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MANUAL 500-2

SECTION 02.8

LEASES

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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 Thruway Authority (Authority).

## **2. Applicable Law and/or Guidance**

New York State Public Authorities Law, Article 2, Title 9, New York State Thruway Authority, Article 9, Title 5-A

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

New York State Public Authorities Accountability Act of 2005

21 NYCRR §106 Leasing of Facilities

New York State Constitution

Thruway Real Property Management Policy (25-6-02)

Executive Instruction entitled Inappropriate Lobbying Influence In Authority/Corporation Procurements

## **3. Introduction**

The Authority is responsible for the financing, construction, reconstruction, improvement, development, maintenance and operation of the highway system known as the Thruway. In accordance with the provisions of Title 9 of Article 2 of the Public Authorities Law, the Authority has the power to acquire and hold real property necessary for its corporate purposes and dispose of real property not necessary for its corporate purposes or whenever the Authority Board shall determine that it is in the interest of the Authority and thus, the interest of the State.

The Authority may enter into leases for real property under the jurisdiction of the Authority for gas stations, restaurants, and other facilities, or for other real property not presently required for Authority needs but held for future use in carrying out its corporate purposes. Leases are considered disposals under the Thruway 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 Authority shall use a competitive process open to the public for all transactions, except in limited circumstances described in SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1). 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 THRUWAY TRANSACTION AND ANALYSIS/RECOMMENDATION (TTAR) form (TA-N5516), unless otherwise authorized by the Executive Director, no permits will be issued in advance of completion of the lease. See SOP-OCCUPANCY PERMITS (500-2-02.5) and SOP-WORK PERMITS (500-2-02.6).

The Board shall approve all leases under the Authority'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 Authority 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 Authority, the Division Permit Coordinator (DPC) will follow SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1) to record the inquiry and send out the application package.

Upon receipt of the completed application, the DPC will assign a Transaction 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 Transaction 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 DPC, in consultation with the Division Real Estate Specialist, will complete the TTAR form and the review and approval process will be done in accordance with SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1). If the proposed lease is rejected at any point during the review and approval process, the Division Director (DD) will send a REJECTION LETTER<sup>1</sup> notifying the applicant and will coordinate with Finance the refund of the appraisal and survey deposit. The DD will send a copy of the letter and the original TTAR to the Bureau of Real Property Management (BRPM) for the Transaction Record and copies of each will be placed in the Division file. The procedure stops here.
- 4.1.3. Following approval by the Contracting Officer on the TTAR form, a LEASE REVIEW LETTER<sup>2</sup> will be sent to the applicant from BRPM 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 Authority 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<sup>1</sup> will indicate that the “restricted period” will begin with the request for proposal (RFP) or auction advertisements, and that the “official contacts” for the Authority during the disposal process will be identified in the RFP or auction advertisement.

#### **4.2. Processing an Authority Initiated Lease**

Where the proposed lease is Authority initiated and there is no applicant, the DPC, in consultation with the Division Real Estate Specialist, will complete the TTAR form and the review and approval process will be done in accordance with SOP-TRANSACTION ANALYSIS PROCESS (500-2-02.1). If rejected, the DD will send BRPM the original TTAR and a note for the Transaction Record and keep a copy of both 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 TTAR form, BRPM will coordinate the necessary processes for completing the transaction.

#### **4.3. Review of the Proposed Lease**

- 4.3.1. Where a survey and/or appraisal are required, BRPM will follow SOP-APPRAISALS AND SURVEYS (500-2-02.2). In most cases, the survey should be completed prior to the appraisal.
- 4.3.2. BRPM will provide the Thruway Real Property Management Committee (TRPMC) with a complete lease application package that includes materials listed in the TRPMC LEASE PACKAGE CHECKLIST<sup>2</sup>. The TRPMC will review the proposed lease and make a recommendation, including any modifications and/or conditions. BRPM will review, and as appropriate, incorporate any modifications and/or conditions recommended by the TRPMC.
- 4.3.3. If the TRPMC rejects the proposed lease, BRPM will send a letter notifying the applicant and will coordinate with Finance, the refund of any deposit and/or the appraisal and survey cost. BRPM will place a copy of the letter in the Transaction Record and send a copy of the letter to the DD for the Division file. The procedure stops here.

