

State of Alabama
Department of Finance
Office of Space Management

Real Estate Lease Submittal Procedures & Policies

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Real Estate Lease Submittal Procedures & Policies

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CHAPTER 1

DEFINITIONS

As used in these Procedures and Policies the following words shall have the following meanings:

1. **Agency.** A Sate department, agency or its subdivision that is or will be the tenant in a lease.
2. **Common Area or Common Space.** The areas of a building and its site which are designated for the non-exclusive use and benefit of all its tenants, such as lobbies, corridors, restrooms, mechanical/electrical rooms and parking lots.
3. **Landlord or Lessor.** The owner of the leased property. The landlords of leases covered by these Procedures may be individuals, private entities or entities of the State of Alabama such as other agencies, public authorities, Retirement Systems of Alabama (RSA), colleges and universities, or subdivisions of the State.
4. **Premises or Demised Premises.** The property, or portion thereof, the possession or use of which is granted to the tenant through the lease.
5. **Real Estate Lease:** A contract that creates the relationship of landlord and tenant. A contractually binding agreement that grants a right to exclusive possession or use of real property, usually in return for a periodic payment of rent. The term “lease” shall refer to a real estate lease.
6. **Tenant or Lessee.** The party to a lease to whom the right of possession or use of property is granted through a lease. The tenants of leases covered by these Procedures are Executive Branch departments, agencies or their subdivisions.
7. **Use or Permitted Use.** The functional manner in which the tenant and landlord intend, and usually state in the lease, that the property is to be occupied by the tenant. Some of the most common uses or real estate leased pursuant to these Procedures are:

Buildings and Building Spaces

Office Space
 Classroom/Training Facilities
 Health Care Facilities
 Laboratory Facilities
 Mini-Warehouse Storage Units
 Warehousing
 Workshop/Maintenance Facilities
 Parking Spaces
 Airplane Hangar
 Boat Storage

Land

Office Trailer Lot
 Monitoring Station Sites
 Communications Tower Sites
 Driver Training Courses
 Parking Lots
 Parking Space(s)
 Bulk Materials Storage Sites

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CHAPTER 2

THE OFFICE OF SPACE MANAGEMENT

SECTION 2.1 SPACE MANAGEMENT CREATION and ORGANIZATION

The Office of Space Management (“Space Management”), a division of the Department of Finance, was created by §41-4-260 through §41-4-263, Code of Alabama, 1975 as amended. The Space Management Officer, head of the division, reports to an Assistant Finance Director. The staff, which also handles construction, renovation and other assignments in the Capitol Complex, consists of the Space Management Officer, the State Buildings Construction Manager, and an ASA III Office Manager.

SECTION 2.2 SPACE MANAGEMENT’S ROLE in the LEASING PROCESS

Agencies are responsible for determination of their space needs, locating spaces, negotiating real estate lease transactions and preparing the lease documents. Space Management reviews real estate leases for compliance with State law, competitive market pricing, and inclusion of required provisions and terms and conditions that are allowable and favorable to the State. Space Management will review e-mailed drafts of leases in advance of signing by the parties. Acceptable leases are recommended to the Finance Director and/or Governor for approval and fully executed, approved leases are returned to the agency. As an agency’s lease nears expiration, Space Management endeavors to contact the agency to learn their intentions for the leases and to prompt necessary action if it is to be extended or renewed.

Space Management can frequently provide leads to available space in an area through agencies it knows have canvassed the area for space.

SECTION 2.3 LEASE INVENTORY

As required by its enabling law, Space Management maintains an inventory of all fully executed real estate leases approved by the Finance Director and/or Governor. Copies of all such lease documents are maintained in our office and an inventory of the leases is maintained in a database called *Lease Track*. A web-based application called *Lease Search* provides agencies and the public access to the inventory of active leases. *Lease Search* can be found on the Finance Dept. website, <http://finance.alabama.gov/>, or [Open.alabama.gov](http://open.alabama.gov/) at <http://open.alabama.gov/>.

SECTION 2.4 RESPONSIBILITY to MAINTAIN OCCUPANCY of STATE-OWNED CAPITOL COMPLEX OFFICE BUILDINGS

Pursuant to §36-24-1 and §41-4-34, Code of Alabama, 1975, as amended, the Finance Director has authority to assign office space to State officers and departments within the Capitol and the City of Montgomery. As a matter of fiscal responsibility the Governor and Finance Director must insure that all available office space remains occupied in the Folsom Administrative Building, the Lurleen B. Wallace Office Building, the Attorney General’s office building and the Gordon Persons Office Building. For these reasons the Finance

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Director has approval authority over leases within the City of Montgomery and may require agencies to move into the State-owned buildings when vacancies occur.

Space Management serves as the leasing agent for space in these buildings and looks for tenants to fill vacancies when they occur. As relates to these buildings Space Management documents changes in tenants and leased square footage, prepares subleases and amendments, and keeps Finance Accounting apprised of changes for billing purposes.

SECTION 2.5 CONTACT INFORMATION

Address: Office of Space Management
RSA Union Building
100 North Union Street, Suite 134
Montgomery, Alabama 36130

Telephone: (334) 242-2023

FAX: (334) 242-2090

E-mail: Gwen.Harrison@sd.alabama.gov

Webpage: <http://finance.alabama.gov/pages/SpaceM.aspx>

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CHAPTER 3

THE LEASE SUBMITTAL PROCESS

SECTION 3.1 WHO MUST SUBMIT LEASES to SPACE MANAGEMENT

3.1.1 Agencies Leasing Real Estate Owned by Private or State Entity Landlords.

State agencies for which the Governor's approval of their contracts is required must also obtain the Governor's approval of their leases of real estate from private landlords or other state entities including the Retirement Systems of Alabama. Such leases that are for property located within the City of Montgomery must also be approved by the Finance Director. Therefore, State agencies seeking approval of their leases by the Finance Director and/or Governor must submit them through Space Management for its review and recommendation for such approvals. In general, this includes all agencies of the Executive Branch. Leases involving rent of less than \$1,000 per year do not require such approvals and need not be submitted to Space Management.

