

--oo00oo--

MANUAL 900-1

SECTION 02.10

LEASES

--oo00oo--

BUREAU OF MANAGEMENT ANALYSIS AND PROJECTS

1. Purpose

The purpose of this procedure is to ensure consistency with respect to the review and issuance of leases for real property under the jurisdiction of the New York State Canal Corporation (Corporation).

2. Applicable Law and/or Guidance

New York State Canal Law §55, §56, §57, §138-b and §138-c

New York State Finance Law §139-j, §139-k

New York State Public Authorities Accountability Act of 2005

New York State Public Authorities Law §382

New York State Constitution

New York State Canal Recreationway Plan

Canal Real Property Management Policy (25-6-01C)

Executive Instruction entitled Inappropriate Lobbying Influence In Authority/Corporation Procurements

3. Introduction

The Corporation is responsible for the maintenance, operation, construction, reconstruction, improvement, development, financing and promotion of the Canal System and for implementation of the New York State Canal Recreationway Plan (CRP). In accordance with the provisions of the Canal Law, the Corporation has the authority to acquire, hold and dispose of real property to advance the purposes of the Corporation and thus, the interest of the State. Real property transactions include, but are not limited to, acquisitions, sales, leases, grants of easements and the issuance of permits.

The Corporation may enter into leases of: real property under the jurisdiction of the Corporation; Canal terminal real property; and Canal terminals in accordance with Article VI-A of the Canal Law. Real property under the jurisdiction of the Corporation within the Adirondack Park may not be leased. Leases are considered disposals under the Canal Real Property Management Policy and are also subject to the Public Authorities Accountability Act of 2005.

Lease rental rates shall be based on fair market value as determined by appraisals or other means, except in limited circumstances. The Corporation shall use a competitive process open to the public for all Transactions, except in limited circumstances described in SOP-TRANSACTION ANALYSIS PROCESS (900-1-02.1). Where a competitive process is not required, the annual lease rental rate or fee will be market based.

Where a lease is contemplated, as determined by the completion and approval of the TRANSACTION ANALYSIS/RECOMMENDATION (TAR) form (TA-N99116), unless otherwise authorized by the Executive Director, no permits will be issued in advance of completion of the lease. See SOP-WORK PERMITS (900-1-02.8) and SOP-OCCUPANCY PERMITS (900-1-02.7).

The Board shall approve all leases under the Corporation's jurisdiction, except as otherwise delegated. Leases may need to be resubmitted to the Board in the following circumstances:

- If the lease is not completed within one year of Board authorization, the proposed lease will be resubmitted to the Board.
- If the circumstances change following Board action and the approved terms and conditions cannot be followed, the proposed lease must be resubmitted to the Board for reconsideration.
- If the background information about the lease presented to the Board changes in any material way, the Executive Director, in consultation with the Contracting Officer, will determine whether the item should be resubmitted to the Board.
- If a Board approved transaction cannot be progressed, a report must be provided to the Board detailing the reasons that the item is not being progressed. In limited circumstances as determined by the Executive Director, in consultation with the Contracting Officer, an item may be submitted to the Board withdrawing the prior authorization.

4. Procedure

4.1. Processing the Proposed Lease from an Applicant Inquiry

- 4.1.1. If the proposed lease is initiated by the Corporation and there is no applicant, go to Section 4.2.

Upon receipt of an inquiry for the lease of real property under the jurisdiction of the Corporation, the Division Canal Engineer (DCE) will follow SOP-TRANSACTION ANALYSIS PROCESS (900-1-02.1) to record the inquiry and send out the application package.

Upon receipt of the completed application, the Division Secretary will assign a Project Reference Number, forward the application fee and appraisal and survey deposit to Finance for deposit, and send a receipt to the applicant.

Note: Once a Project Reference Number has been assigned, it should be indicated on all subsequent correspondence associated with the proposed lease (e.g., transmittal forwarding checks to Finance, receipt sent to applicant, etc.).