1 Exhibit 2

2 Exhibit 3

- 4.3.4. If the TRPMC recommends that the lease be progressed, 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, BRPM will coordinate the preparation and distribution of the Explanatory Statement using the sample EXPLANATORY STATEMENT<sup>+</sup> form.
- 4.3.5. If a competitive process is required for the lease, the procurement policies and procedures would be followed.
- 4.3.6. For a lease where the total rent amount over the contract period exceeds \$10,000, a determination of responsibility for the proposed awardee will be required. BRPM 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 Contracting Officer, assisted by BRPM, will prepare a Board Agenda Item to place the proposed lease on the agenda of the Board.
- 4.4.2. The Contracting Officer will provide the Board with a brief overview of the application and the process of review, including any recommendations from Division, TRPMC, 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. BRPM will notify the applicant or competitive process awardee, DD, and applicable Authority personnel of the Board's approval or rejection. If the Board rejects the lease, BRPM will send a letter notifying the applicant/awardee and will coordinate with Finance the refund of any deposit and/or the appraisal and survey cost. BRPM will place a copy of the letter in the Transaction Record and send a copy of the letter to the DD for the Division file.

- 4.4.5. If the Board approves the lease and the awardee is not the applicant, BRPM 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, BRPM will prepare the draft lease for review by the Legal Department as needed.
- 4.5.2. BRPM shall forward the draft agreement to the applicant/awardee for review and comment and with Legal approval, BRPM may make changes requested by the applicant.
- 4.5.3. Once the lease is ready for execution, BRPM will send six (6) counterparts of the lease agreement and the COVER LETTER WITH LEASE FOR SIGNATURE<sup>1</sup> to the applicant/awardee. For leases where the total rent amount over the contract period is over \$10,000, BRPM will inform the applicant/awardee that the lease is not final until approved by the Office of the Attorney General (OAG) and the Office of the State Comptroller (OSC). BRPM will also request any required bonds, the certificate(s) of insurance and first rental payment.
- 4.5.4. Upon the receipt of the six (6) counterparts of the lease agreement executed by the proposed lessee and any required bonds, the certificate(s) of insurance and first rental payment, BRPM will forward the counterparts to the Legal Department, Contracting Officer and/or the Chief Financial Officer, and the Executive Director for signatures. BRPM sends bonds, certificates of insurance and first rental payment to Insurance Compliance Unit (ICU).
- 4.5.5. ICU will make sure proper insurance coverage is in effect and process bond and rental payment. If a problem exists with insurance coverage, the Insurance Compliance Unit will notify Finance, and Finance will send an INSURANCE NOTIFICATION<sup>2</sup> notifying the applicant of the problem.

1 Exhibit 5

2 Exhibit 6

- 4.5.6. For leases where the total contract rental payments are over \$10,000, the Legal Department will assist BRPM in preparing a package for submittal to the OAG and the OSC following SOP - SUBMITTALS TO THE OFFICES OF THE ATTORNEY GENERAL AND THE STATE COMPTROLLER (500-2-02.3). BRPM will transmit the package to the OAG for approval as to form.
- 4.5.7. Upon approval by the OAG, BRPM will forward the lease package to the OSC for approval.
- 4.5.8. If rejected by the OAG or the OSC, BRPM will send a letter notifying the applicant/awardee and will coordinate with Finance, the refund of any deposit and/or the appraisal and survey cost. BRPM will place a copy of the letter in the Transaction Record and send a copy of the letter to the DD for the Division file.
- 4.5.9. Upon approval by the OSC, BRPM sends an EXECUTED LEASE COVER LETTER<sup>+</sup> with a fully executed counterpart of the lease agreement to the lessee, along with instructions on recording such counterpart in the county clerk's office of the county in which the leased premises is located, and on advising the Authority on the data once recorded. BRPM will maintain one such counterpart in the Transaction Record, will forward one counterpart to the Legal Department, and will forward copies to the DD, ERPU, Finance, and ICU. Upon receipt from the lessee, BRPM will maintain the recording data in the Transaction Record, and will provide same to the Legal Department and ERPU.