3.1.2 Not Agencies Leasing Their Real Estate to Private Entities. Pursuant to Section 9-15-71, Code of Alabama, 1975, as amended, all leases of state-owned real estate to private entities fall under the purview of the State Lands Division of the Department of Conservation and Natural Resources, not Space Management. Such leases yielding rent in excess of \$20,000 shall be competitively bid and awarded by the State Lands Division.

SECTION 3.2 ADVANCE LEASE REVIEW

Upon request, Space Management will review lease documents before an agency and landlord finalize them to offer suggestions and identify problems that would require correction to obtain approval. E-mailed documents in MS Word are preferred. To request this service utilize the contact information provided in Section 2.5.

SECTION 3.3 THE SUBMITTAL PACKAGE

The leasing agency should submit the following to Space Management:

- a. Letter or memorandum of explanation (See Section 3.4);
- b. Three duplicate originals of the lease document signed by the landlord and agency, with signed approval by the agency's lawyer (See Section 6.2.9);
- c. If the lease document is an amendment, provide one copy of the lease and previous amendments being amended; and
- d. One copy of a completed Disclosure Statement, if required (See Section 3.5).
- e. Copy of landlord's E-Verify MOU if applicable (See Chapter 9).
- f. See Section 3.10 regarding submission of Purchase Order leases.

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SECTION 3.4 LETTER or MEMORANDUM of EXPLANATION

An explanation of the document being submitted, as well as the use and need of the leased property, should be provided for the benefit of those reviewing and approving the document. This may be a letter addressed to the Governor or Space Management or may be an internal memorandum of the leasing agency which provides the pertinent information. Insure that the name and telephone number of a contact person in your agency who is thoroughly familiar with the document is included.

3.4.1 New Leases: Briefly explain the intended use and necessity of the leased property. Highlight features of the lease that make the price attractive, such as the rent covers utilities, special services, furnishings, or tenant improvements. If the dates of the lease term depend on the landlord's completion of construction, build out, or tenant improvements, state this fact. (Advise Space Management of the actual dates when they are known.) If your agency is moving from existing leased space into the new leased space, identify the leased property from which you are moving, its lease number, and conditions of termination. If the lease covers a building to be constructed for the agency to lease as the sole tenant, disclose this and provide information required for "build-to-suit" leases (See Section 3.6)

3.4.2 Lease Renewals: For lease renewals, describe changes from the previous lease, such as changed suite or room numbers, leased square footage, property address, ownership, term or rental rate.

3.4.3 Lease Amendments: Describe the net affect of changes of an amendment and the need for them.

3.4.4 Long term leases: If the term of a lease is greater than ten years, the reasons and benefits of entering into a lease for the period of its term should be explained.

SECTION 3.5 DISCLOSURE STATEMENTS

Sections 41-16-80 through 41-16-88, Code of Alabama, 1975, as amended, address the disclosure requirements for public contracts. When required under the following criteria, one copy of the disclosure statement must be included with leases submitted to Space Management.

3.5.1 Agency Files with the Department of Examiners of Public Accounts. Space Management **does not file** copies of disclosure statements with the Examiners of Public Accounts; this is the responsibility of the Agency.

3.5.2 Disclosure Statement form. A sample Disclosure Statement form with instruction is included in the Forms section of the OSM webpage. An online fill-in form is available on the Office of the Attorney General's website, www.ago.alabama.gov, in the topic "Vendor Disclosure Statement Information and Instructions" listed under "Resources".

3.5.3 Disclosure Statements Are Required When:

- a. the total rents for the term of the lease will exceed \$5,000 or

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- b. renewal of the lease is automatic unless the tenant affirmatively terminates and the subsequent term will take the total rent to \$5,000 or more.

3.5.4 Disclosure Statements Are Not Required When:

- a. the lease term is one year or less and rental payments during that term will be less than \$5,000. Such leases may provide that the tenant has the option to renew for additional one-year terms, at less than \$5,000 per year, but the tenant must take some action to exercise that option,
- b. the lease term is multiple years, but the total rental payments for the entire term will be less than \$5,000 or
- c. the landlord is the State of Alabama or a department or agency thereof, an institution or instrumentality of the State of Alabama, or a public corporation of the State of Alabama.

SECTION 3.6 BUILD-to-SUIT LEASES

A “build-to-suit” lease is a lease through which the building to be leased is constructed by the landlord to fit, or suit, the tenant’s needs. In 2008, the Governor’s Office adopted the following policy and an agency considering entering into such a lease should be prepared to demonstrate compliance with the policy.

Build-to-suit leases are to be acquired through competition. The agency's intent to lease a building to be built to their specifications is to be made known in the community in which the building is to be located, extending the opportunity to offer a proposal to those interested and qualified citizens and firms in the community.

When submitting such a lease to Space Management evidence of public announcement and competition must be provided, such as copies of advertisement, RFP, solicitation, and/or proposals received. Since this policy requires a competitive process, compliance with the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act* must be demonstrated (See Chapter 9).

SECTION 3.7 ACTIONS by SPACE MANAGEMENT.

