

TEXAS STATE TECHNICAL COLLEGE SYSTEM
SYSTEM OPERATING STANDARD

No.FA.4.1	Page 1 of 13	Effective Date: 03/11/08
DIVISION:	Fiscal Affairs	
SUBJECT:	Leasing of Facilities Which are Temporarily in Excess of Instructional Requirements	
AUTHORITY:	Minute Order #130-83 (MO#49-85 Requirements)	
PROPOSED BY:	<i>Original Signed by J. Gary Hendricks</i>	
TITLE:	Vice Chancellor for Financial and Administrative Services	Date: 03/11/08
RECOMMENDED BY:	<i>Original Signed by J. Gary Hendricks</i>	
TITLE:	Vice Chancellor for Financial and Administrative Services	Date: 03/11/08
APPROVED BY:	<i>Original Signed by Bill Segura</i>	
TITLE:	Chancellor	Date: 03/11/08

STATUS: Updated 03/11/08

HISTORICAL STATUS: Approved by MC 06/20/05
 Revised 06/2005
 Reviewed 10/04/94
 Revised 03/04/94
 Approved MC 03/25/93
 Revised MO #49-85, 07/22/85
 Revised MO #130-83,11/21/83
 Revised MO #47-78, 05/22/78
 Revised MO #49-77, 08/29/77
 Revised MO #33-72, 08/07/72
 Revised MO #24-71, 04/19/71
 Revised MO #39-71, 08/16/71

POLICY

It is the policy of Texas State Technical College to make available for lease, facilities which are either temporarily in excess of the educational requirements or unsuitable for educational purposes. This is to assure the maintenance of the property at the least net cost to the State of Texas. Any net rental income shall be used for achieving the overall mission and role of the college.

PERTINENT INFORMATION

Chapter 135.561 of the Texas Education Code gives the TSTC Board of Regents the authority to lease land and permanent improvements owned by the system as the Board determines is in the best interest of fulfilling the mission of the college. Income received under the provisions of this System Operating Standard shall be accounted for and used in the same manner as other money available for the establishment or operation of the college.

Texas State Technical College has acquired land and buildings which are not suitable for use as instructional, administrative, or other support activities.

DELEGATION OF AUTHORITY

The Board of Regents must approve leases of Texas State Technical College land and/or facilities for terms of more than six months. The presidents have authority to approve leases for terms of six months or less, as delegated by the Board of Regents with Minute Order #47-78.

If the chancellor determines that circumstances indicate it is in the best interest of the college to enter into a lease agreement without delay, the chancellor may delegate to the president the authority to enter into the lease prior to receiving approval of the Board of Regents. In such a case, the lease agreement will be presented to the Board at its next meeting.

The president or the president's designee is authorized to negotiate terms and conditions for a lease with a potential lessee. The president must approve the terms and conditions negotiated on his/her behalf.

The TSTC System Vice Chancellor for Financial and Administrative Services has the authority and responsibility to review all terms and conditions to assure compliance with applicable laws and institutional policies and procedures.

The TSTC General Counsel has the authority and responsibility to prepare lease agreements in accordance with applicable laws and with the general provisions and specific terms and conditions approved by the president.

OPERATING REQUIREMENTS

A. Standards for Negotiations

1. Before negotiations are opened for the possible leasing of Texas State Technical College property, comparable rental rates for like facilities in the area will be determined. If there are no comparable rental rates available, the method of determining the rate will be fully documented as to why it is appropriate, and this documentation will be retained in the lease file.
2. No lease agreement will be entered into that is not in the best interest of TSTC. And no lease agreement will be entered into with any tenant whose use of the

facility may in any way interfere or conflict with or reflect discredit on Texas State Technical College.

3. Each commercial firm, organization, or individual desiring to lease Texas State Technical College property must provide:
 - a. an audited financial statement or other evidence of financial performance capability;
 - b. a full disclosure of all officers or persons of ultimate decision-making capabilities in the corporation, business or organization;
 - c. a listing of all corporate or other business entities associated with the prospective lessee that are currently conducting business with TSTC; and
 - d. a statement of the intended use of the facilities and property to be leased.