- 4.1.2. The DCE will complete the TAR form and the review and approval process will be done in accordance with SOP-TRANSACTION ANALYSIS PROCESS (900-1-02.1). If the proposed lease is rejected at any point during the review and approval process, the Office of Land Management (OLM) will send a REJECTION LETTER¹ notifying the applicant and will coordinate with Finance the refund of the appraisal and survey deposit. A copy of the letter and original TAR are kept by OLM in the Project Record, and copies of each are sent back to the DCE for placement in the Division file. The procedure stops here.
- 4.1.3. Following approval by the Contracting Officer on the TAR form, a LEASE REVIEW LETTER² will be sent to the applicant from OLM stating that the lease application will be progressed through a negotiated process or that a competitive process is required.
- 4.1.4. For a lease where the estimated real property value is greater than \$15,000, see Executive Instruction entitled INAPPROPRIATE LOBBYING INFLUENCE IN AUTHORITY/CORPORATION PROCUREMENTS for requirements.
 - 4.1.4.1. For a negotiated lease, the LEASE REVIEW LETTER shall identify the “official contacts” for the Corporation and shall indicate that the “restricted period” will commence upon the date the applicant receives the LEASE REVIEW LETTER.

1 Exhibit 1

2 Exhibit 2

- 4.1.4.2. For a competitive process, the LEASE REVIEW LETTER will indicate that the “restricted period” will begin with the request for proposal (RFP) or auction advertisements, and that the “official contacts” for the Corporation during the disposal process will be identified in the RFP or auction advertisement.

4.2. Processing a Canal Initiated Proposed Lease

Where the proposed lease is Canal initiated and there is no applicant, the DCE will complete the TAR form and the review and approval process will be done in accordance with SOP-TRANSACTION ANALYSIS PROCESS (900-1-02.1). If rejected, OLM places the original TAR and a note in the Project Record and send a copy of both to the DCE for placement in the Division file. The procedure stops here. If the proposal to dispose of the real property via a lease is approved by the Contracting Officer on the TAR form, the necessary processes for completing the transaction would continue.

4.3. Review of the Proposed Lease

- 4.3.1. Unless exempt, the Canal Recreationway Committee (CRC) must review and provide its recommendation on the lease. The CRC will review the proposed lease pursuant to its procedures set forth in SOP-CANAL RECREATIONWAY COMMISSION (900-1-02.3).
- 4.3.2. If the CRC determines that the proposed lease is inconsistent with the CRP, OLM sends the determination to the Director of Canals for review. If the Director of Canals concurs with the determination, the proposal may be rejected, revised as necessary to be consistent with the CRP, or progressed with supporting justification. If rejected, OLM will send a REJECTION LETTER⁺ notifying the applicant and coordinate with Finance the refund of the appraisal and survey deposit, and the process would stop here. OLM will also send a copy of the letter to the DCE.
- 4.3.3. If the CRC determines that the proposed lease is consistent with the CRP, the process would continue. Where a survey and appraisal are required, OLM will follow SOP-APPRAISALS AND SURVEYS (900-1-02.4). In most cases, the survey should be completed prior to the appraisal.

+ Exhibit 1

- 4.3.4. OLM will provide the Canal Real Property Management Committee (CRPMC) with a complete lease application package that includes materials listed in the CRPMC LEASE PACKAGE CHECKLIST¹. The CRPMC will review the proposed lease and make a recommendation, including any modifications and/or conditions. OLM will review, and as appropriate, incorporate any modifications and/or conditions recommended by the CRPMC.
- 4.3.5. If the CRPMC rejects the proposed lease, OLM will send a REJECTION LETTER notifying the applicant, and coordinate with Finance the refund of the appraisal and survey deposit. OLM will also send a copy of the letter to the DCE and the process would stop here.
- 4.3.6. If the CRPMC recommends that the lease be progressed, the Director of Canals or the Contracting Officer will keep the Board apprised of the proposed lease, including when an explanatory statement is required. If an explanatory statement is required for a negotiated lease, OLM will coordinate the preparation and distribution of the explanatory statement using the EXPLANATORY STATEMENT² form.
- 4.3.7. If a competitive process is required for the lease, the procurement policies and procedures would be followed. For a lease by auction see SOP-SALES (900-1-02.13).
- 4.3.8. For a negotiated lease where annual rent exceeds \$15,000, a determination of responsibility for the proposed awardee is required. OLM will coordinate the responsibility determination.

4.4. Authorizing the Lease

- 4.4.1. Once a proposed lessee has been identified via a competitive process, or for a negotiated lease, 90 days after any required explanatory statement has been distributed, and upon receipt of any required determination of responsibility, the proposed lease can be presented to the Board for their review and authorization to proceed with preparation of lease documents. The Director of Canals, assisted by OLM, will prepare a Board Agenda Item to place the proposed lease on the agenda of the Board.

