

Airport Lease Agreements and Land Release Procedures Guide



Tennessee Department of Transportation
Aeronautics Division
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Airport Lease Agreements and Land Release Procedures

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I. Overview

Airports are an important part of our overall transportation system in Tennessee. The long term coordinated development and compliance with agreed to state and federal obligations are a critical part of the facilities management and operation. When you, as the airport owner, accepted funds to improve your airport, you agreed to abide by the assurances associated with that grant. Several of the Grant Assurances deal with leasing of facilities, use of airport land and general airport operations.

Certain mandatory clauses are necessary when the airport owner desires to lease, sell land or obtain an aviation easement or when airport facilities are leased for aviation or non-aviation purposes. It is important to note that leasing, sale or use of airport property for non-aviation use requires FAA approval prior to the release or action (see Section III for further information regarding airport land). Several of the mandatory lease clauses contained in this information pertain to other types of airport agreements or leases, so it is important that you review each lease clause to see which one applies.

Notably, you should always review the Grant Assurances (or Terms and Conditions for State Grants) to ensure that any lease agreement is not in conflict with the requirements of these documents. Obligating "Grant Assurances" can be found attached to the latest federal grant agreement for your airport, or you can access the latest version at the www.faa.gov website. State/local grants only have what is known as "Terms and Conditions."

II. Airport Lease Agreements

a. Airport Leases

There are a variety of leases or agreements developed for airport facilities.

- Full service aeronautical service providers (generally known as Fixed Base Operators or FBO)
- Specialized aeronautical service providers: avionics shop, aircraft maintenance shop, air charter service shop, paint shop, ag operations and flight school
- Scheduled or commuter airlines
- Concession facilities (restaurant, vending machines)
- Non-aeronautical service providers
- Aircraft hangar leases—existing buildings, T-hangars
- Aircraft tie down leases
- Ground leases for privately built hangars or facilities
- Excess airport land leased for farming
- Weather Bureau leases
- FAA facilities leases
- And many others

b. The Process

Review ALP

The first step in considering any airport related proposal, such as a facility lease agreement, an airport property land release request or proposed on-airport aeronautical development (e.g. – new aircraft hangar) is to review the Airport Layout Plan set (ALP) developed for the airport. The airport board, committee or authority and/or airport manager should review the proposal to ensure that it is consistent with the ALP plan adopted by the community for the development of the airport. NOTE: The ALP set is a large-sized multiple page set of drawings (24" x 36"), typically including the Airport Layout Drawing (ALD), Terminal Area Drawing, Airspace Drawing, Inner and Full Approach Area Drawings, Land Use Drawing and a property map.

The ALP set provides you with a starting point to determine if the proposal would conflict with any future airport development. It is just as important to review the ALP set when you are preparing an airport facilities lease agreement as it is when you are considering a proposal for future airport development.

Review Grant Assurances and Obligations

Following the review of the ALP (provided that the proposed development is consistent with the ALP), you should scrutinize your files to determine your last federally funded airport improvement grant. Associated with the grant are the "Grant Assurances" which you, as the airport owner, agreed to abide by. Your duty is to ensure that the lease agreement will not conflict with any of the Grant Assurances. You also may want to review any local ordinances relating to structures or utility agreements on your airport.

Review Other Agreements

At this point, it is also important to consider other airport agreement/document provisions that might apply. Typically, a General Aviation airport should develop and maintain several important airport management/operational type agreements (or documents). That list includes a set of Minimum Standards for both full and specialized Aeronautical Service Providers, Airport Rules and Regulations, an Aeronautical Service Provider lease(s), an Airport Management (manager) Agreement, hangar leases, a ground lease for private hangar development, agricultural leases, tie down leases, facility and fuel system leases.

Review Rates and Charges Document

Every airport also needs to create an airport Rates & Charges Schedule. This schedule should identify the current lease rental rates and charges for a variety of airport facilities including hangar space, terminal space, tie downs and other buildings. It should be posted and referenced in all lease application materials. Other examples of rate changes include the current rate for renting a T-hangar or space in a large storage hangar, the going ground lease rental rate (both aviation and non-aviation land) and fuel flowage fees.

Create

The next step would be to develop (if you haven't done so already) a standard lease for the aeronautical activity to be conducted on the airfield. Your airport attorney should be consulted for assistance in developing airport leases and agreements. Additional resources information can be found at the Federal Aviation Administration's (FAA) website, www.faa.gov. At this website, search for copies of Advisory Circulars on airports, "Exclusive Rights and Minimum Standards."