## **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 TTAR 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.

+ Exhibit 7

## 6. Responsibilities

BRPM will coordinate the lease application approval process including preparation and distribution of any required Explanatory Statements and draft leases, and submittals to the OSC. BRPM will coordinate collection of any required bonds, the initial proof of insurance and first rental payment at time of lease execution by the lessee. BRPM will coordinate reviews by the OAG and OSC. BRPM will coordinate the lessee's recordation of the executed and approved lease agreement.

The Board will authorize all lease transactions, unless otherwise designated.

The Contracting Officer is responsible for compliance with and enforcement of the Thruway Real Property Management Policy as it applies to disposals, including leases. The Contracting Officer 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 DPC will coordinate lease inquiries and the completion of the TTAR form.

The DD will coordinate the TTAR review and contacts with the applicant if the proposed lease is rejected during the review process.

The Executive Director, the Contracting Officer and /or the Chief Financial Officer, and Legal Department will sign leases on behalf of the Authority.

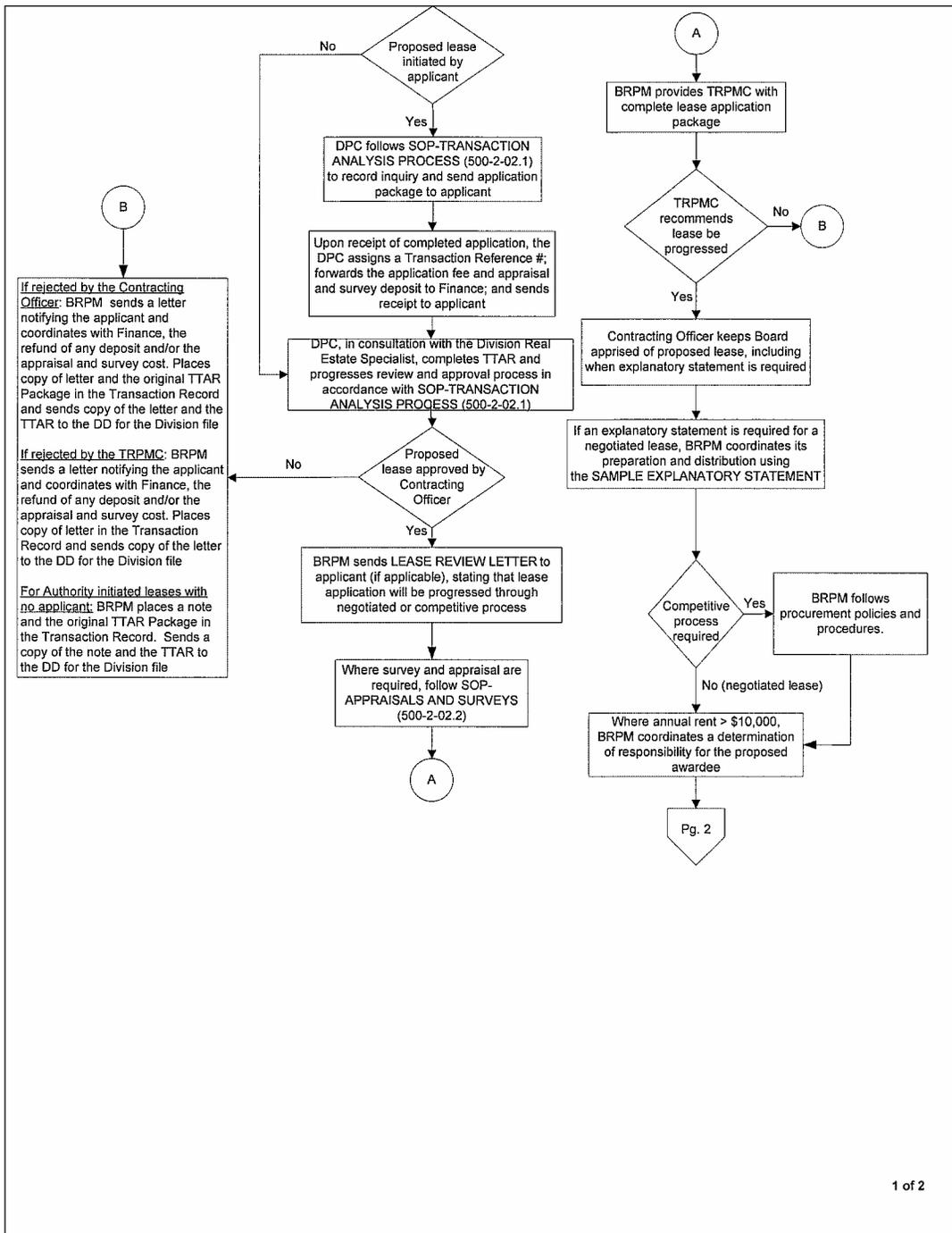
Finance will coordinate the deposit of fees and monies received from applicants and any required refunds. Finance will also coordinate setting up the lease account, obtaining rental payments and required insurance from the lessee.