1 Exhibit 3

2 Exhibit 4

- 4.4.2. The Director of Canals will provide the Board with a brief overview of the application and the process of review, including any recommendations from Division, CRC, CRPMC, local, regional or state agencies, comments received in response to an explanatory statement where applicable, the result of any competition, and responsibility determinations when required.
- 4.4.3. The Board will approve or reject the proposed lease.
- 4.4.4. OLM will notify the applicant or competitive process awardee, DCE, and applicable Canal personnel of the Board's approval or rejection. If the Board rejects the lease, OLM will coordinate with Finance the refund of any deposits and/or appraisal and survey cost to the applicant/awardee.
- 4.4.5. If the Board approves the lease and the awardee is not the applicant, OLM will coordinate with Finance the refund of any deposits and/or appraisal and survey cost to the applicant.

4.5. Executing the Lease

- 4.5.1. If the Board approves the lease and authorizes preparation of lease documents, OLM will prepare the draft lease for review by the Legal Department as needed.
- 4.5.2. Once the lease is ready for execution, OLM will send five (5) copies of the lease and the COVER LETTER WITH LEASE FOR SIGNATURE⁺ to the applicant/awardee. For leases where the property value is over \$10,000, OLM will inform the applicant/awardee that the lease is not final until approved by the Attorney General's Office and the Office of the State Comptroller.
- 4.5.3. Upon the receipt of the five (5) copies of the lease executed by the proposed lessee, OLM will forward the copies to the Legal Department, Contracting Officer, and the Executive Director for signatures.
- 4.5.4. For leases where the property value is over \$10,000, the Legal Department will assist OLM in preparing a package for submittal to the Attorney General's Office for approval as to form. OLM will transmit the package to the Attorney General for approval.
- 4.5.5. Upon approval by the Attorney General's Office, OLM will forward the lease package to the Office of the State Comptroller following SOP- SUBMITTALS TO THE OFFICES OF THE ATTORNEY GENERAL AND THE STATE COMPTROLLER (900-1-02.5).

+ Exhibit 5

- 4.5.6. If rejected by the Attorney General or the State Comptroller, OLM will notify the DCE and the applicant or competitive process awardee and will coordinate with Finance the refund of the appraisal and survey cost.
- 4.5.7. Upon approval by the State Comptroller, OLM will maintain one of the executed lease documents in the Project Record and forward executed leases to Finance and the Legal Department, with a copy to the DCE.
- 4.5.8. Finance will set up the lease account, and will send an EXECUTED LEASE COVER LETTER¹ to the lessee with the executed lease and request the first rental payment and the Certificate of Insurance be sent to Finance.
- 4.5.9. Upon receipt of the Certificate of Insurance, Finance will forward it to the Insurance Compliance Unit, which will verify and ensure that the required insurance coverage is met. The Insurance Compliance Unit will provide Finance notice that proper insurance coverage has been met. If a problem exists with insurance coverage, the Insurance Compliance Unit will notify Finance, and Finance will send an INSURANCE NOTIFICATION² notifying the applicant of the problem.

5. Complying with §139-j and §139-k of the State Finance Law (Lobbying Law)

Any contact (inquiry, etc.) made regarding a real property transaction following the TAR form approval for negotiated sales and subsequent to the first notice of a competitive process for disposal of such real property (solicitation, RFP, etc.) is subject to the Lobbying Law and must be recorded. See the Executive Instruction entitled INAPPROPRIATE LOBBYING INFLUENCE IN AUTHORITY/CORPORATION PROCUREMENTS.

1 Exhibit 6

2 Exhibit 7

6. Responsibilities

The Board will authorize lease transactions, unless otherwise designated.

The CRPMC will review proposed leases and make recommendations to approve or reject the transaction.

The CRC will review non-exempt leases for consistency with the CRP.

The Contracting Officer is responsible for compliance with and enforcement of the Canal Real Property Management Policy as it applies to disposals, including leases. The Contracting Officer, the Executive Director, and the Legal Department will sign leases on behalf of the Corporation.

The Director of Canals will present the proposed lease transaction to the Board for authorization or rejection and keep the Board apprised of the progress of the lease. The Director of Canals will also review any determinations of inconsistency with the CRC Plan made by the CRC.

The Division Canal Engineer will coordinate the review and initial processing of the lease application and the appraisal and survey process.

The Executive Director, the Contracting Officer, and Legal Department will sign leases on behalf of the Corporation.