Space Management endeavors to process or take other action on each lease within three business days after receiving it. Within that time frame Space Management will either recommend and forward the lease for the required approvals or contact the leasing agency by telephone, email, or correspondence to address issues or questions. If necessary, Space Management will return a lease to the leasing agency for correction. If an agency is uncertain of the acceptability of a lease, a draft may be emailed to Space Management for advance review and comment.

SECTION 3.8 ROUTING for APPROVAL and DISTRIBUTION.

3.8.1 Montgomery City leases require the approval of the Finance Director and Governor; therefore, Space Management sends them to the Legal Division of the Finance Dept. for review and approval who then forwards them to the Finance Director for approval. The

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Finance Director's Office forwards the leases to the Governor's Legal Office for review and obtaining the Governor's approval. The fully approved leases are returned to Space Management for distribution.

3.8.2 Other leases require the Governor's approval only; therefore Space Management sends them directly to the Governor's Legal Office for review and obtaining the Governor's approval. The approved leases are returned to Space Management for distribution.

3.8.3 Space Management returns two of the fully executed and approved lease documents to the agency. The agency should retain one copy for their records and forward one copy to the landlord. (In the case of RSA leases, Space Management returns the two copies to RSA and they forward one to the agency.)

SECTION 3.9 LEASE NUMBERING

Each lease document recommended by Space Management for approval is assigned an OSM Lease Number and that number is applied to the first page and signature page of all copies of the lease document. That number is used by Space Management to track lease documents and retrieve lease data from the inventory database, *Lease Track*. The OSM Lease number can also be used to locate lease information in the web-based application, *Lease Search*.

3.9.1 DISPLAY YOUR OSM LEASE NUMBER ON RENTAL VOUCHERS! When processing lease rental vouchers for payment, the Office of the Comptroller utilizes *Lease Search* and the OSM Lease Number to verify that a lease has been properly reviewed and approved through Space Management. **For this reason the Office of the Comptroller requires that the assigned OSM Lease Number be displayed on rental vouchers submitted to them.**

3.9.2 Lease Numbering System. Leases are tracked by property address and agency; therefore, when a property is first leased by an agency, the initial lease or "Master Lease" is assigned a "Master Lease Number" for recording in *Lease Track*. That Master Lease Number, plus an appropriate suffix, is applied to each subsequent lease transaction (amendments, renewals, or extensions) involving that agency's occupancy or use of that property until the last lease transaction is terminated or expires.

- a. **Master Lease Numbers** are comprised of two numbers: (1) a four digit number which is the year in which the term of the lease begins and (2) a three digit number which is assigned sequentially in the order leases are received. Example: **No. 2006-051** means the term of the lease began in 2006 and this was the 51st 2006 Master Lease received by Space Management.
- b. **Lease Renewals** are assigned the original Master Lease Number with an alphanumeric suffix of R1, R2, R3, etc. "R" signifies "Renewal" and the sequential number identifies the renewal as the first, second, third, etc., renewal of the Master Lease. Example: **No. 2006-051-R3** means the lease document is the third renewal of Master Lease No. 2006-051.

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- c. **Amendments** to Master Leases and Renewal Leases are assigned the Master Lease Number or Renewal Lease number they are amending with an alphanumeric suffix of A1, A2, A3, etc. "A" signifies "Amendment" and the sequential number identifies the amendment as the first, second, third, etc., amendment of the Master Lease or Renewal Lease. Examples: **No. 2006-051-A1** means the document is the first amendment of Master Lease No. 2006-051; **No. 2006-051-R3-A1** means the document is the first amendment of renewal lease No. 2006-051-R3.
- d. **Extension Letters**, used by the tenant to exercise the "renewal option" (See Chapter 7, Section 7.2) of a Master Lease or Lease Renewal, thus extending the term of the Master Lease or Lease Renewal record. Extension Letters are lease documents authorizing Space Management to extend the term of lease records in *Lease Track* and are treated and assigned numbers as if they are amendments.

3.9.3 Shared Leased Space. Several agencies lease building space and share portions of that space with other agencies on a cost reimbursement basis. It is not pertinent to the purpose of the database inventory of leases to record and track such arrangements. However, vouchers for such reimbursements must also display an OSM Lease Number to comply with State Comptroller's requirements; therefore, the OSM Lease Number assigned to the lease for the property can be used by all of the agencies sharing the space.

To minimize confusion under this practice, the following wording should be used on the reimbursement voucher:

"Reimbursement for share of space under OSM Lease # _____"

3.9.4 Using Lease Numbers in *Lease Search*. Only an active lease record can be accessed through *Lease Search*; therefore, a search by lease number only requires input of the seven-digit Master Lease Number, because *Lease Search* will retrieve the active record having the lease number that begins with those seven digits. When the lease data is displayed, the entire lease number of the active record will be displayed. A search using a lease number with all of its suffixes will work also, but increases the chance of input error resulting in an unsuccessful search.

SECTION 3.10 PURCHASE ORDER LEASES

Rentals of "mini-warehouse", boat storage facilities and other small properties may be accomplished through Purchase Orders issued by the Purchasing Division instead of lease agreements processed through Space Management. This method of procuring in typically small rental amounts requires no further approval through Space Management, but the transactions still need to be recorded in the *Lease Track* inventory and an OSM Lease Number assigned for payment purposes. Consequently, the agency should provide Space Management a copy of the Purchase Order; faxed and e-mailed copies are acceptable. If the Purchase Order does not clearly state the address of the property, provide that information in

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your transmittal. Space Management will advise the agency by e-mail of the assigned lease number.

Purchase Orders are not required for purchases of less than \$1,000, thus Purchase Orders are not required for leases involving rent of less than \$1,000 per year. Space Management does not require notification of rentals involving less than \$1,000 per year.

