will be offered housing quarters that are either owned or leased by the FAA. This policy follows the mandate in OMB Circular A-45 as stated below,

"It is the policy of the Federal Government to rely on the private housing market to provide housing for its civilian employees. If there is no requirement of service or protection or if there is no lack of available housing, as discussed in OMB Circular No. A-11, Preparation and Submission of Budget Estimates, subsection 12.5(n)(2) and (3), agencies must not acquire additional rental quarters." (OMB Circular No. A-45, Section 5- POLICY).

And

"Subsidies, inducements prohibited. Federal employees whose pay and allowances are fixed by statute or regulation may not receive additional pay and allowances for any service or duty unless specifically authorized by law. 5 U.S.C. section 5536. Consequently, rents and other charges may not be set so as to provide a housing subsidy, serve as an inducement in the recruitment or retention of employees, or encourage occupancy of existing Government housing."

This guidance must be followed for the acquisition, management and disposal of FAA owned or leased housing facilities.

Therefore, all requests for the construction or leasing of new housing, and/or the improvement and rehabilitation of existing housing must be presented to the Air Traffic Organization (ATO) and address the impact of status quo, what is the cost comparison of constructing, and what is the cost of leasing. The request should then be coordinated with the Air Logistics Organization (ALO) Real Estate Policy, Procedures and Budget (ALO-200) Office for implementation for implementation. For further information regarding new Housing Acquisitions, see Section V.

All FAA Housing Quarters rental rates are established in accordance with OMB Circular No. A-45 and will be appraised by Department of Interior National Business Center Quarters Office and managed by managed by the Air Logistics Organization (ALO) Real Estate Policy, Procedures and Budget (ALO-200) Office. These provisions are applicable to all LOBs and organizational elements having a requirement for and using FAA housing quarters.

8.2 Roles & Responsibilities Revised 10/2015

This section outlines the major roles and responsibilities of offices within the FAA LOBs to implement the FAA housing program. This listing is not all-inclusive.

A. **Aviation Logistics Organization (ALO)**

1. **Aviation Logistics Organization, Real Estate Policy, Procedures and Budget (ALO-200)** is responsible for managing the national housing program by establishing housing policy for ARC Real Estate Contracting Officers to implement. In addition, ALO-200 appoints the National Housing Manager and Internet Quarters Management Information System (iQMIS) Quarters Manager.
2. **ALO-01** has designated the three (3) Logistics Service Area Managers as the Housing Representative for ARC/ALO.
3. **Logistics Service Area Manager (LSAM) or Deputy LSAM** is the Housing Representative for ALO in the Logistics Area and coordinates all employee housing activities within or outside the agency.
4. **National Housing Manager** is designated the principle housing officer for the FAA. Also serves as voting member on Department of Interior Housing Council, ensures that budgeting for and payment of the iQMIS annual bill is timely and accurate, and responds to housing inquiries related to rents.
5. **iQMIS Quarters** Manager is designated the housing officer responsible for updating and validating iQMIS data for all Service Areas. The iQMIS Quarters Manager inputs data regarding FAA's housing inventory into the iQMIS database. In addition, the iQMIS Quarters Manager:
    - Receives and validates reports provided by the Department of the Interior from the iQMIS system.
    - Validates Sample Plans for Regional Rental Market Surveys submitted by the Department of the Interior.
    - Receives rental rates for housing quarters from Department of the Interior, National Business Center, and implements rents in iQMIS.
    - Issues annual tenant rental notices and adjustments in compliance with OMB Circular A-45 to all tenants occupying permanent quarters.
    - Issues of payroll deductions, arrears, overages, and collections will be coordinated by the iQMIS Quarters Manager between FAA HR, the PLS Liaison, and DOI.
    - Coordinates and develops FAA specific iQMIS training for Tenant Managers, CORs and other FAA employees, as directed, by the National Housing Manager.
    - Assists the National Housing Manager in developing national housing policy. Updates time sensitive housing information in iQMIS at the request of the Service Area Group Manager when Service Area Tenant Managers are unavailable.
6. **Tenant Manager** is the housing officer designated by the Service Area Manager to be

responsible for entering tenant data, managing housing assets, and providing housing documents to LOB Housing Contracting Officers Representatives (COR). In addition, the Tenant Manager:

- Adds and deletes tenants in iQMIS.
- Prints and transmits required iQMIS documents to the LOB Housing Contracting Officer's Representative (Housing COR).
- Coordinates arrivals and departures with the LOB Housing COR and ensures iQMIS tenant data is accurate.
- Sends tenant rental information to the Service Area Payroll Liaison Specialist (PLS) when FPPS/iQMIS automated interface is inoperable.
- Maintains Service Area Housing File Folders.