B. Standards for Lease Terms

The president or the president's designee will negotiate the terms and conditions of the lease. Lease agreement requirements will be as follows:

1. Provision regarding liability insurance coverage

Liability insurance coverage must be provided by the lessee based on an annual risk assessment of activities conducted on TSTC property. Proof of current liability insurance that meets TSTC's minimum requirements for the facility must be on file in the TSTC System Records Center before the lessee occupies TSTC facilities.

TSTC will incorporate the following additional requirements into its lease agreements:

- a. TSTC will be named as Additional Insured on the Lessee's General Liability Policy
- b. The cost of hazardous occupancy insurance premiums will be passed on to the lessee, with the cost being calculated as the difference between ordinary and hazardous occupancy insurance premiums, as reflected in TSTC's insurance premiums.
- c. The lessee's insurance carrier must notify TSTC 30 days before canceling the lessee's insurance.
- d. Lessee Comprehensive General Liability (Public Liability) Insurance will be required as follows:

- 1) \$1,000,000 per occurrence/\$2,000,000 annual aggregate;
- 2) \$1,500,000 per occurrence/\$3,000,000 annual aggregate; or
- 3) \$5,000,000 per occurrence/\$10,000,000 annual aggregate.

The category required will be based on risk assessment of the individual lessee. The insurance coverage may be obtained by the general liability policy or a combination of the general liability policy and an umbrella policy.

- e. TSTC will be provided with a Waiver of Subrogation Endorsement on all lessee insurance policies. This endorsement will state that the insurance company waives its rights to subrogate against TSTC for any claim or cause of action attributable to the negligence of any party other than the insured.
2. Disclosure of monthly or annual rental rates and requirement of advance payment of the first and last month's rent or other agreed amount at the beginning of the lease period
 3. For multi-year leases, an annual rate increase based upon the Consumer Price Index or another applicable method
 4. Collection of a prorated deposit equal to estimated property tax liabilities, in addition to rental charges
- This amount may be considered as being included in the advance payment of the first and last month rent, if that payment is equal to or greater than the estimated tax liabilities. If those payments are less than estimated tax liabilities, the difference must be paid as an additional deposit.
5. Provision for default of contract for non-compliance with the conditions and terms of the lease
 6. Requirement that all subleases must be approved in advance by the Board of Regents and that the Board may require the re-negotiation of any rental rate in the original lease before approval of a sublease
 7. Provision requiring the lessee to provide fire and extended coverage insurance for the replacement value of the facility

In lieu of the lessee obtaining the coverage, TSTC may carry the structure(s) on its policy and collect a premium from the lessee in addition to monthly rental charges.

8. Provision requiring lessee to provide for proper handling of wastes in manufacturing, storage, and/or disposal of hazardous wastes.
9. Provision that if a lessee plans to store explosive, toxic, or flammable materials, the lessee must notify the TSTC administration of its plans in advance
10. Provision that in the event of a spill or any occurrence that may endanger any person or the environment within the proximity of the TSTC campus at which the leased land and/or facility is located, the lessee must notify TSTC Public Safety and the TSTC Office of the President **immediately**.
11. Provision for appropriate certification or compliance with special legal requirements peculiar to the use of the facility
12. Provisions that the lessee accepts the facility "as is"; holds TSTC harmless and indemnifies TSTC against all expenses, liabilities, and claims; and occupies the premises at its own risk

C. Standards for Lease Document Preparation

1. Once the president and the potential lessee have agreed to the conditions and terms for a lease, those conditions and terms that are peculiar to that lease will be submitted by memorandum by the president to the general counsel, with a copy to the chancellor and the TSTC System chief financial officer.
2. Upon receipt of this memorandum, the general counsel will prepare a lease agreement, unless otherwise notified by the chancellor. If the conditions and terms are not in compliance with laws and policy or if there are other concerns, the matter will be referred back to the president for resolution.