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CHAPTER 4

UPDATE YOUR LEASE INFORMATION

In order to keep the lease data current in *Lease Track* and *Lease Search*, Space Management must be kept apprised of changes to start and end dates and agencies' actions or intended actions regarding current leases.

SECTION 4.1 WHAT YOU NEED to TELL SPACE MANAGEMENT

4.1.1 Actual Commencement Date and Term. If the commencement date of a lease term is dependent upon completion of construction or renovations, Space Management will insert the estimated commencement date stated in the lease document in *Lease Track* and flag the lease as "Pending". When occupancy and commencement of the lease term actually occurs, the agency should notify Space Management so that the actual information can be recorded and the "Pending" flag removed.

4.1.2 Street Address. If the street address of the leased property will be established during or upon completion of construction, notify Space Management of the address when it is known.

4.1.3 Change of Landlord or Landlord's Name. If the property is sold or otherwise transferred to another individual or entity, or there is a restructuring of the landlord resulting in a name change, Space Management should be advised and provided documentation of the change. The preferred form of documentation is an amendment as discussed in Chapter 7.

4.1.4 Holdover Status. Space Management should be notified when the "Holdover Term" provision of an expiring lease will be invoked to extend the lease on a month-to-month basis until an expected event takes place, such as negotiation of a renewal lease or vacating the premises.

4.1.5 Termination. Space Management should be notified and provided documentation of a lease termination.

4.1.6 Expiration. If a lease is to be allowed to expire without renewal or extension, Space Management should be advised so that *Lease Track* can be so updated.

SECTION 4.2 CONTACT by SPACE MANAGEMENT.

Unless Space Management receives a renewal, amendment, extension letter or holdover notification, the status of an Active record becomes questionable as the end of its term approaches. However, Space Management will not change an Active lease record to Inactive status without first contacting the tenant agency by telephone or e-mail to determine the agency's intentions regarding the lease.

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CHAPTER 5

LANDLORD’S REGISTRATION with the SECRETARY of STATE

Pursuant to Code of Alabama Title 10A, Alabama Business and Nonprofit Entities Code, corporations, limited partnerships, limited liability companies, professional associations, employee cooperative corporations, and real estate investment trusts formed in Alabama are “domestic” entities and their existence is recorded with the Secretary of State. Such entities formed and existing under the laws of a jurisdiction other than the State of Alabama are “foreign entities” and in order to transact business in Alabama must register with the Secretary of State.

If the landlord of a lease is a corporation, limited partnership, limited liability company, professional association, employee cooperative corporation, or real estate investment trust not previously known to Space Management, the Secretary of State website, www.sos.state.al.us, will be used to verify their existence and registration. If the landlord is not found on the website listing the lease is returned to the agency or held by Space Management until their existence and registration can be verified. Agencies should perform this verification before submitting such leases to Space Management to avoid related delay in approval.

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CHAPTER 6

THE LEASE DOCUMENT REQUIREMENTS

SECTION 6.1 RECOMMENDED LEASE FORM

OSM Form A is the lease form recommended by Space Management. OSM Form B is a variation of that form in which Article 2, Term, accommodates a month-to-month tenancy. These lease forms are simple and address matters pertinent to most of the leases submitted to Space Management and should at least be used as a resource when drafting a lease. The forms are available on the OSM webpage, <http://finance.alabama.gov/pages/SpaceM.aspx>, in Microsoft Word and may be edited to fit a specific transaction.

SECTION 6.2 REQUIRED LEASE INFORMATION

The following information is to be included in leases submitted to Space Management. These instructions follow the recommended lease forms, but apply to any lease form. Note that where underlined blanks are provided in the recommended lease form, the underlining may be deleted when information is inserted.

6.2.1 County: Insert the name of the county in which the leased property is located.

6.2.2 State Agency or Department: Insert the name of the entity entering the lease with the landlord.

6.2.3 Parties:

- a. Date:** Insert the date upon which the agreement is made; i.e., the date the agency and landlord have signed the lease. This need not be the date upon which the term or occupancy begins, that will be inserted under TERM. If this date is left blank when submitted to Space Management, we will insert the date upon which the fully executed and approved lease is returned to the agency.
- b. Owner:** Insert the name and address of the landlord. Note that the “RENT” provision identifies the address inserted here as the address to which rental payments are to be delivered.
- c. Agency:** Insert the name of the entity that will be the tenant. This may include identification of branch or division, if that helps identify funding source.

6.2.4 Term of Lease: Enter the dates upon which occupancy of the property is to begin and end. In the case of “month-to-month” leases, it is preferred that the expiration date not exceed 24 months after the start date of the lease.

6.2.5 The Demised Premises:

- a. Address:** Insert the county, city, and street address, including zip code, of the property being leased. Include suite, unit, or room number, if applicable. If a

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street address has not been assigned to the property pending completion of construction, insert the most descriptive address available, particularly zip code, and notify Space Management of the street address when it is assigned.

- b. Square Footage:** Insert the area of the leased space in square feet.
- c. Property type or Use:** Insert the intended use of the property (office, storage, classroom, etc.)

6.2.6 Rent: Insert the annual rent, the annual cost per square foot and the monthly rental payments. (Lease forms that state monthly payments only are acceptable.) If the rent is to escalate during the lease term, state the rental amount and cost per square foot that will apply to each year or group of years. **Do not state rental escalation as a percent increase per year, rent and rental rates must be stated in dollar amounts for each year or group of years.**

Note that this provision states that the Lessor's address stated at the beginning of the lease is the address to which rental payments are to be delivered. If rental payments are to be delivered to some other address, this provision should be revised accordingly.