7. **Real Estate Contracting Officer (RECO)** is designated by the Service Area Manager and is responsible for the following:
    - The RECO acquires and disposes of housing quarters.
    - For leased quarters, the RECO works with the Lessor to correct performance deficiencies as well as ensuring the lease clauses are met. LOB field manager (Housing COR) or representative is responsible for the assignment of the housing quarters. At no time will the RECO become involved with housing assignments at the local level, or employee matters that rest with the LOB managers.
    - Requires funded PR from the LOB prior to initiating the acquisition of additional leased housing.
      RECO ensures that all housing quarters assets are listed in the Real Estate Management System (REMS).

B. **Air Traffic Organization (ATO)**

1. **Housing Contracting Officer Representative (Housing COR)** or local FAA housing designee is appointed by ATO and is responsible for the local housing program, who once designated, will be issued a COR appointment letter signed by the Tenant Manager or RECO. These are agency employees whose duty assignments place them in the vicinity of employee housing locations on a frequent or day-to-day basis.
    - The Housing COR shall be appointed in accordance with all applicable policy and must complete the required on-line and person-to-person training as outlined within the Acquisition Management System (AMS).
    - The Housing COR must conduct on-site inspections of employee housing units with ATO Manager at least once every three years and will provide appropriate documentation to the iQMIS Quarters Manager for rent calculation and real property inventory purposes.
    - The Housing COR will handle management of day-to-day functions of FAA housing in the area including but not limited to:
        - Immediately advise Tenant Manager of tenant occupancy/vacancy and submit completed paperwork. Also maintains record of current tenant agreements and inventory listings for each unit as well as other pertinent information. Preparing and forwarding required reports to the Tenant Manager and iQMIS Quarters Manager..
        - Housing COR is responsible for conducting move-in/out inspections and

inventory with tenants and for maintaining appropriate paperwork to document such inspections.
    - Resolution of problems arising from occupancy and operations, and inform the Tenant Manager.
    - Advising the Tenant Manager/RECO of all pertinent actions.
    - Housing COR will assist the Tenant Manager and iQMIS Quarters Manager in gathering market data and providing pictures, prices, and other information for the purposes of acquiring new housing, or for making the determination to remain in existing housing.

2. **ATO Service Center Manager** is responsible for ensuring the budget requests have been forwarded to headquarters for the construction, maintenance and upkeep of the housing inventory. They are also responsible to help resolve any employee issue related to the condition, maintenance and upkeep of the housing unit. They should notify the ALO LSAM, Tenant Manager and RECO of any adverse situations that arise with respect to the FAA housing. Housing Managers will retain notification in the file. ATO Service Center Manager is also responsible for coordinating with ALO Logistics Housing Representative for the collection of payment for damages to housing, posting eviction notices, and responding to Congressional inquiries on housing. **ATO Manager (SSC or other ATO Manager as appropriate)** is responsible for reviewing, coordinating and securing necessary approvals of all project documents involving housing. Other responsibilities include:
    - The ATO Manager will develop and prepare, in coordination with Program and Requirements who will coordinate with the ATO Service Area Tech Operations Director, annual estimates for funding the construction, maintenance, repair, and upkeep of the employee housing inventory located in their Service Area. Actual budget submissions will be the responsibility of the ATO Service Area in accordance with annual budget submission procedures.
    - The ATO Manager will also maintain for record purposes copies of both Facilities and Equipment (F&E) and Operations annual budget submission.
    - ATO Manager will designate a project manager or site representative for housing construction, repair, and improvement projects per assigned project. (Upon request from the RECO, the Project Manager on behalf of the ATO Manager shall submit the annual report identifying the number, condition, and information on the status of the project.
    - ATO Manager may designate a representative or the Logistics Management Specialist (LMS) may inspect the housing units using the forms as outlined in IV. “Forms & Documentation.”
    - ATO Manager will provide funding for RECO travel for housing inspections, **subject to the availability of appropriations**. In the event that there are insufficient funds to pay all travel-related expenses, the Housing Manager shall assign sufficient funds to pay all travel-related expenses, the Housing Manager shall assign the inspection to the COR, subject to the review and approval of the inspection report by the Tenant Manager or RECO.