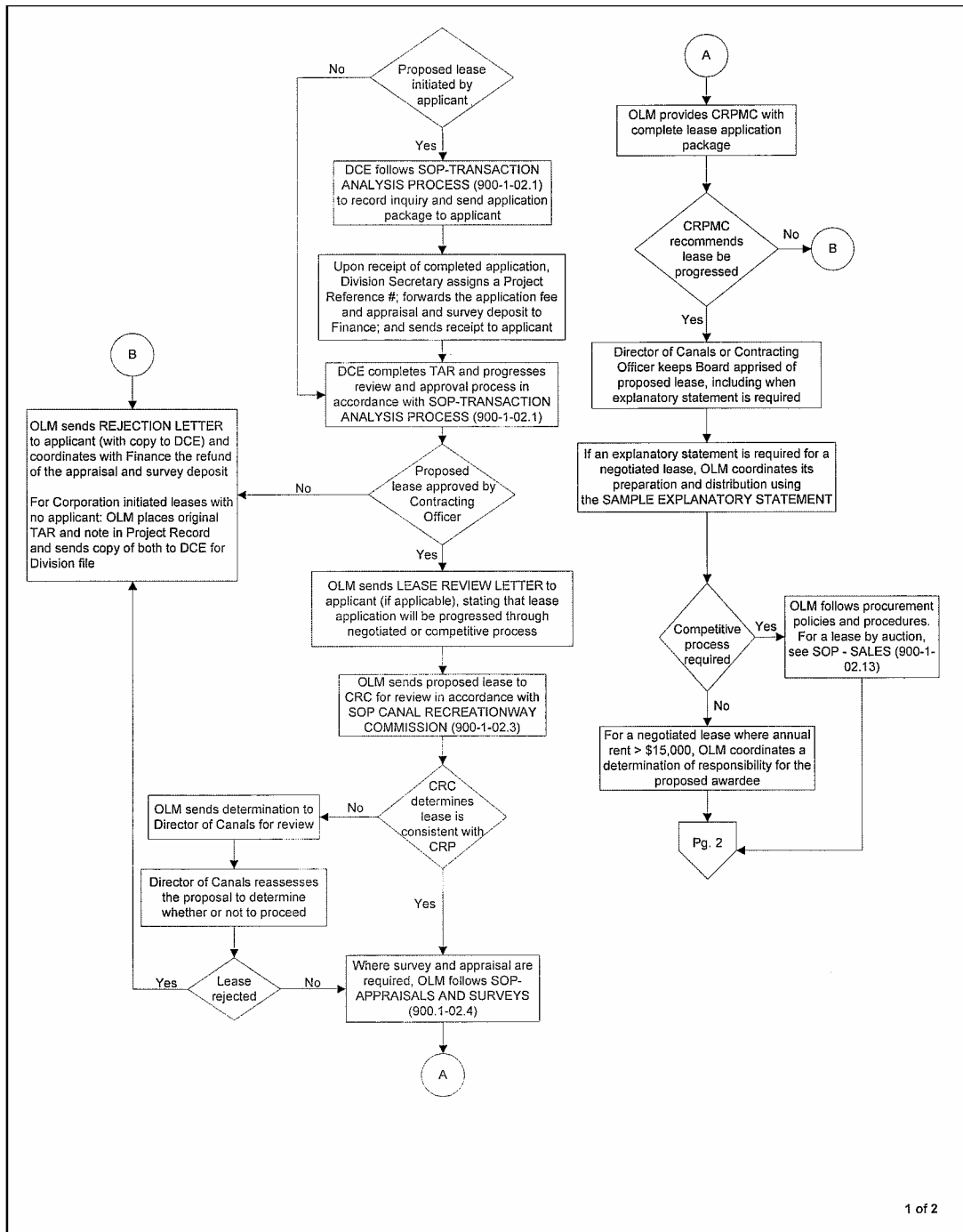
Finance will coordinate the deposit of fees and monies received from applicants and any required refunds. Finance will also coordinate setting up the lease account, obtaining rental payments and required insurance from the lessee.

