National Aeronautics and Space Administration

Headquarters
Washington, DC 20546-0001

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Reply to Attn of: Office of the Chief Financial Officer

TO: Distribution

FROM: Deputy Chief Financial Officer

SUBJECT: Financial Management Requirements, Volume 16, Chapter 5, Enhanced Use Leases

The enclosed Financial Management Requirements (FMR) chapter provides the National Aeronautics and Space Administration (NASA) financial policy on Enhanced Use Leases (EUL). It is effective immediately. The enclosed EUL policy supersedes the existing description of EUL in Volume 16 Section 010201(B)(7).

This policy explains the authority to lease NASA real property to other Federal and non-Federal entities and to retain net proceeds derived from those leases. The policy reflects existing legal authority for EUL leases at the Ames Research Center and Kennedy Space Center and recent legislation that will expand EUL authority to all NASA Centers effective December 31, 2008.

If you have any questions, please contact Richard Savitsky by e-mail at richard.savitsky-1@nasa.gov or by phone at (202) 358-2329.

Terry Bowie

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CHAPTER 5

ENHANCED USE LEASES (EUL) OF REAL PROPERTY

0501. GENERAL. This section of the Space Act (42 U.S.C. § 2459j) gives the Administrator authority to lease NASA real property to other Federal Agencies and non-Federal entities, to lease property at fair market value, to use the amounts collected to cover the full costs to NASA in connection with the lease, and to use the net proceeds of the lease for other purposes.

050101. Under authority initially enacted, the statute applies to any real property under the jurisdiction of the Administrator at no more than two NASA Centers. The Ames Research Center and Kennedy Space Center have been NASA's EUL demonstration sites. Amounts received under that authority in excess of costs associated with the lease shall be available for maintenance, capital revitalization, and improvements of the real property assets of the Centers selected for this demonstration program, and shall remain available until expended.

050102. EUL authority was modified by Public Law 110-161 and becomes effective on December 31, 2008. The revised statute applies to any non-excess real property and related personal property (i.e., collateral equipment) under the jurisdiction of the Administrator and extends the EUL authority to all NASA Centers.

050103. Sunset. Authority to enter into EUL leases shall expire on December 26, 2017. The expiration of EUL authority to enter into leases shall not affect the validity or terms of leases or NASA's retention of proceeds from leases entered into under EUL authority before the date of the expiration of such authority.

0502. PRICING OF LEASE AGREEMENTS. Lease agreements shall not be for less than the fair market value of the property plus expected incremental billable costs as described in Section 0505. Lease agreements entered into prior to December 31, 2008, with customers from other Federal agencies shall be based on the full costs of leases as described in Section 0505.

050201. Fair market values of lease agreements should be supportable and shall be established using market surveys as discussed in Financial Management Requirements (FMR) Volume 16, Chapter 4, Section 040102 or utilizing appraisal services. A recent market survey or appraisal for a different EUL agreement could be referenced if the properties are comparable.

050202. Since lease agreements can be in excess of full costs of leases as described in Section 0505, collections associated with EUL leases can result in net proceeds. Net proceeds of EUL leases are discussed in Section 0506.

0503. RECORDING OF EUL LEASE AGREEMENTS.

050301. Lease agreements under EUL authority shall be established in the Agency accounting system as agreements under a no year account as directed by the Office of the Chief Financial Officer (OCFO).

050302. Each year, Centers shall prepare estimates of reimbursements under this authority and shall submit estimates to OCFO in the same manner as other anticipated reimbursements for the purpose of preparing an apportionment request to the Office of Management and Budget (OMB). The estimated reimbursements for a lease should represent only the portion of that lease that is expected to be earned in the coming year plus an estimate of incremental billable charges in addition to contractual lease payments (e.g., demand services) in the coming year. Estimates for reimbursements under this authority shall be distinguished from other anticipated reimbursements.

Budgetary resources derived from EUL authority shall include the unobligated balance brought forward into the new fiscal year (i.e., carryover).

050303. Lease agreements under EUL authority shall be managed in accordance with a program/management structure developed by the Facilities Engineering and Real Property Division at Headquarters (HQ) in coordination with OCFO and affected Centers. In addition, the capital assets account under EUL authority shall be managed in accordance with a program/management structure developed by the HQ/Facilities Engineering and Real Property Division in coordination with OCFO and affected Centers.