In addition, the general counsel will prepare a letter that briefly describes the conditions and terms of the lease agreement. The letter will be addressed to the chancellor and contain the following information:

- a. number of years that the property is being leased;
- b. lessee's type of business;
- c. lease rental rate;
- d. length of lease;
- e. general liability insurance requirements;
- f. any other insurance requirements;
- g. responsibility for taxes; and

h. other information, as appropriate.

Upon completion, the general counsel will forward three originals of the lease and the accompanying letter to the president.

3. The president will obtain the notarized signature of the lessee on the three originals of the lease.
4. If the term of the lease is six months or less, the president will:
 - a. sign the three originals of the lease; and
 - b. forward one signed original of the lease to the TSTC System Records Center, along with the appropriate insurance policies.

If the term of the lease is more than six months, the president will:

- a. sign the three originals of the lease;
- b. have his/her designee prepare a Minute Order Document for the Board of Regents (see Standards for Minute Order Document Preparation below); and
- c. forward the following to the TSTC System Vice Chancellor for Financial and Administrative Services, with a copy to the secretary to the board, in accordance with the official Schedule for Preparing Materials for the TSTC Board of Regents Meetings:
 - 1) three signed originals of the lease;
 - 2) the general counsel's letter describing the lease; and
 - 3) the Minute Order Document.

D. Standards for Lease Renewal

1. If a lease includes an option to renew, the lease will stipulate that the lessee must give notice of intent no less than 90 nor more than 120 days before the end of the lease period, so any negotiations may be accomplished before the lease's expiration date.
2. In order to renew a lease, the lessee must be in good standing with TSTC, i.e., be current on all rental payments, have required insurance, etc.
3. Lease renewals will go through the same processes as new leases. However, if the original Minute Order authorized the renewal of the lease without further

Board approval, the renewal will not need to be presented to the Board.

E. Standards for Minute Order Document Preparation

1. Minute Order Documents will be proposed by the president and prepared in accordance with official TSTC System procedures and Schedule for Preparing Materials for the TSTC Board of Regents Meetings.
2. The Subject will begin “Lease Agreement with . . .” It will include the lessee’s name, the leased building name/number or a brief description of the leased land, and the number of square feet being leased, and the location of the building/land being leased, that is, “at Texas State Technical College [location].”
3. The Background, Justification, Additional Information, and Fiscal Implications will be brief but provide the information needed for the Board of Regents to make an informed decision. If existing Minute Orders have a direct bearing on the lease, the most recent one(s) will be cited by number.

These sections will include:

- a. number of years that the property is being leased;
 - b. lessee's type of business;
 - c. use of the property;
 - d. rental rate and, where appropriate, comparison to current rate;
 - e. beginning and ending dates of lease, including length of lease (one to five years, unless the lease involves investment of major capital equipment or construction of buildings);
 - f. in multi-year contracts, adjustment of the annual rental rate being based on the Consumer Price Index or another applicable method;
 - g. general liability insurance and other insurance requirements;
 - h. responsibility for taxes; and
 - i. other information, as appropriate.
4. The Attachment will include the general counsel’s letter that describes the lease.
 5. The Recommended Minute Order will include the lessee’s name, the effective dates of the lease, the building name/number or a brief description of the land being leased, the number of square feet being leased, and the location of the building/land being leased, that is, the TSTC college.

F. Following Approval of the Minute Order

Immediately after the Board of Regents has approved the Minute Order, the following will occur.

1. The secretary to the board will:
 - a. obtain the chancellor's signature on the three originals of the lease; and
 - b. forward two signed originals to the president and one signed original to the TSTC System Records Center.
2. The college will:
 - a. forward the associated insurance policies to the TSTC System Records Center to be held with a signed original of the lease;
 - b. forward one signed original of the lease to the lessee; and
 - c. retain one signed original of the lease, along with the associated insurance documents.

G. Proof of Insurance Requirements

Proof of current liability insurance that meets TSTC's minimum requirements must be on file in the TSTC System Records Center before the lessee occupies facilities at Texas State Technical College.