6.2.7 Who pays for utilities and maintenance? The recommended lease form is written for the condition in which the landlord pays expenses of janitorial services, utilities, and maintenance of building systems and the landlord's payment of such expenses is covered by the rent. Therefore, item "g" of Covenants of Agency states "Agency agrees to use reasonable precautions in the conservation of energy and utilities" and item "d" of Covenants of Lessor states "...unless otherwise waived or amended in writing, LESSOR shall provide AGENCY with services including, but not limited to heating, air conditioning, sewerage, water, janitorial service, and will pay the related utility bills and expenses thereof, all of which are included in and covered by the rental payments".

If any of these expenses are to be paid by the agency, then these provisions must be revised to state the terms that apply.

6.2.8 Parking: Due to the variety of circumstances that could apply, the recommended lease form does not contain a default provision addressing parking. However, it is recommended that parking arrangements be confirmed in the lease under "Covenants of the Lessor".

6.2.9 Renewal Option: Insert the number of one-year periods that the agency has the option to renew the lease. Insert "0" if there is no renewal option. This provision may be modified to reflect whatever renewal option has been agreed upon.

6.2.10 Identify Signatories: Beneath the signature lines for the Lessor and Agency type or legibly print the name and title of the person signing for each. If you are not using the recommended form, take note that the agency's attorney is to sign off on the document; therefore, prepare a signature line for your attorney.

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SECTION 6.3 REQUIRED PROVISIONS

The following provisions are required to be included in leases to be recommended for approval by Space Management. This language is from Space Management's recommended lease form and may be modified to strengthen the language, but the substance of the language should not be diminished.

6.3.1 Not a Debt of the State.

“Under no circumstances shall the commitment of the AGENCY under this lease constitute a debt to the State of Alabama as prohibited by Section 213, official Recompilement of the Constitution of Alabama of 1901, as amended. Instead, it is understood and agreed that during any fiscal year of the State of Alabama occurring during the term of this lease, the AGENCY's commitments under this lease are payable solely from amounts appropriated by the Alabama Legislature for the AGENCY as reduced by any proration declared pursuant to Alabama law applicable to such fiscal year.”

6.3.2 Cancellation Privilege.

“It is expressly understood and agreed by the parties hereto that the AGENCY shall have the option to terminate this lease at the end of any fiscal year of the State of Alabama in the event the State Legislature fails to appropriate sufficient funds to AGENCY to make the rental payments for the ensuing fiscal year. It is further agreed that in the event of the proration of the fund from which payment under this lease is to be made, the lease will be subject to termination at the option of the Agency. “

6.3.3 Severability.

“If any provision of the lease shall contravene any statute or Constitutional provision or amendment, either now in effect or which may, during the term of this lease, be enacted, then that conflicting provision in the lease shall be deemed null and void.”

6.3.4 Montgomery City Clause.

“In the event the State of Alabama or an entity thereof constructs, purchases, or expands an office building in the City of Montgomery for occupancy by AGENCY, or in the event existing State-owned office space becomes available in the City of Montgomery for occupancy by AGENCY, the AGENCY may cancel this lease by giving written notice to LESSOR of no less than six (6) months. “

Note: This article must be included in leases of property within the City of Montgomery. Exceptions are leases of space for ABC Stores and leases which provide that the agency can terminate the lease for any reason with six months or less notice to the landlord.

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6.3.5 Exemption.

“The AGENCY notwithstanding any provision of this lease, incorporations or amendments hereto, does not release or waive, expressly or implied its right to assert sovereign immunity or any other affirmative defense right it may have under law.”

SECTION 6.4 SERVICES INCLUDED IN LEASES

6.4.1 General Rule. Any service that can be reasonably and economically excluded from a lease should be competitively bid for direct contract between the agency and a provider pursuant to the competitive bid rules and regulations of the Purchasing Division of the Department of Finance.

6.4.2 Tenant Improvements. “Tenant Improvements” are agency-requested alterations, renovations, or improvements to a building, part of a building, or building site (to be leased or currently leased) to make the leased premises fit the agency’s needs. Tenant Improvements are usually provided by the landlord at the landlord’s expense. Tenant Improvements may be included in a lease and the landlord’s cost of having the improvements designed and constructed may be stipulated to be:

- a. included in the base rent,
- b. additional rent in the form of a stipulated or not-to-exceed lump sum, one-time payment,
- c. a stipulated or not-to-exceed amount to be paid as additional monthly rental payments over a specified period of time, or
- d. an allowance included in the base rent estimated to cover the costs of not yet designed improvements with provisions to address over-run or under-run of the allowance.

The scope of Tenant Improvements should be dictated by the general rule above. It is highly recommended that agencies require landlords to obtain competitive bids for significant Tenant Improvements before they are incorporated into an existing lease or charged against an allowance. Sole source specification of materials or equipment by the agency tenant must be avoided.

6.4.3 Utility Bills. The costs of monthly utility bills may be included in the base rent of a lease (as in the recommended lease form) or, in the case of multi-tenant buildings, as additional rent calculated as the tenant’s pro-rata share (defined in the lease) of the landlord’s actual utility bills for the entire building.

6.4.4 Janitorial and Garbage Disposal Services. Subject to the general rule above, the costs of janitorial and garbage disposal services may be included in the base rent of a lease or as additional rent for which the method of calculating costs is defined.

6.4.5 Guard and Security Monitoring Services. When the leased space is in a multi-tenant building and the landlord provides guard and security monitoring services for the

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entire building, these services and special extensions of these services for the agency-tenant may be included in the lease. Otherwise, guard and security monitoring services must be contracted directly with the providers pursuant to the competitive bid rules and regulations of the Purchasing Division of the Department of Finance.