Other types of leases may be necessary depending upon the aeronautical activity being proposed. Examples could include leases associated with aviation museums/aircraft restoration companies, weather service offices, specialized aviation training facilities, FAA facilities and so forth. Most of these types of agreements incorporate ground lease provisions and/or facility rental conditions. In both cases, they will contain some of the other clauses discussed in this information.

Structures

If the proponent is considering constructing a structure on the airport, he/she should also be advised of the ground lease agreement provisions and requested to provide the airport owner with information regarding FAA Form 7460-1, "Notice of Proposed Construction or Alteration." If after reviewing the proposal, both the proponent and the airport owner concur on the proposed development, ask the proponent to complete the 7460-1 form and attach a sketch of the proposed structure showing building orientation, heights, distance from pavements, etc. FAA Form 7460-1 is used for any proposed on-airport development (hangars, Navaids, towers, etc.) or if applicable, off-field construction meeting the requirements as outlined in the form instructions. This form can be found at the faa.gov website. It is suggested that the airport sponsor (owner) ask the building proponent to submit to them all necessary development paperwork (e.g.--local permit, insurance or bonding information, etc.) and the signed 7460-1 form. Once received the airport sponsor should submit this data (along with a scan of the 7460-1 form and any associated sketches/drawings) into the FAA website for review and comment. This way the FAA (and state) will be assured that the airport sponsor is aware of and concurs with the proposed development.

The form and your sketch provide the State and Federal Aviation Administration (FAA) with the information needed to evaluate the proposed development and comment on its potential impact on existing airport surfaces and facilities. Following review of the submittal, FAA issues an airspace determination letter to the State who then forwards a copy to the proponent. If the airspace determination letter is issued with a favorable outcome, the next step would be to obtain any necessary local permits and execute a lease agreement. If the airspace determination letter lists issues to be addressed, the airport sponsor must address those issues outlined in the letter. A copy of the executed lease agreement should be reviewed annually and properly filed for future reference.

NOTE: If you are considering leasing or selling airport property for non-aviation related use, contact the Tennessee Department of Transportation, Aeronautics Division, prior to any action with the property. FAA/sponsor grant agreement obligations associated with airport property may remain in effect as long as the facility is operated as an airport.

c. Specific Leasing Requirements

General

Regarding rental rates, FAA is unilaterally opposed to excessively low (or no) rent for land or facilities which in a sense belongs to the public, regardless of whether it is considered aviation or non-aviation land use.

“Public lands will not be made available for private enterprise without obtaining a fair market return. No private individual or firm has a right to the use of publicly funded airport land for personal gain without paying their fair share of the maintenance, development and operation of the facility. Having invested substantial public funds in the capital airport plant, the public owner and the FAA have thereby created a business opportunity for privately owned aviation services and non-aviation uses which otherwise would not exist. Therefore, the sponsor has both a right and obligation to command a reasonable return on his/her investment.”

Further, a no rent or excessively low rent lease (aviation or non-aviation) will not meet the requirement of the Sponsor's Assurance contained in current grant agreements, which reads in part:

"Sponsor will maintain a fee and rental structure consistent with Assurances 22 and 23 for the facilities and services being provided the airport users which will make the airport as self-sustaining as possible under the circumstances existing at that particular airport, taking into account such factors as the volume of traffic and economy of collection."

A fair market rental value (historically 8% to 12% of fair market value) should be assessed for grounds within the leasing area. The fair market rental value of land to be leased should be determined by an acceptable market analysis, usually formal appraisals. Such leases must bring a fair market return to the airport.

As an alternative to or in addition to charging a fee for all land under lease, many airport owners are charging a percentage of the gross income of the fixed based operator (FBO). This method may result in a fair return on the land and allows the airport to grow as the FBO grows. Regardless of the rates or methods used, they must remain non-discriminatory. (This will be further addressed in the escalating clauses section.)

Please note, fuel flowage fees are considered a pass through actually paid by aircraft operators and therefore, are not considered applicable to rent. A fuel flowage fee should be applied equally to all airport tenants, whether commercial or private. Further, the fee should be applied to all fuel delivered to the airport for economy of collection.

Leasing of aviation facilities for non-aviation purposes should include a clause indicating that if the space is needed for aviation related activities, the sponsor has the right to terminate the lease, giving aviation activities preference.