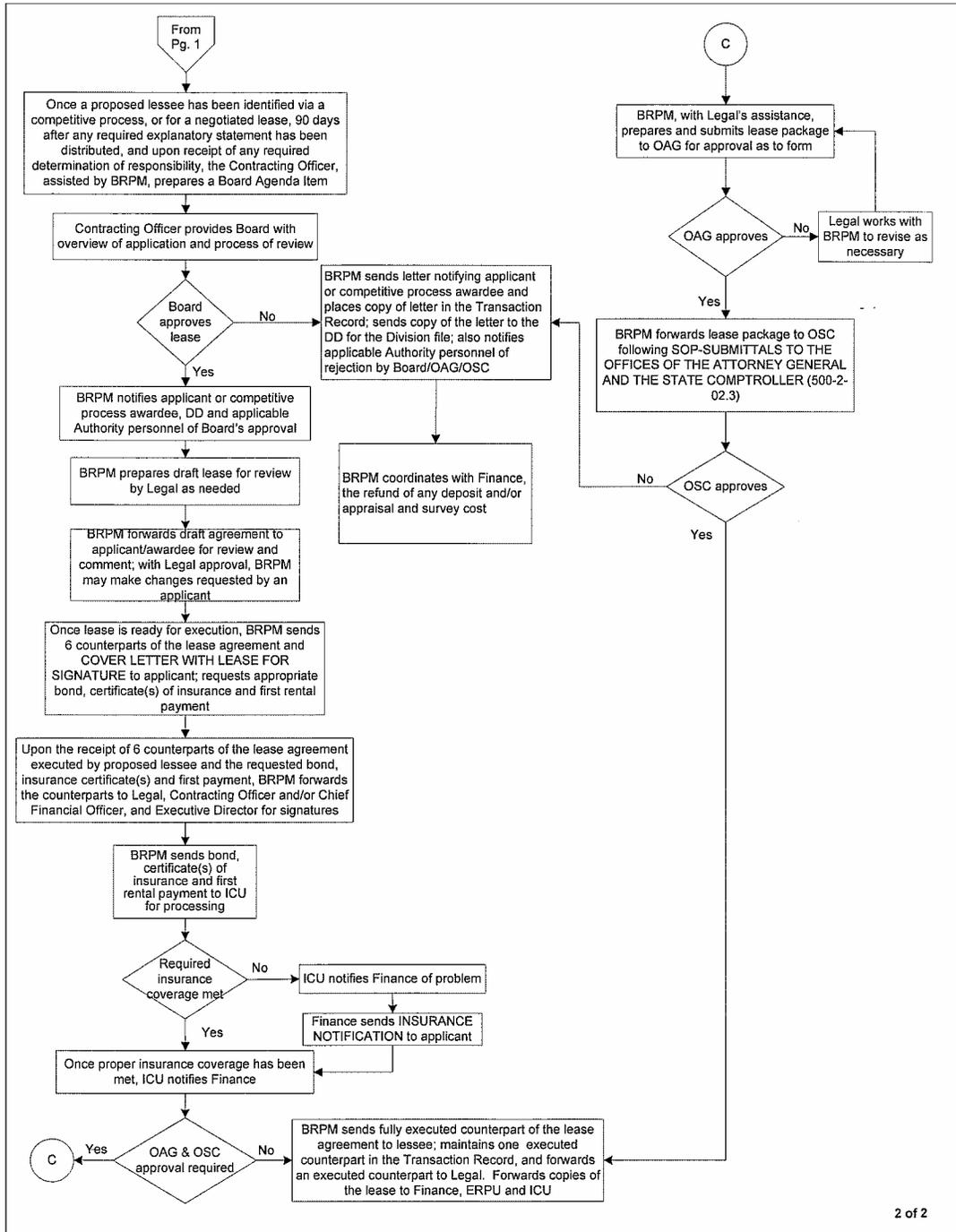
The Insurance Compliance Unit will determine the insurance required based on the Authority's Rules and Regulations and will also determine if the applicant's proof of insurance is adequate.