6.4.6 Security Systems. Subject to the general rule above, the installation of security systems may be included in a lease as Tenant Improvements.

SECTION 6.5 DISALLOWED PROVISIONS

6.5.1 Indemnification and Hold Harmless Agreements. Language obligating a State agency to indemnify and hold the landlord harmless or reimburse a landlord's attorney's fees conflicts with the State constitution and is not allowed. Limiting the scope of such agreements with such language as "to the extent permitted by the Constitution of the State of Alabama (or Alabama State law)" has been accepted, but not encouraged because it is misleading.

6.5.2 Acceleration of Rent. An acceleration of rent clause provides that upon specified events, rent for the entire remainder of the lease term becomes due immediately. The triggering events are usually failure to pay rent, default, or early termination by the tenant. Such clauses have been interpreted by Space Management and legal reviewers as creating a debt of the State in violation of the State Constitution and, therefore, are not allowed.

6.5.3 Penalties and Fees for Default and Early Termination. There is no statutory authority for the State to pay penalties or fees for default or early termination; therefore, they are not allowed in real estate leases.

SECTION 6.6 DEFAULT AND DISPUTE RESOLUTION

Provisions addressing curing of default or dispute resolution are not required to obtain Space Management's recommendation of lease approval. However, the recommended lease form does contain the simple provision below addressing curing of default. For agencies wishing to include a disputes resolution provision in their lease, suggestions are offered below for use in leases with private owners and inter-agency leases.

6.6.1 From the recommended lease form:

CURE DEFAULT

Upon default in any covenants or obligations under this lease, the non-defaulting party shall give the defaulting party written notice of the nature of the default. If the default is for payment of money, the defaulting party must cure the default by payment of the amount within thirty days of the date of the notice or the date specified in the notice, whichever period is the longer. Any other default must be cured within a reasonable time after the date of the notice or by the date specified in the notice, whichever is the longer, provided however that any cure period must take into consideration the nature of the default and provide a reasonable time to cure.

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If the default is not cured within the time allowed, the non-defaulting party may cancel this lease without further obligation, or may cure the default. The cost of curing a default of the AGENCY shall become additional rent to be paid in monthly installments over the remainder of the lease term. Should the cured default be paid by the AGENCY, the cost will be due and payable upon AGENCY's written demand on the LESSOR, or AGENCY may deduct that cost from future rent.

Other than as provided in this section, the LESSOR's sole remedy to collect money due under the terms of this lease, or arising out of, or related to the landlord-tenant relationship, shall be the filing of a claim with the Alabama State Board of Adjustment.

6.6.2 Dispute Resolution for Leases with Private Owners.

DISPUTE RESOLUTION

“Should a dispute between the parties relate to the payment of money to the LESSOR, the sole remedy of the LESSOR shall be to file a claim with the State of Alabama Board of Adjustment.

For any other dispute between the parties, senior officials of LESSOR and AGENCY who have the authority to bind their principals to any agreement they should reach, shall meet and engage in a good faith attempt to resolve the dispute.

Should negotiation not produce a resolution, the parties agree that the dispute shall be submitted to non-binding mediation, to be conducted in a mutually agreed location utilizing mediators selected from the roster maintained by the Alabama Center For Dispute Resolution.

This agreement of the AGENCY to the use of alternative methods to attempt to resolve a dispute is not a waiver of the AGENCY's right to assert sovereign immunity.”

6.6.3 Dispute Resolution for Inter-Agency Leases.

DISPUTE RESOLUTION

“Any disputes arising out of, or related to, this lease will be resolved by negotiation between the chief administrative officers of each party to the lease. Either party may call for negotiation by written notice to the other party. If the dispute cannot be resolved by negotiation within ninety (90) days of that notice, one or both of the parties shall advise the Governor that the dispute is being submitted to him for resolution and his decision shall be final and binding upon both parties.”

SECTION 6.7 MISCELLANEOUS PROVISIONS

6.7.1 Holdover Term. The “Holdover Term” provision of the recommended lease form is not required for approval, but is recommended to simplify lease administration. The advantage of this provision is that it allows the agency to continue occupancy and pay rent

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after lease expiration. This can be an important feature if renewal negotiations or processing of a renewal has not been finalized by the expiration date stated in the current lease.

6.7.2 Interest on Late Payments. Provisions requiring the state agency to pay interest on late payments are allowed; however, they must conform to Alabama's "Prompt Payment Act", Section 41-16-3, Code of Alabama, 1975, as amended. The Act states, in pertinent part: "If the amount due by the state is not in dispute, payment shall be made within 30 days after the [landlord] has... presented a proper invoice. If the amount payable is not paid within 30 days, interest on the amount shall be charged. ... The interest rate shall be the legal amount currently charged by the state." The "legal amount currently charged by the state" is the interest rate assessed by the Department of Revenue on underpayment of taxes, which is a rate determined and published on a quarterly basis by the Internal Revenue Service for underpayment of taxes.

6.7.3 Unamortized Tenant Improvement Costs. If tenant improvements (TI's) paid for by the landlord are included in a lease, they are most frequently covered by the rent and amortized over the term of the lease. However, if the agency has to terminate early the landlord does not recover all of its costs as long as the space then remains vacant or is rented at a lower rate. Some landlords want to include an "Unamortized Tenant Improvement Costs" clause that requires the agency, upon early termination or default, to pay the landlord the tenant improvement costs that would have been covered by rental payments of the unfinished term.