C. **Service Area Housing Oversight Committees**

Service Area Housing Oversight Committee(s) shall consist of LSAM, Group Manager,

Tenant Manager, RECO and ATO Service Representative, AT Flight Service Representative, Flight Standards Representative, and Human Resources (HR). This committee will be formed in the service areas that have employee housing. This committee shall meet as needed to discuss and resolve housing issues arising in the Service Areas.

8.3 Types of Housing Units Revised 10/2015

A. FAA has three types of housing units, which are described below:

1. **Permanent Quarters** are for those positions designated by ATO that need to be remotely located on a permanent basis. Employees pay rent based on a Regional Rental Market Survey which is adjusted annually for changes in the Consumer Price Index (CPI) and utility costs. Family members and dependents may occupy quarters if they are reported on the FAA Application for Government Housing.
2. **Transient Quarters** are provided for unscheduled occupancy by employees when they are dispatched for preventive maintenance, facility restoration, one-time projects, or intermittent use by Flight Standards. These quarters can only be occupied by the employee while on official business. Family members, dependents, and pets are prohibited. Rent is not charged.
3. **Rotational Quarters** are those occupied by employees who are assigned to a duty station on a regular, but not constant, basis such as week on, week off ATO employees. These quarters can only be occupied by the employee while on official business. Family members, dependents, and pets are prohibited. Rent is not charged.

B. FAA Owned/Leased- The housing units in FAA's portfolio are either leased or owned by FAA:

1. FAA owned housing is maintained by the ATO Technical Operations Organization.
2. If no other government housing is available to meet the needs of FAA employees in a particular location, and/or FAA does not have a long term requirement for housing that would justify construction of new housing, the FAA may lease housing units for its employees. FAA leased housing units are maintained by the lessor as specified in the Employee Assignment Agreement, DOI 1881.

8.4 Forms & Documentation Revised 1/2017

This section provides a description of all mandatory forms applicable to the use and occupancy of FAA housing. These forms apply to both owned and leased housing. Copies of these forms may be found in the Real Estate Templates section of AMS or are generated directly from the iQMIS software. All other pertinent documentation will be maintained by designated ARC Point of Contact (POC) and ATO POC.

Inspection & Inventory Form is used for Move-In and Move-Out Inspections as well as any other Inspections required. This form must be on file for each tenant.

Government Housing Assignment Agreement (DI form 1881) is generated by iQMIS and is

required to be signed by each tenant and the Government's Housing Representative (Housing COR) at Move-In. The DI-1881 shall be updated following surveys and rental adjustments.

Government Housing Tenant Rent Notice (DI form 1882) is generated by iQMIS and is required to be signed by each tenant at move-in, and following surveys and rental adjustments.

FAA Payroll Deduction for Rent of Employee Housing Request and Authorization Form is generated by iQMIS, certified by the Tenant Manager, and is transmitted to the HR Payroll Liaison Specialist (PLS) when an employee moves-in, moves-out, and following surveys and rental adjustments (only used when the FPPS/iQMIS interface is in blackout status or off-line).

FAA Application for Government Housing is used to request occupancy of Government Quarters and to document the number of occupying dependents and their relationship to the Government sponsor (Tenant employee).

Housing Work Request Form is used to track all repair, maintenance, upgrades, or the addition of other improvements to employee housing.

Dwelling Unit Clearance Form is used upon Move-Out Inspection to document that the tenant has complied with the Terms of Occupancy Agreement and that no assessment of charges is required for restoration of quarters beyond normal wear and tear.

Oversized/Inadequately Sized Unit Composition Form is used only in the event if housing available at the time of occupancy is limited to one of the following inappropriately sized units:

- **a.** Oversized: The only available unit has more space than required by the employee's circumstances and there is no commercial rental market available in the area.
- **b.** Inadequately Sized: The only available unit has less space than required by the employee's circumstances and if there is no commercial rental market available in the area.