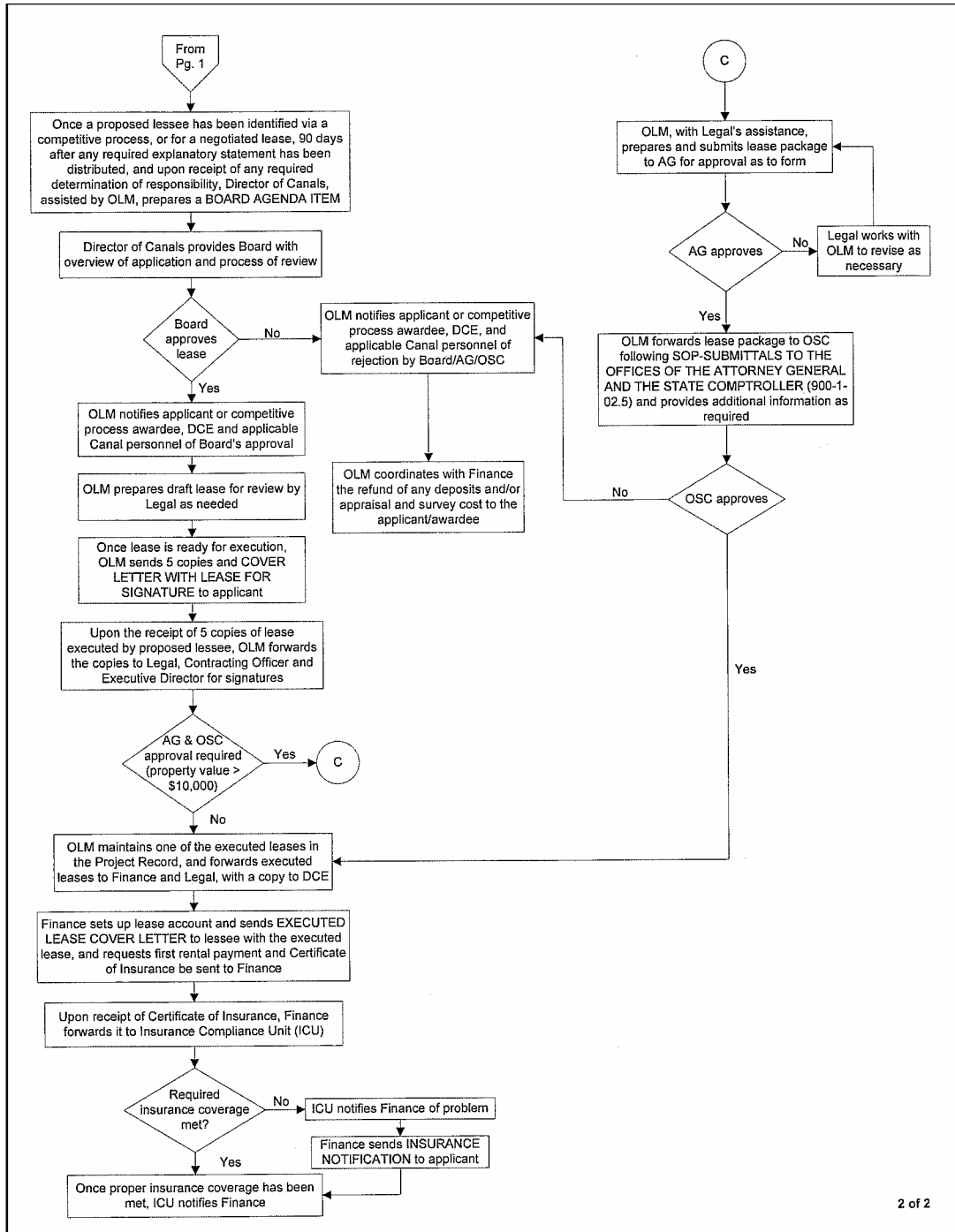
The Insurance Compliance Unit will determine the insurance required based on the Corporation's Rules and Regulations and will also determine if the applicant's proof of insurance is adequate.

The Legal Department will review proposed leases and coordinate reviews by the Attorney General's Office. The Legal Department, Contracting Officer, and the Executive Director will sign leases on behalf of the Corporation.

OLM will coordinate the lease application approval process including contacts with the applicant, preparation and distribution of any required explanatory statements, and submittals to the Office of the State Comptroller.

7. Flowchart





September 2006

900-1-02.10

11

EXHIBIT 1
REJECTION LETTER

This letter will be used to notify the applicant that the proposed lease has been rejected.