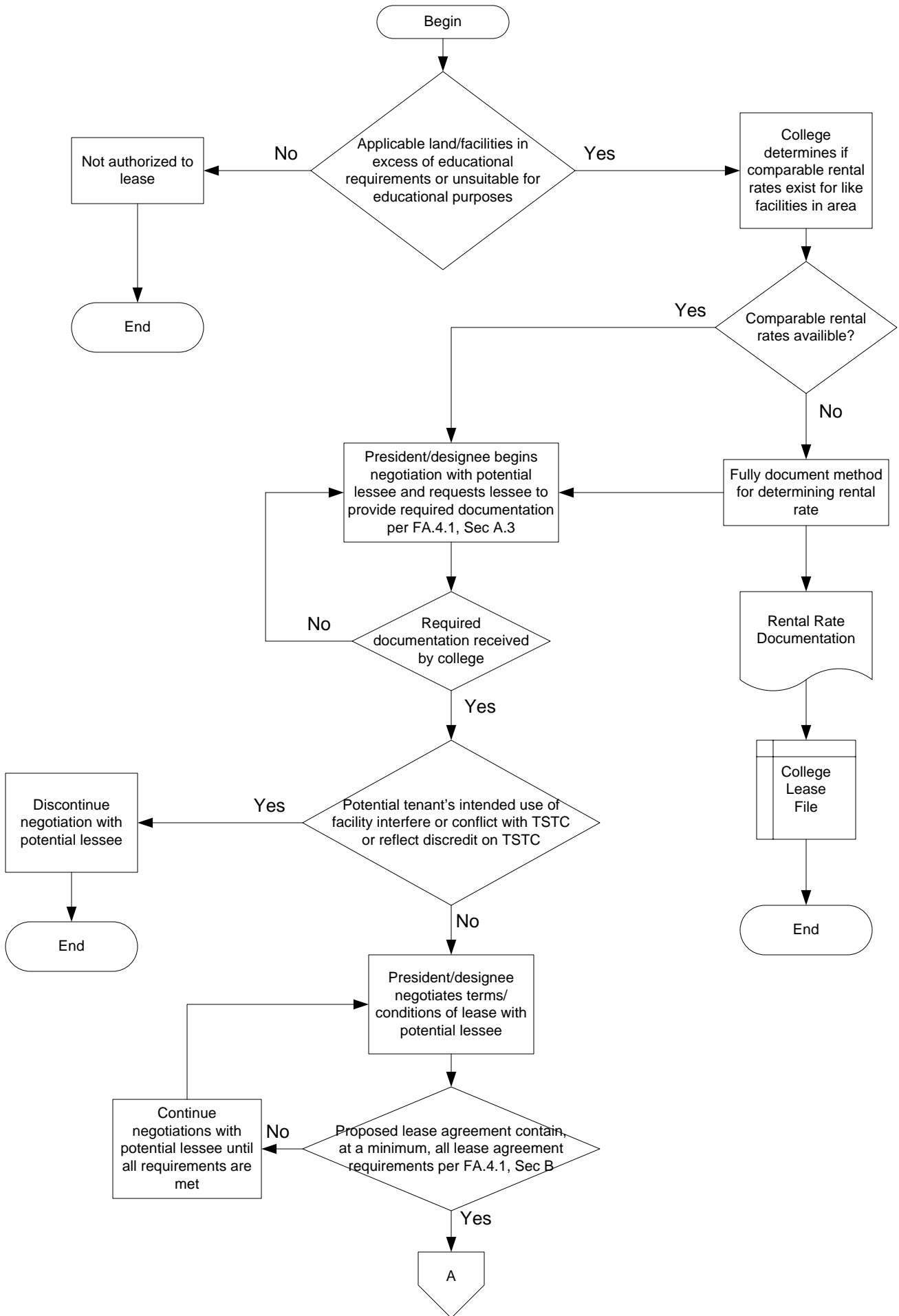
PERFORMANCE STANDARDS

1. Originals of all signed leases, along with accompanying insurance policies and other supporting documents, are maintained in the office of the TSTC System Records Center.
2. All leases are maintained on a current basis, and all re-leasing activities begin in time to assure approvals are obtained before expiration of a lease.