In such cases, the tenant must sign the Oversized/Inadequately Sized Unit Composition Form stating he/she will relocate at their own expense, to an appropriately sized unit if and when one becomes available; and if the tenant chooses to decline the relocation, they will agree to pay the full rental rate of their current unit. The ATO District Manager must sign and date the form. The ATO District Manager may also recommend an adjustment amount (0%-10%) to compensate for the improper size. A signed copy is sent to the Tenant Manager for retention. The Tenant Manager will notify the iOMIS Manager to issue the adjustment effective the date of the ATO District Manager signature.

No Phone Available Certification Form is used to document inadequate phone service at the housing unit. Form should be updated each time a new tenant initially checks in to the unit and annually thereafter.

Federal Tenant Brochure and CPI Adjustment Memorandum are provided to each employee when he/she checks in to housing and annually thereafter for the duration of occupancy. This document provides detailed information on the process of setting rental rates. In addition the Federal Tenant Brochure, includes points of contact, and the appeal

rights of tenants.

Other Related Housing Documentation:

- ☐ **Real Estate File Checklist**
- ☐ **Inspections**
- ☐ **Correspondence**
- ☐ **Investigations of Tenant Damage to Quarters & Bills of Collection**
- ☐ **Rental Documentation**
- ☐ **Miscellaneous**

8.5 New Housing Acquisition Process Revised 10/2015

In accordance with AMS Policy, in order to begin the new housing acquisition process, all new housing requests must be sent to the appropriate Logistics Service Area Real Estate Division/RECO. The request must include an approved Purchase Request (PR).

The acquisition process will take a minimum of 30 days to complete once the written request described in the immediately preceding paragraph has been received.

ATO appoints the Housing Contracting Officers Representative (Housing COR) and the Tenant Manager or RECO assigns the Housing COR duties through a letter of appointment. The RECO may request that the Housing COR assist in locating and inspecting potential housing units, and to provide pictures, prices, and other information to assist the RECO in making a final selection decision. After a unit has been selected, the RECO will finalize contract/lease terms and conditions and acquire the unit.

The Housing COR is responsible for conducting the initial walk through inspection/inventory of the unit and will sign off on acceptance of the keys thereto. New tenants must sign the Government Housing Assignment Agreement (DI 1881), Government Housing Tenant Rent Notice (DI form 1882), and should receive a copy of the inventory prior to moving in.

8.6 Housing Administration Revised 1/2017

This section describes the basic standards and guidelines FAA has established for the day-to-day management and administration of the FAA housing program. These standards and guidelines may be supplemented by Service Areas in order to ensure effective housing management.

A. **Day-to-Day Operation**

On-site housing management functions will be performed by the ATO Employee appointed as the Housing COR. In addition to the roles and responsibilities cited in Section II, housing management functions include:

1. Administration and assignment of FAA housing, maintenance of records, and the

development and implementation of additional rules and policies pertaining to tenants as necessary.

2. In coordination with ARC/ALO/ATO, the ATO employee on-site shall establish a schedule of, and guidelines for, periodic on-site inspection of FAA quarters and related buildings, grounds, streets, and utility systems for livability and appearance.

3. The Housing COR shall ensure that appropriate Fire/Life Safety inspections occur on a regular basis.

B. **Standards for Occupancy**

1. Subject to the availability of appropriate and adequate housing in a particular geographic location, family size and composition will govern the assignment of quarters. If there is only an oversized/inadequately sized housing unit available at the time of occupancy and there are not commercial rental market in the area, the tenant can submit the Oversized/Inadequately Sized Composition Form described in AMS 8.4.

2. The following standards will be applied by ARC, ATO, and ALO in determining adequate size when utilizing the oversized/inadequately sized composition form: the minimum size for a single individual is one bedroom and one bath; the minimum size for a family of two individuals (this can be employee and spouse or two unrelated individuals) is two bedrooms and one bath; each unrelated adult should have a bedroom and a bath if one is available.

3. Regular occupancy of permanent housing will be restricted to the assigned employee and his immediate family. Rotational and Transient (RTH) housing units may only be occupied by the employee while on official business; dependents are not authorized in RTH housing. Request to house persons in permanent quarters other than the employee and his immediate family will be considered by ARC, ALO and ATO on a case by case basis, provided that the employee submits the required documentation supporting the request. (See Terms of Occupancy Agreement for further information.)