Such provisions are allowable; however, the following conditions should be considered:

- a. Custom improvements required for the agency's use (laboratory, x-ray room, vault, unusual color schemes or finishes, etc.) not useable by a typical successor tenant, are legitimate improvements for which such a provision might be considered; however, improvements that are capable of being used by a successor tenant may not be.
- b. The fixed or maximum value of the TI's must be stated.
- c. The method of calculating payments for unamortized TI costs must be stated.
- d. An obligation to pay substantial unamortized costs could be a financial obstacle to an agency's ability to adjust or eliminate programs or services housed in a leased space should such actions become necessary. To minimize this risk the amortization period should be limited to five years.
- e. The agency's obligation to pay for unamortized TI costs should not apply to terminations resulting from non-appropriations of funds, proration, or relocation to fill vacant space in state-owned buildings.
- f. The agency should only be obligated to pay for unamortized TI costs for that portion of the amortization period during which the demised premises remains vacant.

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- g. The agency's obligation to pay for unamortized TI costs should exist only if the landlord is making a reasonable effort to re-lease the vacant premises.
- h. The agency's obligation to pay for unamortized TI costs cannot create a debt of the State in violation of Section 213, official Recompilation of the Constitution of Alabama of 1901, as amended. If an "Unamortized Tenant Improvement Costs" clause is included, it should be supplemented by language of the same effect as that underlined in the following Space Management recommended "Not a Debt of the State" clause:

"Under no circumstances shall the commitment of the AGENCY under this lease constitute a debt to the State of Alabama as prohibited by Section 213, official Recompilation of the Constitution of Alabama of 1901, as amended. Instead, it is understood and agreed that during any fiscal year of the State of Alabama occurring during the term of this lease, the AGENCY's commitments under this lease are payable solely from amounts appropriated by the Alabama Legislature for the AGENCY as reduced by any proration declared pursuant to Alabama law applicable to such fiscal year."

6.7.4 Payment of Actual Operating Expenses. "Operating expenses" are cash outlays necessary to operate and maintain a property. Operating expenses typically include utilities, janitorial services and supplies, garbage and trash removal, pest control, building and systems maintenance and repair, building personnel and management expenses, real estate taxes, and property insurance. Operating expenses should not include capital expenditures, structural repair, substantial repairs to or replacement of major systems (heating, cooling, electrical, plumbing, elevators, escalators, etc.) or debt service.

Language providing for the tenant's payment of its share of actual, auditable operating expenses is intended to reduce contingency pricing by the landlord and is acceptable. There are two general arrangements for paying actual operating expenses: (1) an annual operating expense is estimated annually and that amount is paid in monthly installments as additional rent, the difference between the estimated and actual expenses is paid after the end of the year, or (2) operating expenses of a base year is included in the base rent and the difference between the actual expenses of the base year and actual expenses of subsequent years is paid annually. "Operating Expenses" should be clearly defined and the tenant's right to be provided proof of the actual costs of these expenses must be included in the lease.

6.7.5 Notices: The addresses to which formal notices are to be delivered to the agency and landlord and the conditions constituting "delivered" should be stated. Such a provision is included in the recommended lease form.

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CHAPTER 7

CHANGES to LEASE TERMS DURING the LEASE PERIOD

SECTION 7.1 AMENDMENTS

Lease amendments are used when it becomes necessary to change, or amend, limited portions of a Master Lease or Renewal Lease while leaving the majority of the terms and conditions intact. Amendments are typically short, one or two page documents and are submitted in accordance with Chapter 3. OSM Form C, Sample Lease Amendment, is available on the OSM webpage, <http://finance.alabama.gov/pages/SpaceM.aspx>, in MS Word.

Following are subjects typically addressed in amendments:

- a. Tenant improvements initiated during the term of the lease.** Scope of improvements, maximum costs, and terms of payment are addressed.
- b. Addition or reduction of leased spaces.** Expanding or reducing leased area during the lease term can be accomplished through an amendment. Such amendments should state room or suite numbers being added or deleted, square footage added or deleted, net square footage of the lease after the change, net annual and monthly rent after the change, and the effective date of the change.
- c. Extension of lease term and rent.** An amendment is a simple way to “extend” a lease without preparing an entire, new lease document. Such amendments will define the new, extended term and rental payments during that period.
- d. New or Restructured Landlord.** If ownership of the property changes by sale, foreclosure, death, or restructure of the landlord, it is recommended that this change be documented by amendment. This is particularly important if the lease does not contain language passing the landlord’s rights and obligations under the lease to its successors and assigns. OSM Form D, Sample Lease Amendment Changing Name of Landlord, is available on the OSM webpage, <http://finance.alabama.gov/pages/SpaceM.aspx>, in MS Word.

A Note of Caution: Repetitive extension of a lease term, changing of rental rates, and changing of leased area by amendments can get out of hand and render interpretation of a lease with multiple amendments a confusing matter. At some point it is prudent to execute a new lease document to catch up and redefine the current lease.

SECTION 7.2 EXTENSION LETTERS

An extension letter notifies the landlord that the tenant elects to extend its lease pursuant to a “Renewal” clause of the lease. An extension letter should be written in a timely manner, identify the extension period, state the rent to be paid during the extension period, and, if the lease provides for multiple renewal periods, state which period is being effected, first, second, etc. It is prudent to request the landlord’s acknowledgement or concurrence with the

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action. OSM Form E, Sample Extension Letter, is available on the OSM webpage, <http://finance.alabama.gov/pages/SpaceM.aspx>, in MS Word.

SECTION 7.3 TERMINATION AGREEMENTS

Although rare, there are occasions when tenant and landlord mutually desire to terminate a lease early. For such an occasion OSM Form F, Sample Lease Termination Agreement, is available on the OSM webpage, <http://finance.alabama.gov/pages/SpaceM.aspx>, in MS Word.

