

Chapter 11. Contracts, Leases and Agreements

§1101. Joint Use Agreements

A. Elements of the Lease

1. At the initiation of the lease, DOTD's real estate section will estimate the fair market lease value of the property. That value will be utilized in determining the amount charged as a rental fee. At the conclusion of a five-year term, the market value of the leased property will be reassessed. If the lessee chooses not to renew the lease and pay the revised fair market value as a fee, the lease shall expire.

2. DOTD property that is "excess," or that was expropriated through unfriendly negotiations will not be eligible for lease. DOTD "excess" property shall be disposed of in accordance with R.S. 48:224 and EDSM Number I.1.1.10, and shall not be leased.

3. Property that bears improvements constructed with public funds will not be eligible for lease for a period of 20 years from the date of completion of said improvements.

4. Preference in use of right-of-way is as follows:

- a. highway purposes;
- b. drainage purposes;
- c. legal street connections purposes;
- d. legal driveway connections purposes;
- e. utilities purposes;
- f. joint use (lease) purposes.

5. Preference for availability of joint use leases shall be given to the following entities, in the following order:

- a. governmental bodies using the property for the general public and generating no revenue;
- b. governmental bodies;
- c. the land owner from whom the property was expropriated;
- d. adjacent land owners;
- e. general public.

6. Title and control of the area of right-of-way involved will remain with DOTD.

7. Subleasing is prohibited without the prior written consent of DOTD.

8. Use of property shall be in accordance with local building and zoning ordinances and/or codes.

9. DOTD may terminate the lease agreement at any time and require lessee to vacate the premises and remove all improvements. Improvements not removed by lessee within 30 days may be removed by DOTD at lessee's expense.

10. The lease shall be subordinate to any existing agreements between DOTD and other parties affecting the leased property.

11. Illegal activities on the premises conducted by lessee are prohibited and shall trigger automatic termination of the lease.

12. All heavy commercial activity and the serving of alcohol are prohibited on the leased premises.

B. Application Procedure

1. Parties interested in leasing state right-of-way must contact the headquarter's utility and permit engineer at the permit office of DOTD.

2. The applicant must submit, in writing to the headquarter's utility and permit engineer, a proposal detailing the use of the property including a location description. The headquarter's utility and permit engineer will distribute copies of the proposal to the district office and other appropriate parties within the department.

3. DOTD will investigate proposed highway improvements in the area and the viability of leasing the property.

4. If a lease agreement is viable, then the applicant must submit:

- a. a layout map of the requested area showing DOTD right-of-way, including a metes and bounds description;
- b. a written metes and bounds description of the area labeled as "Exhibit A";
- c. detailed plans showing any improvements to be placed on the premises including structures, type of material used, appearance, fences which may be required, and any other pertinent information, labeled "Exhibit B";
- d. vertical clearance between area to be used and bottom of overhead structure.

5. DOTD's real estate section will estimate the fair market lease value of the property.

6. If more than one party is interested in leasing the same parcel of property:

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a. DOTD shall first attempt to facilitate a cooperative endeavor agreement between the parties, so that the property can be shared;

b. if a cooperative endeavor is not possible, then §1101.A.5 shall be utilized to select a lessee;

c. if two or more parties tie for top choice, then DOTD shall initiate a bidding process as follows:

i. all parties will be informed of the bid situation and given 30 days to prepare bids;

ii. DOTD shall designate a date to receive sealed bids;

iii. the headquarter's utility and permit engineer shall open all bids on the same day;

iv. bids more than 10 percent below the estimated fair market value shall be rejected. All bids for uses that the headquarter's utility and permit engineer deems prohibited, inappropriate, or inconsistent with use of the property by DOTD shall be rejected. If any bids remain, the lease shall be awarded to the highest bid. If no eligible bids remain, then the bid process may be repeated. If there are still no eligible bids, then all proposals shall be discarded. In the event of a tie, the tied parties will be allowed to toss a coin to determine the winning bidder.

7. DOTD performs all required reviews of the request, including an environmental assessment. The applicant may be required to submit corrected and/or additional information.

8. Once the submittal is complete and correct and the environmental clearance is issued, the request is given final approval by the headquarter's utility and permit engineer.