4. It is not FAAs intent to assign housing to non-FAA employees, but rather to utilize FAA's housing inventory effectively for its own employees. In the event that occupancy by non-FAA personnel is requested, a reimbursable agreement that meets all of the requirements in AMS must be executed by the parties and submitted with the request.

C. **Instructions to Tenants**

Tenants will be provided written instructions regarding occupancy (see Government Housing Assignment Agreement DI form 1881), which shall include the following:

1. While occupying FAA housing, Tenants will conduct themselves at all times in a manner that reflects positively on the tenant and the Government.

2. Owners of pets will ensure that pets are not a nuisance and do not create unsanitary conditions in and around quarters. Non-domesticated and exotic pets are not permitted in

FAA housing. Pets are not permitted in Rotational and Transient (RTH) quarters unless they are Service Animals. Premises are subject to inspection anytime. At the time of inspection, the FAA can determine whether the pet has damaged the premises beyond what would be considered normal wear and tear. If this determination is made, tenant is expected to remediate the condition within 10 days at their own expense. After 10 days, the ATO manager or Housing COR will return to verify remediation. If the condition has not been remediated, the ATO manager has the authority to perform such remediation and contact the tenant for payment (Reference C(1) and Section F of 8.6 for additional information).

3. Tenants will keep the unit and grounds clean, sanitary, and orderly, and will do nothing to lay waste to the property.

4. Any loss or damage to water pipes, toilets, drains, electrical devices, fixtures or other Government property will be reported by the tenant to his ATO manager immediately.

5. Tenants are prohibited from assigning or subletting any part or portion of the premises.

6. Tenants of permanent housing units may invite relatives and close friends as house guests for visits of up to 30 days in any twelve month period. Extended visits in excess of 30 days must be approved in writing by the ATO Manager and the tenant (employee) will be required to update their FAA Application for Government Housing Form to include the gust. The approval process shall evaluate factors such as the duration of the employee's assignment, employee morale, community impact, cost, and other pertinent factors.

7. In other than exigent or emergency circumstances, tenants will permit the FAA, its agents or employees, to enter the premises upon appropriate notification, at reasonable hours in order to inspect the premises, make repairs, or take such other action as may be necessary and reasonable. In the event of such emergency or exigent circumstances, the Government may enter the housing unit without prior notice and may inspect it and undertake all actions it determines necessary.

8. Tenants will report any change in marital status or family composition to the Housing COR who will require the tenant (employee) to update his/her FAA Application for Government Housing Form, who will notify the Service Area Tenant Manager. Such change in marital status or family composition may affect the tenant's eligibility for continued use and occupancy of the premises.

9. Tenants, members of their household, and guests will comply with all statutes, rules, regulations, and policies promulgated with respect to Government/FAA provided housing, to include granting access to FAA management and maintenance personnel.

10. Tenants will be personally responsible and liable for all damage to and/or loss of Government property caused by the intentional or negligent acts or omissions of the tenant, members of the tenant's household, the tenant's agents, the tenant's pets, and/or invited guests. The tenant may also be subject to disciplinary action, up to

and including termination of employment.

11. Tenants will not make any alterations to the premises or the equipment contained therein without prior written approval of the ATO Manager, and then only subject to the limitations and conditions under which approval is granted.

12. Tenants on extended leave or temporary duty at another location will continue to be charged for quarters and related facilities unless permitted to vacate quarters for occupancy reassignment for the duration of such leave or temporary duty. For purposes of this provision, the duration of the extended leave or temporary duty cannot be not less than sixty (60) days.

13. No method of heating or cooling other than as supplied by FAA or the Lessor will be used by the tenant without the advanced written approval of the ATO Manager.

14. Tenants will not use or keep hazardous, flammable or explosive materials on the premises, except those items normally found in private residences, such as cigarette lighter fluids or cleaning fluids.

D. **Rental Rates and Collections**

Rent calculations for payroll deductions are calculated using the QMIS, developed and maintained by the Department of Interior (DOI) through the National Business Center (NBC). This system is used to establish rental rates for all civilian employee residential quarters throughout the Government. The policies and procedures for establishing rents are detailed in OMB Circular A-45.

For additional information, visit the NBC website.

1. Rent Collections will be coordinated by the ALO Tenant Manager through the Payroll Liaison Specialist (PLS) in the Service Area or automated FPPS/iQMIS interface.