Date
Name Address City, State, Zip
Re: <Location and description of property> Project Reference Number:
Dear <insert name>:
Thank you for your interest in the property at the above referenced location. I regret to inform you that your request has been denied at this time, because <insert appropriate text based on <u>one</u> of the choices below>.
Should you have any questions, I can be reached at <insert phone number>.
Sincerely,
Name Title Department
Option 1: the property is needed for future Canal Corporation purposes.
Option 2: the proposed use of the property is not consistent with the Canal Recreationway Plan or Canal Corporation goals.
Option 3: the Canal Corporation is not the owner of the property or the property is not under the jurisdiction of the Canal Corporation.
Option 4: If none of the above applies, insert specific details to explain the reason for the rejection.

September 2006

900-1-02.10

12

EXHIBIT 2
LEASE REVIEW LETTER
Page 1 of 5

Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TAR form. This letter is for leases in excess of \$15,000 that will result in a public auction.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Project Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your lease application is being progressed and will result in a public auction. If you are not the winning bidder, your survey and appraisal deposit will be refunded.

Any contact regarding this real property transaction is subject the New York State Lobbying Law and must be recorded. The restricted period for such contact will begin with the initial auction advertisement and the official contact for the Canal Corporation will be identified in the auction advertisement.

Should you have any questions prior to the auction advertisement, I can be reached at < insert phone number >.

Sincerely,

Name
Title
Department

September 2006

900-1-02.10

13

LEASE REVIEW LETTER

Page 2 of 5

Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TAR form. This letter is for leases in excess of \$15,000 that will result in a Request For Proposal (RFP).

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Project Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your lease application is being progressed and will result in a Request for Proposal (RFP). If you are not the winning bidder, your survey and appraisal deposit will be refunded.

Any contact regarding this real property transaction is subject the New York State Lobbying Law and must be recorded. The restricted period for such contact will begin with the initial RFP advertisement and the official contact for the Canal Corporation will be identified in the RFP.

Should you have any questions prior to the auction advertisement, I can be reached at < insert phone number >.

Sincerely,

Name
Title
Department

September 2006

900-1-02.10

14

LEASE REVIEW LETTER

Page 3 of 5

Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TAR form. This letter is for leases in excess of \$15,000 that will result in a negotiated lease.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Project Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location and your lease application is being progressed.

Any contact regarding this real property transaction is subject the New York State Lobbying Law and must be recorded. The restricted period for such contact will begin upon your receipt of this letter and all questions concerning this lease must be addressed to the following person:

Name
Title
New York State Thruway Authority/New York State Canal Corporation
200 Southern Boulevard
Albany, New York 12209
Phone
Fax
E-mail

Please acknowledge this notification of the restricted period and the contact person, by signing and dating below and returning this letter to us.

Sincerely,

Name
Title
Department

Acknowledgement: _____ Date: _____

September 2006

900-1-02.10

15

LEASE REVIEW LETTER

Page 4 of 5

Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TAR form. This letter is for leases of \$15,000 or less that will result in a public auction without bids.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Project Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your lease application is being progressed and will result in an auction without public advertising for bids. If you are not the winning bidder, your survey and appraisal deposit will be refunded.

Should you have any questions, I can be reached at <insert phone number>.

Sincerely,

Name
Title
Department

September 2006

900-1-02.10

16

LEASE REVIEW LETTER

Page 5 of 5

Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TAR form. This letter is for leases of \$15,000 or less that will result in a negotiated lease.

< insert date >

Name
Address
City, State, Zip

Re: <Location and description of property>
Project Reference Number:

Dear < insert name >:

Thank you for your interest in the property at the above referenced location. Your lease application is being progressed and if you have any questions, I can be reached at <insert phone number>.

Sincerely,

Name
Title
Department

LEASES

September 2006

900-1-02.10

17

EXHIBIT 3
CRPMC LEASE PACKAGE CHECKLIST

This checklist contains the list of information that shall be in a package submitted to the CRPMC for review.

Content under development

September 2006

900-1-02.10

18

EXHIBIT 4
SAMPLE EXPLANATORY STATEMENT

The form gives the information that should be contained in any required explanatory statement.

Content under development

September 2006

900-1-02.10

19

EXHIBIT 5
COVER LETTER WITH LEASE FOR SIGNATURE

This describes the information that will be contained in the cover letter to the lessee and a lease template.

Content under development

LEASES

September 2006

900-1-02.10

20

EXHIBIT 6
EXECUTED LEASE COVER LETTER

The cover letter to the lessee would contain the executed lease and request the first rental payment and Certificate of Insurance.

Content under development

LEASES

September 2006

900-1-02.10

21

EXHIBIT 7
INSURANCE NOTIFICATION

This notice would be sent to the applicant in the event there were any issues regarding insurance.

Content under development