050304. An Estimated Price Report (EPR) for the agreement shall be prepared in accordance with the format provided in Appendix A of FMR Volume 16. The full cost of the agreement on the EPR shall include cost components as described in Section 0505. The full cost should include a regular recurring facilities charge based on property size and type and comply with Section 050501. That facilities charge should be represented on the Center Management and Operations (CM&O) line on the EPR. If the Center calculates a lease management and administration charge as part of the full cost of the lease as described in Section 050502, that charge shall be included in the amount entered on the CM&O line on the EPR. The EPR shall also include an estimate for incremental billable charges (e.g., demand services) associated with the lease that would be in addition to the regular recurring facilities charge. An estimate for the incremental billable charges should be represented on the line for Other Direct Costs on the EPR. The EPR prepared for an EUL lease agreement shall include the Price Charged Customer based on the fair market value of the lease as addressed in Section 050201. The price adjustment column on the EPR does not need to be completed.

050305. Revenue derived from a lease, including in kind consideration, shall be recognized and recorded in the Agency accounting system in the period in which lease payments become due.

0504. CONSIDERATION.

050401. A person or entity entering into a lease under this section shall provide consideration for the lease at not less than fair market value.

050402. All consideration received by NASA in connection with the lease, including in kind consideration, shall be applied to lease amounts due. Lease revenue shall be recognized when lease payments become due. Consideration, including in kind consideration, shall be applied to amounts due NASA and be associated with each lease agreement. Consideration may take one or a combination of the following forms:

A Payment of Cash

B. In Kind Consideration. NASA (i.e., at the two EUL demonstration Centers, Ames Research Center and Kennedy Space Center) is authorized to accept in kind consideration in lieu of cash for rent with leases entered into prior to December 31, 2008. In kind consideration shall reflect expenses for property repairs, upgrades, and/or capital improvements that extend the useful life of NASA properties and where the lessee assumed responsibility for the charges. In kind consideration shall be included in the draft lease submitted to HQ/Facilities Engineering and Real Property Division for review and approval. All in kind consideration is to be spelled out in the draft and final versions of the lease. Any changes to an existing lease that regarding new projects as in kind consideration shall be submitted to HQ/Facilities Engineering and Real Property Division for approval.

Contributed materials, supplies, facilities, and property, if significant in amount, should be recorded at their fair value, and provided the entity has a clearly measurable and objective basis for determining the value. If the values of contributed materials, supplies, facilities, and property cannot reasonably be determined, they should not be recorded as in kind consideration. Unless the amount involves a legitimate capital improvement to the property for the benefit of NASA and unless it is approved in advance by both the Center and HQ/Facilities Engineering and Real Property Division, the amount should not be recognized as consideration in lieu of cash for the lease payment. .

In kind consideration received by NASA may take one or a combination of the following forms:

1. Maintenance, construction, modification or improvement of facilities on real property under the jurisdiction of the Administrator.

2. Provision of services to NASA, including launch services and payload processing services.

3. Use by NASA of facilities not under the jurisdiction of the Administrator.

050403. Amounts reflecting consideration shall be recorded in a no year account as directed by the OCFO. Consideration received for the lease amounts due shall be recognized as revenue. Cash consideration realized in excess of lease amounts due shall be recorded as advances to be applied to future lease payments. In kind consideration received in excess of lease payments due from the lessee shall be applied to future lease payments and shall be distinguished from cash advances.

050404. Upon termination of the lease and after all relevant charges have been settled with the lessee, any outstanding cash advance balances shall be returned to the lessee.

0505. FULL COST OF LEASES. The Administrator may utilize amounts of cash consideration received under this section for a lease entered into under this section to cover the full costs to NASA in connection with the lease. These funds shall remain available until expended. Because the funds collected under this authority to cover the full costs of leases shall remain available until expended, the amounts collected to cover lease costs shall be tracked separately in a no year account. The full cost of leases under this authority shall consist of the following in accordance with provisions of EUL lease agreements.

050501. A Center entering into an EUL lease agreement shall prepare an estimate of the cost to the Center per unit of space (e.g., cost per square foot) of the property or other similar measure based on an objective and systematic analysis of the type of property being used (e.g., office space, undeveloped land, etc.). That cost should reflect indirect costs, general use of facilities services (e.g., shared charge for security services, procurement activities), and building maintenance (including both routine and major building repairs) of comparable properties at the Center. A charge shall be calculated based on the utilization of space by the lease times the cost per unit of space as described above and shall be included as part of the regular recurring lease payment by the lessee. Proceeds derived from this charge shall be available to fund expenses at the Center which constitute the basis for that charge.

050502. Lease management and administration. The Center can determine whether to separately calculate a rate for lease management and administration. The lease management and administration charge may include, but not be limited to personnel and other expenses incurred by the Center for administrative, legal, and other services for EUL support activities (e.g., contract support, contract management, financial management). The lease management and administration charge should be represented as a recurring charge and part of the full cost of the

lease. It should be based on a rate determined in a manner similar to the recurring facilities charge as described in Section 050501. The charge shall be included as part of the regular recurring lease payment by the lessee. If the Center determines not to separately calculate a lease management and administration charge, such support costs should be included as part of the recurring facilities charge described in Section 050501.