The Legal Department will review proposed leases.

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

7. Flowchart





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EXHIBIT 1  
REJECTION LETTER

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

<p>Date</p>
<p>Name Address City, State, Zip</p>
<p>Re: &lt;Location and description of property&gt; Transaction Reference Number:</p>
<p>Dear &lt;insert name&gt;:</p>
<p>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 &lt;insert appropriate text based on <u>one</u> of the choices below&gt;.</p>
<p>Should you have any questions, I can be reached at &lt;insert phone number&gt;.</p>
<p>Sincerely,</p>
<p>Name Title Department</p>
<p>Option 1: the property is needed for future Thruway Authority purposes.</p>
<p>Option 2: the proposed use of the property is not consistent with the Thruway Authority goals.</p>
<p>Option 3: the Thruway Authority is not the owner of the property or the property is not under the jurisdiction of the Thruway Authority.</p>
<p>Option 4: If none of the above applies, insert specific details to explain the reason for the rejection.</p>

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EXHIBIT 2  
LEASE REVIEW LETTER  
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Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TTAR 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>  
Transaction 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 Thruway Authority 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

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LEASE REVIEW LETTER

Page 2 of 5

Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TTAR 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>  
Transaction 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 Thruway Authority 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

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LEASE REVIEW LETTER

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Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TTAR 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>  
Transaction 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 and will result in a negotiated lease.

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: \_\_\_\_\_

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LEASE REVIEW LETTER

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Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TTAR 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>  
Transaction 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

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LEASE REVIEW LETTER

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Sent to an applicant following approval of the proposed lease by the Contracting Officer on the TTAR 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>  
Transaction 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

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EXHIBIT 3  
TRPMC LEASE PACKAGE CHECKLIST

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

*Content under development*

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EXHIBIT 4  
SAMPLE EXPLANATORY STATEMENT

The form gives the information that should be contained in any required Explanatory Statement.

*Content under development*

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EXHIBIT 5  
COVER LETTER WITH LEASE FOR SIGNATURE

The cover letter sent to the lessee with the lease agreement for signature.

*Content under development*

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EXHIBIT 6  
INSURANCE NOTIFICATION

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

*Content under development*

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EXHIBIT 7  
EXECUTED LEASE COVER LETTER

The cover letter to the lessee sent with the fully executed lease.

*Content under development*