SECTION 7.4 REPLACEMENT LEASES

Occasionally, it is mutually beneficial to the landlord and tenant that the landlord relocate the tenant to another property. This is typically accomplished by executing a new, replacement lease in advance of the move. The replacement lease must acknowledge the presence of the existing lease and address its termination upon occupancy of the new space. When the replacement lease is submitted to Space Management, the agency's transmittal letter must advise Space Management of the Lease Number of the lease that will be terminated.

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CHAPTER 8

SPECIAL CONDITIONS and EXEMPTIONS from SPACE MANAGEMENT REVIEW

SECTION 8.1 LEASING STATE-OWNED PROPERTY to PRIVATE ENTITIES

Pursuant to Section 9-15-71, Code of Alabama, 1975, as amended, all leases of state-owned real estate to private entities fall under the purview of the State Lands Division of the Dept. of Conservation and Natural Resources, not Space Management. Such leases yielding rent in excess of \$20,000 shall be competitively bid and awarded by the State Lands Division.

SECTION 8.2 PORTABLE STORAGE UNITS

Portable Storage units are personal property, not real property. Rental contracts for such units on an agency's property are not under the purview of Space Management. However, if a storage unit is on someone else's property and the lease grants rights to the real estate, the lease of the property would be submitted to Space Management.

SECTION 8.3 SHARED LEASED SPACE

Several agencies lease building space and share portions of that space with other agencies on a cost reimbursement basis. It is not pertinent to the purpose of the database inventory of leases to record and track such arrangements. However, vouchers for such reimbursements must also display an OSM Lease Number to comply with State Comptroller's requirements; therefore, the OSM Lease Number assigned to the lease for the property can be used by all of the agencies sharing the space.

To minimize confusion under this practice, the following wording should be used on the reimbursement voucher: Reimbursement for share of space under OSM Lease #_____

SECTION 8.4 STATE RECORDS CENTER

The Dept. of Archives & History (ADAH) operates a State Records Center in a facility that they lease under a Space Management approved lease. ADAH, in turn, charges agencies a quarterly fee based on a unit price per box of materials stored in the facility. This is not a lease and Space Management considers this arrangement to be the same as that addressed as "Space Shared by Agencies". Therefore, agencies submitting rental invoices for the State Records Center for payment should write either of the following on the invoice:

"Reimbursement for share of space under OSM Lease #_____

or

"OSM Lease Number not required per Office of Space Management"

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CHAPTER 9

COMPLIANCE WITH THE

BEASON-HAMMON ALABAMA TAXPAYER AND CITIZEN PROTECTION ACT

SECTION 9.1 PURPOSE AND SCOPE OF THE ACT

Act 2011-535 of the 2011 Alabama Legislature was codified as Code of Alabama, **Sections 31-13-1 et seq.** and was amended by Act 2012-491 of the 2012 Alabama Legislature. The Act, entitled the *Beason-Hammon Alabama Taxpayer and Citizen Protection Act*, regulates illegal immigration in the State of Alabama.

Section 9 of the amended Act governs contracts, grants and incentives awarded by the State, any political subdivision thereof, or any state-funded entity. For the purposes of that Section, **§31-13-9(i)** defines a “contract” as a contract awarded by the State, any political subdivision thereof, or any state-funded entity that was competitively bid or would, if entered into by the state or an agency thereof, be required to be submitted to the Contract Review Permanent Legislative Oversight Committee. In other words, if a transaction entered into by a state agency does not require either competitive bidding or submission to Contract Review, it is not a “contract” under Section 9 and not subject to the requirements of that Section. No more inquiry about whether there is actually some kind of “competitive process” is required.

SECTION 9.2 APPLICABILITY TO REAL ESTATE LEASES

There are no statutory requirements for State agencies to award real estate leases to private entities through competitive bidding or a competitive process; therefore, they are, in general, exempt from the provisions of Section 31-13-9. **However**, if an agency has internal procedures implementing a competitive process for awarding its real estate leases the requirements of Section 31-13-9 will apply to such leases. Likewise, by policy of the Governor’s Office “build-to-suit” leases (See Section 3.6, Page 6) are to be acquired through competition and the requirements of Section 31-13-9 apply to them.

SECTION 9.3 DOCUMENTATION REQUIREMENTS

If Code of Alabama, Section 31-31-9, as amended, does apply to a real estate lease, the landlord’s compliance with the Act must be documented as follows:

9.3.1 “Section 9(k)” Language. Pursuant to **Section 31-13-9(a) and (k)** the following language must be included in the lease:

“By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in

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violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.”

9.3.2 “Section 9(b)” Documentation. To satisfy the requirements of **Section 31-13-9(b)** the landlord must either demonstrate to the tenant agency why the landlord is not enrolled in the E-Verify program or submit to the tenant-agency a legible copy of the executed Memorandum of Understanding (“E-Verify MOU”) between the landlord and the United States Department of Homeland Security bearing the number assigned to that MOU by Homeland Security. Usually, a copy of the cover page and signature page of the E-Verify MOU is sufficient. A claim of exemption from E-Verify enrollment must be made in writing to the agency.

SECTION 9.4 DETERMINATION OF APPLICABILITY

The agency, **not Space Management**, is responsible for determining whether Code of Alabama, Section 31-13-9, as amended, applies to any real estate lease which it transacts. However, in the case of build-to-suit leases, the lease must include the Section 9(k) language and be accompanied by Section 9(b) documentation to obtain Space Management’s recommendation of approval.