FAA Approved Airport Layout Plan (ALP)

An approved ALP, required by federal statute, depicts the entire property, identifies the present facility and the plans for future development. The ALP reflects agreement between FAA and the airport owner as to the proposed allocation of areas of the airport to specific operational and support functional usage. Thus, the ALP becomes the controlling instrument in both aviation and non-aviation development. As it relates to leasing, it readily identifies those areas that may be leased to conduct non-aviation enterprises.

d. FAA Mandatory Clauses

i. Escalation Clauses

Since the annual cost of satisfactorily operating and maintaining an airport will most likely increase throughout the term of the lease, provisions should be made to ensure that fair market rental value rates remain current throughout the life of the lease. Accordingly, rental rates should be adjusted at a minimum of five-year increments. An escalating clause or other means of automatic adjustment must be incorporated into long term leases. A local, state or federal cost of living index can be utilized as the basis for determining the increase. The following is a sample clause:

"Lessor and lessee recognize and agree that the purchasing power of the United States dollar is evidenced by the _____ (Name of appropriate index). In (date) and every five years thereafter, the parties hereto will compare the price index for said year with the price index for (state year the lease is executed), and the annual rental payments shall be increased (or decreased) in the same proportion as said price index has increased (or decreased) with the price index for (state the year the lease is executed)."

Other Acceptable Methods of Adjusting Lease Rates

"This lease shall be subject to review and re-evaluation at the end of each _____ year period by the airport owner, and the rent may be adjusted according to their action, not to exceed the Consumer Price Index rate during the _____ month period." or

"Landless improvements will be appraised every five years, and the adjusted rental will be based on ___percent(normally 10-12%) of appraised value. If disputed, lessor obtains appraisal at his own expense, and lessor/lessee equally shares expense for review appraisal that establishes fair market value."

Consideration may be given relating to percentages of gross sales, etc. Due to escalating land values in the southeast over the previous years, many leases of this nature fail to command a fair market rental rate throughout the life of the lease if the airport is located in a high growth area. Caution should be used when entering into this arrangement.

ii. Non-Discrimination

"The tenant for himself, his personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree that (1) no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over or under such land and the furnishing of services thereon, no person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination, (3) that the tenant shall use the premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally Assisted Programs of the Department of Transportation-Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations may be amended.

iii. Non-Discrimination

"That in the event of breach of any of the above non-discrimination covenants, the airport owner shall have the right to terminate the lease and re-enter as if said lease had never been made or issued. The provision shall not be effective until the procedures of Title 49, Code of

Federal Regulations, Part 21, are followed and completed, including exercise or expiration of appeal rights."

iv. Airport Protection

a. Right of Flight or Noise

"It shall be a condition of this lease, that the lessor reserves unto itself, its successors and assigns, for the use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the real property hereinafter described, together with the right to cause in said airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the said airspace, and for use of said airspace for landing on, taking off from or operating on the airport."

b. FAR Part 77 Height Restrictions

"That the Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the hereinafter described real property to such a height so as to comply with Federal Aviation Regulations, Part 77."

c. Creation of Hazards

"That the Lessee expressly agrees for itself, its successors and assigns, to prevent any use of the hereinafter described real property which would interfere with or adversely affect the operation or maintenance of the airport or otherwise constitute an airport hazard."

v. Subordination (Property Rights Reserved)

"This lease and all provisions hereof are subject and subordinate to the terms and conditions of the instruments and documents under which the airport owner acquired the subject property from the United States of America and shall be given only such effect as will not conflict or be inconsistent with the terms and conditions contained in the lease of said lands from the airport owner, and any existing or subsequent amendments thereto, and are subject to any ordinances, rules or regulations which have been, or may hereafter be adopted by the airport owner pertaining to the _____ Airport."

vi. Exclusive Rights (Required in Aviation Leases Only)

"Notwithstanding, anything herein contained that may be, or appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this agreement are non-exclusive and the Lessor herein reserves the right to grant similar privileges to another Lessee or other Lessees on other parts of the airport."