2. The effective dates for commencing and terminating billings for the collection of rent and related charges will normally be the same as the premises' assignment dates and termination dates in iQMIS, respectively, which are documented on the Federal Aviation Administration Payroll Deduction for Rent of Employee Housing Request and Authorization Form generated by the iQMIS and transmitted to the PLS.

3. In FAA leased Housing, the FAA is the Lessee and the Property Owner/Manager is the Lessor of the unit. The unit is assigned to an employee/occupant who is considered the assignee. The rental paid by the employee to the FAA via payroll deduction on a bi-weekly basis is based on the DOI QMIS process, which takes into account information such as physical characteristics of the unit assigned (i.e. size, age, appliances, services, etc.), employee eligibility (e.g. dependents), and other information about the unit itself.

4. Base rental rates are subject to change based on annual Consumer Price Index (CPI) revisions provided by the DOI QMIS process. The "baseline" regional rental survey usually is conducted by DOI every four years. The tenant will be notified in writing at

least 30 days in advance of any CPI or "baseline" rental survey rent adjustment. A new Terms of Occupancy Form will be required when rates are revised pursuant to a "baseline survey." The tenant will pay the annual applied CPI adjustments without the need for a new Agreement to be executed.

5. Temporary adjustments to the rental amount and temporary housing may be approved as necessary due to lack of basic necessities, damage to units, etc., resulting from natural disasters or other causes as approved by the Tenant Manager and coordinated with the iQMIS Quarters Manager.

6. Any change in marital status or family members living with tenant shall be reported promptly by the tenant to the COR by submitting a revised FAA Application for Government Housing, which will be submitted to the Service Area Tenant Manager.

E. **Appeal of Rental Rates Adjustments**

1. FAA employees may appeal their rental rate after an Annual Rental Market Survey or CPI Adjustment, but only if they submit their "Request for Reconsideration" within thirty (30) days of notification. In addition, new market based rents must be disputed in the year the survey is implemented. Tenants should submit documentation with their request for reconsideration to their ALO Tenant Manager who will forward through the LSAM to the National Housing Office.

F. **Liability for Loss or Damage**

1. In lieu of a security deposit, tenants will be held financially responsible and subject to disciplinary action, for loss or damage to FAA quarters, furnishings, and equipment, resulting from their negligence or willful misconduct and will be required to pay for all repairs, restoration or replacement (normal wear and tear, acts of God or the elements, excepted). Refer to FAA Order 3750.A, Conduct and Discipline, Section 205. The Housing COR will conduct the final checkout inspection to determine if any damages are found.

2. If disciplinary action is required or contemplated, the matter will be referred through appropriate supervisory channels for further action.

3. If pecuniary liability is assigned to the employee, the following will apply:
    - Charges will be assessed for the cost of repair or replacement, less a reasonable allowance for depreciation or salvage value, as appropriate, when the tenant agrees to voluntary restitution. The tenant and Payroll Liaison Specialist will be notified by the Tenant Manager in writing of the charges to be assessed within 60 days of the reported loss or damage.
    - When the tenant does not agree to voluntary restitution, the matter will be referred to the LSAM for the required coordination and further action. Notice will be given to the tenant of the action to be taken. In the meantime the rent charges will continue via payroll deductions until such assessed damages are collected resolved and Dwelling Unit Clearance Form is issued.

4. Damaged Government-owned household furnishings and equipment will, in all cases, be retained by the Agency until it has been determined by the surveying Property Management Officer that it is no longer needed for investigative purposes. Unless a determination is made to repair and retain the damaged articles in service, such damaged property, or salvage, will be disposed of as provided in accordance with the FAA Process and Procedure Guide, Utilization and Disposal of Excess and Surplus Personal Property.

G. **Household Furnishings**

1. Government provided household furnishings in quarters shall not be removed by tenant or replaced by privately owned furnishings. In instances where special or custom furniture-- e.g. a bed-- is required for health conditions (obesity is a health condition) , permission must be obtained in advance and in writing from ATO Manager and arrangements for storage of the provided furniture must be made with the COR. A furniture inventory will be conducted upon check-in (move-in) to the housing unit.

2. In leased units, since FAA enters into real estate lease contracts with various and multiple owners, the leased premises may or may not include furnishings. In such case, the tenant will be required to provide furniture.