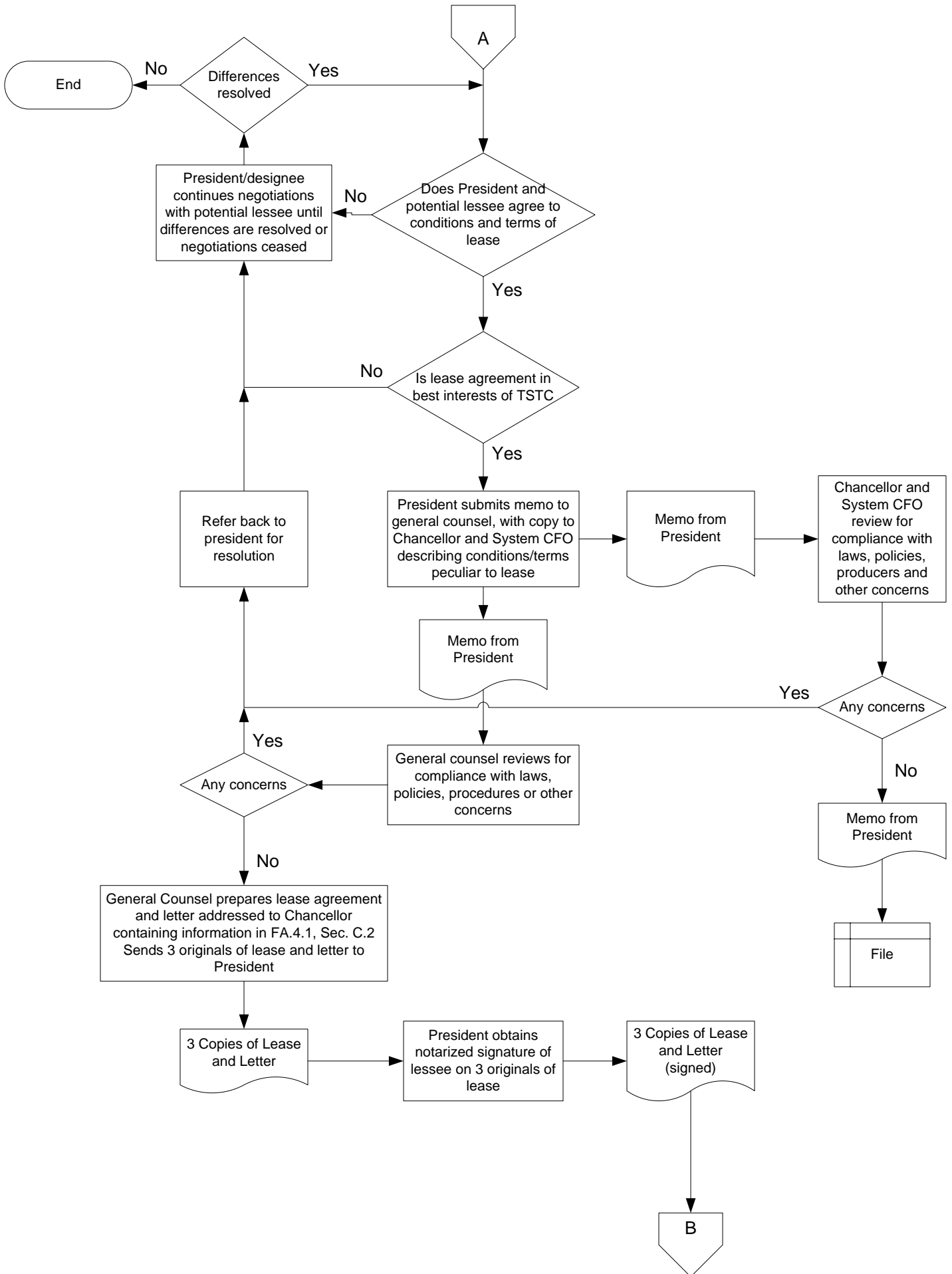
COLLEGE OPERATING PROCEDURE

COLLEGE		Page 1 of
OFFICE OF RESPONSIBILITY:		
APPROVED BY:		
TITLE:		Date