LEASE REVIEW SUMMARY

AIRPORT _____ DATE _____

LESSEE: _____

LOCATION ON AIRPORT _____

(attach sketch or property survey information)

TERM: _____ YEARS WITH _____ OPTION(S) OF _____ YEARS(s)

(YES) (NO):

_____ CONSISTENT WITH APPROVED AIRPORT LAYOUT PLAN

_____ LEASE IS ENVIRONMENTALLY COMPATIBLE WITH
AIRPORT OPERATIONS.

APPRAISAL:

1. APPRAISAL DATED _____ REFLECTS CURRENT FMV.
2. FAIR MARKET RENTAL VALUE REFLECTS _____% OF FMV.
3. RENTAL \$ _____ PER _____ (MONTH)(YEAR)
4. OTHER (% OF SALES, ETC.) _____

MANDATORY CLAUSES:

- A. _____ ESCALATION
- B. _____ NON-DISCRIMINATION
- C. AIRPORT PROTECTION:
 _____ RIGHT OF FLIGHT/NOISE
 _____ FAR PART 77 HEIGHT RESTRICTIONS
 _____ CREATION OF NO HAZARDS
- D. _____ PROPERTY RIGHTS RESERVED
- E. _____ EXCLUSIVE RIGHTS (AVIATION LEASES ONLY)

I, _____, HAVE REVIEWED THE ATTACHED LEASE AND CERTIFY THAT THE LEASE MEETS THE REQUIREMENTS SET FORTH BY FAA. I FURTHER UNDERSTAND THAT FAILURE TO SUPPORT FAIR MARKET RENTAL VALUE OR TO COMPLY WITH THE REQUIRED CLAUSES COULD JEOPARDIZE FEDERAL FUNDING.

SIGNATURE

PRINTED NAME

TITLE

RECOMMENDED CLAUSES (NOT MANDATORY, NO SAMPLE CLAUSES PROVIDED):

- | | | |
|--|------------------------------|----------------------------|
| A. USE DEFINED | B. SUBORDINATION | C. TAX RESPONSIBILITY |
| D. MAINTENANCE & REPAIR | E. INDEMNIFICATION | F. INSURANCE REQUIREMENTS |
| G. SUBLEASES | H. INSPECTION OF PREMISES | I. DEFAULT |
| J. DELINQUENT PAYMENTS | K. SEVERABILITY | L. DAMAGE ASSESSMENT PROC. |
| M. MEDIATION | N. OWNERSHIP OF IMPROVEMENTS | |
| O. LESSOR'S INTEREST (NOT SUBJECT TO LESSEE'S LIENS) | | |
| P. DEVELOPMENT STANDARDS FOR FACILITIES | | |

III. Airport Land Release

The Process

As noted in the overview section of this information, when you as an airport sponsor or airport authority (owner) accepted a federal grant to improve the airport, you also agreed to abide by a set of grant assurances, terms, conditions that accompanied the grant offer. Several of the conditions and/or assurances relate to the leasing or release of airport property, including the fact that the airport owner will not sell, lease, encumber or otherwise transfer or dispose of any part of its title or other interests in the property without approval by the Secretary.

Generally, if you lease airport property for an aviation related activity, you should review Section II of the guide and the Federal Aviation Administration (FAA) Grant Attachment entitled "Terms and Conditions of Accepting Airport Improvement Program Grants" for your airport. Particular attention should be given to Section IV C paragraph 31, Disposal of Land.

If you desire to release land (an example would be a small piece of airport property needed for a roadway project), or if you want to lease some airport property for a non-aviation related business, then you need to prepare an Airport Land Release or Non-Aviation Lease Proposal for FAA review and approval. Follow the checklist included in this section in preparing your land release or non-aeronautical lease proposal.

FAA Airport Compliance Manual, Order 5190.6B, Chapter 22, Releases from Federal Obligation, should be consulted prior to considering any land release request. This chapter discusses the laws, regulations, policies, and procedures pertaining to sponsor requests for release from federal obligations and land use requirements. All leases and agreements must comply with this order.

The order starts off by stating the following:

“Any property, when described as part of an airport in an agreement with the United States or defined by an Airport Layout Plan (ALP) or listed in the Exhibit “A” property map, is considered to be “dedicated” or obligated property for airport purposes by the terms of the agreement.”

It then goes into a discussion about FAA release considerations for granting approval, the different types of federal obligations and ways in which the various conditions and circumstances can affect the type of release.

Next is a discussion about a sponsor seeking approval of a request, but not release, to make “concurrent use” of airport land. A request of this kind from the sponsor would be to designate airport property for a compatible non-aviation activity while at the same time, the property serves the primary purpose for which it was acquired. Examples of this type are easements and agricultural uses.

The chapter’s release process discussion then proceeds to give guidelines for numerous different types of full and partial land release situations, each of which require a different release approach depending upon the many special situations and circumstances. Release of property other than land and release of an entire airport is also covered.