3. Waterbeds are prohibited.

4. Any storage of personal furnishings will be at the occupant's expense.

5. Tools and equipment for grounds care may be made available on loan by the ATO manager to the extent that the tenants are unable to procure items locally. Normally, ATO is responsible for grounds maintenance.

H. Property Inspection

FAA owned or controlled housing units will be inspected whenever there is a change of tenants (move-in/move-out) and at such other times as necessary.

- ☐ Occupants will be notified at least 24 hours in advance of the inspection.
- ☐ Results of the inspection will be documented.
- ☐ The Housing COR and other appropriate ATO representatives will take appropriate actions to correct any reported deficiencies.

1. <u>Initial Inspection</u> of housing assignments will be preceded by a detailed inspection by the Housing COR or their representative and tenant. Occupancy of permanent housing shall not begin until the Inspection & Inventory Form and Government Housing Assignment Agreement (DI form 1881) is signed by all parties. The original forms will be kept by the Housing COR and copies sent to the Tenant Manager and a copy given to the tenant.

2. <u>Routine Inspections</u> shall be conducted by the appropriate ATO Manager or designee prior to initial occupancy and not less than annually to determine the condition of Government-provided furnishings/ appliances, and to ascertain the general overall

appearance and condition of the quarters, grounds, and structures. An Inspection & Inventory Form shall be completed or updated as necessary during inspections.

3. Final inspection will be conducted within 7 days of vacating of the premises by the employee and prior to issuance of a Dwelling Unit Clearance Form. Please see prior section- Liability for Loss or Damage-- for further information regarding collection of rents and issuance of the Dwelling Unit Clearance Form.

4. If multiple inspections of the premises are required (i.e. Fire, Life, Safety, general inventory/inspection, etc.), they should be coordinated between the appropriate personnel to minimize impact on tenant.

I. Termination of Housing Assignment

1. The Housing COR or ATO Manager will notify the ALO Tenant Manager when housing assignments are changed within Five (5) days of the date the Manager knew of the change.

2. The tenant shall provide written Notice of Intent to Vacate permanently assigned housing at least 30 days in advance of terminating occupancy of the premises. The vacating date will be noted on the Inspection & Inventory Form and Terms of Occupancy Agreement. A Dwelling Unit Clearance Form will not be issued until all outstanding obligations have been met by the tenant. Rent deductions will continue until this form is issued.

3. The tenant may be subject to eviction from the assigned housing if tenant does not observe and comply with the established rules and regulations or violates the Terms of Occupancy Agreement. Eviction action will be initiated only with the approval of the Service Area Housing Oversight Committee. Action recommended under this provision will include full documentation setting forth:
    - Reason(s) for recommended tenant eviction;
    - Proof that the tenant had previously been furnished a written copy of rules and regulations concerning occupancy at the time quarters were assigned;
    - Documentation establishing that appropriate humanitarian consideration has been given to the effects of the eviction on the tenant and his family; and
    - Other supporting information having a direct bearing on the case.

4. Tenants whose employment is terminated by FAA will vacate assigned housing at the ATO Manager's discretion, not to exceed 14 calendar days after the effective date of the termination notice. Individuals who remain in Government housing after they are no longer employees must make arrangement to pay the daily rental rate for the housing unit. The local ATO Manager approving the occupancy is responsible for contacting the ALO Tenant Manager for the daily non-federal rental rate and collecting any rent owed to the Government.

J. Transient Quarters

Housing units set aside for the use of employees on temporary duty are subject to all of the

applicable regulations set forth in the Acquisition Management System. In addition:

1. Linen, cleaning, and janitorial service will be provided by the FAA to the extent possible and subject to the availability of appropriated funds.

2. Household kits (dinnerware, utensils, pots and pans, coffee maker, etc.) are to be provided in units for temporary occupancy.

3. The employee's per diem does not include lodging.

4. Employees utilizing transient housing are required to complete the Transient Housing Occupancy/Vacancy Request form. The form shall be forwarded to the ALO Tenant Manager after occupancy to determine length of stay.

5. Dependents and guests are not authorized in transient quarters.

K. **Excess Housing**

ATO will notify ARC to request the disposition of real property. The RECO has the authority to dispose of airport and airway properties. The process of disposition of housing begins when the RECO receives a copy of the Real Property Disposal Report in accordance with Real Property Guidance, Section 5.