FORWARDED TO SYSTEM OFFICE ON		

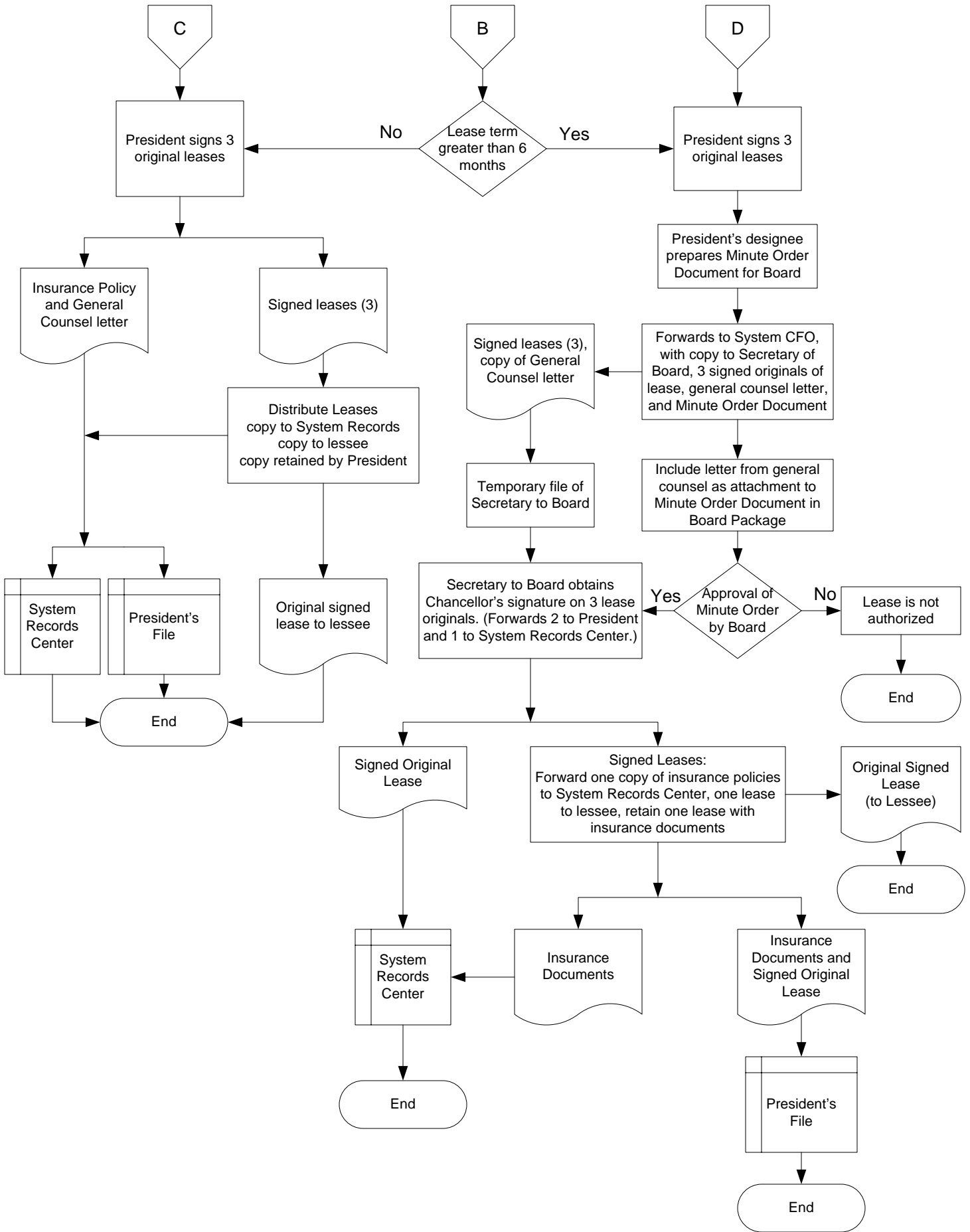
Leasing of Facilities



Leasing of Facilities



Leasing of Facilities



Lease Renewal Procedure