The first step in considering any land lease or release request for airport property is to review the Airport Layout Plan set (ALP) developed for your airport. Airport property boundaries and ownership are shown on a drawing known as the airport "Exhibit A" property map. There may or may not be an updated copy of this drawing associated with the last ALP set update. If not, then there should be a stand-alone Exhibit "A" drawing available for the airport.

Checking the airport "Exhibit A" and the ALP set should provide you with a starting point to determine if the proposed land lease, land release or proposed development involving airport land is consistent with planned future airport development. Your airport board/authority and/or airport manager should be consulted regarding the ALP or any on-airport development. Be sure to consider whether or not the proposed development will constrain, limit or otherwise disrupt any current airport operations or near-term development and long range airport plans.

Following the review of the ALP (provided the proposed development is consistent with the ALP), you should scrutinize your files to determine your last federally funded airport improvement grant. Associated with the grant are the "Grant Assurances" which you as the airport owner (sponsor) agreed to abide by in accepting the grant. Your duty is to ensure that the lease agreement associated with a land lease or land release will not conflict with any of the Grant Assurances.

At this point, contacting the Tennessee Department of Transportation, Aeronautics Division, to discuss your land use proposal is a good idea. Next, look at the Airport Land Release Checklist included with this section of information. You should prepare three copies of a land release or non-aviation related airport land lease proposal discussing the items listed in paragraph 3A.

Forward the three copies to the Tennessee Department of Transportation, Aeronautics Division, for coordination with the Federal Aviation Administration. About 120 days from the date of your submittal, you should receive a response (either favorable or non-favorable) regarding your proposal.

Airport Land Release Checklist

Airport property acquired with federal funds or airport property shown on your Airport Layout Plan or "Exhibit A" property map may be tied to the "Terms and Conditions" of federal grants issued to support development of your airport. Any time an airport owner desires to dispose of, lease airport property (for non-aeronautical use) or give up title to (e.g. – a land swap or property exchange), a written approval from the Federal Aviation Administration (FAA) is required. In order for the FAA to evaluate either of the actions mentioned above, a written proposal (3 copies) must be prepared. Please follow this checklist in preparing your proposal.

- ___ 1. Review your Airport Layout Plan (ALP) to ensure that property will not be needed for airport development.
- ___ 2. Review airport property documents to determine when property was purchased and with what kind of funds; state, federal, local.
- ___ 3. If the property is currently shown as part of the ALP or on your "Exhibit A," a property release from the Federal Aviation Administration may be necessary.

Follow the instructions below for requesting a federal land release.

A. Property Release Cover Letter and Supporting Documents (proposal) –

I. Cover Letter

- Cover letter on airport owner letterhead describing the property in question and the desire to obtain FAA concurrence on land release.
- Cover letter should include a statement that the land disposal has been coordinated with or is a result of a request from the airport owner or airport administrative board/authority and include attachments of any comments from each entity.
- Include a statement that the land is no longer needed for aeronautical purposes.
- The cover letter should be accompanied by an Airport Layout Plan drawing, showing land to be released. This drawing serves to graphically explain or depict the area and effect on the airport.

II. Property Appraisal

- Provide a fair market appraisal value of property conducted by qualified appraiser.
- Describe the present condition/present use of land. The use of pictures might be of help here!

III. Description of Proposed Land Use, Use of Revenues and Proposed Lease Agreement

- What will be done by airport with proceeds from sale. (Note - Proceeds must be used for airport purposes).
- What agreements with the United States are involved? (i.e. land to be released was acquired under what grants - give grant number). Check your "Exhibit A" property map and supporting documents for land acquisition information.

Airport Land Release Checklist (Continued)

Prepare and submit three copies of the cover letter and supporting documents (proposal) to the Tennessee Department of Transportation, Aeronautics Division, for coordination with the FAA.

- ___ 4. If the land release is approved, it will require a 30 day run as a Federal Register Notice. (Note – This step will be completed by the FAA prior to the issuance of any land release approval letter).
- ___ 5. Review the necessary property statement clauses to be included as part of the property documents. (Refer to Section II – "Lease Agreements" for details)

Following receipt of approval letter.....

- ___ 6. If the proposal involves the construction of a structure or other development (e.g. roadway) then a FAA 7460-1 Form, "Notice of Proposed Construction or Alteration" should be submitted 60 – 90 days before the start of construction. Contact TDOT – Aeronautics Division for a copy of this form.
- ___ 7. A pen and ink change should be made to your current ALP set for future reference. A copy of the approval letter you receive should be maintained with the ALP set and an additional copy placed with your "Exhibit A" airport property drawing.

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