050503. Costs for site preparation specific to the leased property. These costs may include, but are not limited to, basic upgrades so that a property can be considered viable for leasing and building modifications or customizations in order to accommodate EUL leases. Site preparation costs shall not include routine building maintenance or building repairs. If the lessee is a non-Federal entity, NASA should receive an advance to cover that work or the work should be sufficiently general in nature that it could be covered appropriately by the Center's CM&O functions. The charge shall be billed in addition to regular recurring lease payments and shall be based on reimbursement to NASA of direct costs incurred by NASA for providing the service.

050504. Costs for demand services representing services provided by the Center based on usage or requests by the lessee for incremental services not normally covered by the charge for general use of facilities and building maintenance as described in Section 050501. Examples include charges for utilities or work orders for upgrades or installations not normally covered by routine building maintenance. The charge shall be billed in addition to regular recurring lease payments and shall be based on reimbursement of direct costs incurred by NASA for providing the demand services.

050505. Other incremental costs traceable to the lease. Examples can include extraordinary administrative, legal costs, or other costs not normally included as part of routine facilities maintenance or otherwise described above. The charge shall be billed in addition to regular recurring lease payments and shall be based on reimbursement of direct costs incurred by NASA for providing the services. Costs not otherwise described above shall be approved by the HQ/Facilities Engineering and Real Property Division in coordination with OCFO before being recognized as part of the full cost of a lease.

0506. NET LEASE PROCEEDS.

050601. Amounts of cash consideration collected in excess of full cost of leases in accordance with Section 0505 shall be deposited into capital asset accounts to be established by the Administrator.

050602. Net lease proceeds derived from leases entered into on December 31, 2008, and later or which are earned after December 2008 shall contribute to a capital asset account available for capital revitalization and construction projects, improvements

of real property assets and related personal property under the jurisdiction of the Administrator, and may not be utilized for daily operating costs. That capital account shall be managed by HQ/Facilities Engineering and Real Property Division on behalf of the Agency. Amounts shall remain available until expended.

050603. Net lease proceeds derived from leases entered into prior to December 31, 2008, and which are earned not later than December 2008 are available to contribute to capital asset accounts available for maintenance, capital revitalization, and improvements of the real property assets of the NASA Centers participating in the EUL demonstration program (i.e., Ames Research Center and Kennedy Space Center) and shall remain available until expended. Contributions of net proceeds to the account that is available to be used for maintenance or daily operating costs shall require prior approval by the HQ/Facilities Engineering and Real Property Division.

0507. CAPITAL ASSET ACCOUNTS. Amounts deposited into the capital asset account shall be net proceeds on an accrual basis (i.e., revenue recognized in accordance with Section 050403) or cash proceeds, whichever is less. Amounts shall be credited to the capital asset accounts described above at least annually.

050701. Consideration received from lessees in excess of lease amounts due (i.e., for regular lease payments in accordance with the lease agreement plus incremental billable costs as described in Section 0505) shall be applied against future lease billings to the lessee, but not recognized as revenue associated with the lease or be available to contribute to capital asset account(s) described in this Section.

050702. The capital asset accounts shall be maintained by NASA in a no year fund.

0508. ADDITIONAL TERMS AND CONDITIONS. The Administrator may require such terms and conditions in connection with a lease under this section as the Administrator considers appropriate to protect the interests of the United States.

0509. RELATIONSHIP TO OTHER LEASE AUTHORITY. The authority under this section to lease property of NASA is in addition to any other authority to lease property of NASA under law.

0510. LEASE RESTRICTIONS. NASA is not authorized to lease back property under this section during the term of the lease or enter into other contracts with the lessee respecting the property.

0511. PLAN AND REPORTING REQUIREMENTS. The Administrator shall submit an annual report to Congress by January 31 of each year on the status of the EUL program. Assembling the report shall be the responsibility of the HQ/Facilities Engineering and Real Property Division in coordination with OCFO. EUL reports shall provide accounting as of the fiscal year just ended for lease revenue and balances and activity affecting capital asset accounts derived from the EUL activity as described in Sections 0506 and 0507. Reporting shall provide the capability to distinguish the following:

051101. Fiscal year beginning and ending balances of the capital asset account.

051102. Revenue derived from each lease. Distinctions shall be provided for cash proceeds versus in kind consideration. Data shall be traceable to source documents recorded in the Agency accounting system.

051103. Costs directly associated with each lease in order to derive the full cost of each lease agreement.

051104. Use of proceeds in accordance with provisions in EUL authority and as described above. Data shall be traceable to source documents recorded in the Agency accounting system.