9. The request is then submitted to the Federal Highway Administration (FHWA) for review and becomes effective upon the concurrence of FHWA.

NOTE: FHWA concurrence is not required for some state routes.

C. Improvements

1. No improvements or alterations, including landscaping, shall be made upon the premises without written approval of DOTD.

2. The improvements and the property must be maintained by the lessee in good condition. Maintenance must be accomplished so that there is no unreasonable interference with the transportation facility.

3. All plans for construction of any improvements must be reviewed and approved by

DOTD. Preliminary plans must be submitted with the initial application.

4. At the conclusion of the lease, all improvements must be removed leaving the property in its original condition. In special cases improvements may remain with written consent from DOTD, provided there is no expense to DOTD.

D. Maintenance and Inspection

1. The lessee shall, at its sole expense, keep and maintain the premises at all times in an orderly, clean, safe, and sanitary condition.

2. If proper maintenance is not performed, DOTD reserves the option to cancel the lease or perform the maintenance and obtain reimbursement from the lessee.

3. The lessee shall maintain the premises at the lessee's own expense, including all driveways, fences, and guardrails, subject to the approval of DOTD. The lessee shall be liable for reimbursement to DOTD for any damage to DOTD property.

4. On-premise signs, displays, or devices may be authorized by DOTD, but shall be restricted to those indicating ownership and type of activity being conducted in the facility, and shall be subject to reasonable restrictions with respect to number, size, location, and design.

5. Inspections of the property may be performed by a DOTD representative to assure compliance with all the rules set forth in the lease. DOTD specifically reserves the right of entry by any authorized employee, contractor, or agent of DOTD for the purpose of inspecting said premises, or the doing of any and all acts necessary on said premises in connection with protection, maintenance, painting, and operation of structures and appurtenances. DOTD reserves the further right, at its discretion, to immediate entry upon the premises and to take immediate possession of the same only in case of any national or other emergency and for the protection of said structures; and, during said period, lessee shall be relieved from the performance of all conditions of the agreement.

6. All structures shall be of fire resistant construction as defined by the applicable building codes, and will not be utilized for the manufacture of flammable material, or for the storage of materials or other purposes deemed by the DOTD or Federal Highway Administration to be a potential fire or other hazard to the highway.

7. The lessee shall secure all necessary permits required in connection with operations on the

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premises and shall comply with all federal, state, and local statutes, ordinances, or regulations which may affect the lessee's use of the premises.

E. Liability of Lessee

1. The lessee shall occupy and use the property at its own expense, and shall hold DOTD, its officers, agents, and employees, harmless from any and all claims for damage to property, or injury to, or death of, any person entering upon same with lessee's consent, expressed, or implied.

2. The lessee shall carry liability insurance to indemnify claims resulting from accidents and property damage, which coverage shall be extended to include the facilities authorized in this agreement, to provide for the payment of any damages occurring to the highway facility and to the public for personal injury, loss of life and property damage resulting from lessee's use of the premises. DOTD shall be named as an additional insured and proof of such required insurance shall be provided to DOTD prior to occupancy. The insurance company and lessee shall notify DOTD, in writing, at least 30 days prior to cancellation of changes affecting the required insurance coverage.

F. Credit Check and Security Deposit

1. DOTD may require a credit check.

2. A security deposit may be required at the discretion of the DOTD.

G. Payment

1. Payment will be due on the first day of every year. If the lease begins in the middle of the year, the rent will be prorated for that year according to the number of days remaining in that year.

2. At the discretion of DOTD, payment may be due on a monthly basis.

3. Payments must be made by check, money order, or certified check.

4. If a lessee submits a bad check for payment, he will no longer be allowed to pay with personal checks. Future payments must be made by certified checks or money orders.

H. Governmental Entities

1. The fees may be waived for governmental entities if there is no revenue derived by the use of the property.

2. If the revenue generated is not sufficient to cover operating expenses and the joint use fee, the rent may be reduced to 10 percent of the gross revenue.

AUTHORITY NOTE: Promulgated in accordance with R.S. 48:381.1.

HISTORICAL NOTE: Promulgated by the Department of Transportation and Development, Office of Highways/Engineering, LR 24:1135 (June 1998).