

A UNIQUE SUBLEASE/OPTION AGREEMENT

by Michael Kelly

A professional sports franchise can produce economic benefits for a community, and acquiring a site for a sporting facility can be a challenge for government representatives and private consultants involved in the site acquisition process.

The following story outlines a complex real estate transaction between the state of Florida, several state agencies, and Hillsborough county, that resulted in a site for the construction of a professional baseball spring training stadium, in Tampa, Florida.

Hillsborough County (HC) needed to acquire a 31-acre parcel of land for the new baseball stadium near an existing football stadium. The proposed baseball stadium site was owned by the state of Florida and encumbered by leases in favor of the Department of Health and Rehabilitative Services (HRS) and the Department of Corrections (DOC). The property was improved with a 100-bed correctional work-release facility and certain building improvements that were used for juvenile justice social programs.

The real estate agreement that was negotiated between the parties in April 1994 to acquire the site and to establish compensation was entitled "Sublease/Option Agreement." The Sublease/Option Agreement granted Hillsborough County an exclusive, irrevocable, five-year option to purchase the stadium site, with two five-year renewal periods. The purchase price for the three-acre stadium site, as determined by two fair market value appraisals was \$13,100,000. In addition, HC was obligated to pay an annual rent payment for the use of the property until the option is exercised. The first years' rent payment was \$400,000. Rent payments for the remaining years of the first option period are based on six percent of the principal balance.

Forms of Consideration. The Sublease/Option Agreement is unique because it contemplates the county accumulating credits against the \$13,100,000 purchase price. Credits are defined by the county's efforts to provide HRS and DOC with certain facilities and/or properties and/or services, as well as out-of-pocket costs, or some combination thereof, in addition to cash. The value of credits for facilities or properties is determined by fair market value appraisals. The value of credits for services and out of pocket costs are based on the actual expenses that the county incurred (i.e., contractor's fees, appraisals, audits, surveys, etc.).

1. *Prison Site.* The state owned land in Hillsborough County, and DOC was developing plans to construct a maximum security prison. Due to strong opposition from local residents and other interested parties, DOC was experiencing difficulty securing regu-

latory approval of their plans by HC. As a condition of the Sublease/Option Agreement, HC agreed to provide DOC with a replacement site for a prison within a two-year period.

The county's obligation included locating a site, evaluating the site, facilitating zoning, providing water and sewer service, purchasing nearby residences, and arranging and finding the purchase of the site.

In the event HC was unable to provide DOC with a properly zoned prison site, with water and sewer, within two years, then the county was obligated to pay DOC a \$2 million penalty.

The county initiated a siting process to identify a prison site in the summer of 1994. Numerous potential sites were evaluated, and the best site was determined to be a 1,000-acre tract of vacant land, north of an existing county landfill operation. A real estate contract in the amount of \$3,155,500 was negotiated with the property owner, subject to zoning approval for a prison. At the subsequent zoning hearings, strong opposition against the proposed prison was expressed by local residents. In response to the citizens' opposition and political pressure by the HC Board of county Commissioners (BOCC), the state agreed to waive the requirement that a prison be sited in Hillsborough County, providing Hillsborough County paid the DOC \$3,155,500 for the purchase of a site outside of Hillsborough County. In addition, the state also agreed to sell the existing prison site they owned to Hillsborough County for its environmental lands program.

2. *Work Release Facility.* A 100-bed work-release facility was located on the proposed stadium site. The DOC agreed to relocate the facility to a temporary location, at its expense, by October 1, 1994. HC agreed to pay DOC \$2,500,000 by April 1, 1995 toward the construction of a new correctional facility.

3. *HRS Facilities Relocation.* HRS operated a group treatment home and other juvenile social programs in building improvements on the stadium site. HC agreed to pay for the relocation of these buildings, improvements, or the construction of new portable building improvements to serve these juvenile programs. The county incurred \$753,000 in costs to accomplish this action.

4. *Relocation of HRS Employees.* A former tuberculosis hospital, in poor condition, is located next to the new stadium site. HRS uses the facility as office space for approximately five hundred administrative employees. HC agreed to provide HRS with office space to allow for the relocation of the 500 employees within a five-year period. The parties agreed that the fair market value of the replacement office building, plus any building renovations, can be used by the county as a credit toward the rent or the purchase price of the stadium.

next page ►



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Since April 1994, approximately 14 different properties have been submitted to HRS for their consideration. HRS contracted an engineering consultant to evaluate the sites. A 12-year old former outlet mall, containing approximately 345,000 sq. ft. of space was selected as their first choice for a replacement facility. Two appraisals of the property were secured by HC. Based on the appraisal, HRS and the county negotiated a contract to acquire the property for \$5,000,000. Subject to the results of due diligence studies, the contract provided for a closing within 120 days.

At the closing for the outlet mall, HRS and the county will establish an escrow account for the balance of the purchase price of the stadium. The amount of the escrow account is estimated to be \$1,691,500.

The purchase of the outlet mall and the establishment of the escrow agreement will allow the county to exercise its option to acquire the stadium site and to receive a deed from the State for the stadium at closing.

A summary of the transaction is outlined below:

SUBLEASE/OPTION AGREEMENT

**31-Acre Baseball Stadium Site
Tabulation of Credits**

Purchase Price :	\$13,100,000.00
Less: Credits \ Consideration:	
*DOC Prison Site	\$3,155,500.00
*Work Release Facility	2,500,000.00
*HRS Facilities Relocation	753,000.00
*HRS Office Space	5,000,000.00
*Escrow - HRS Office Relocation	1,691,500.00
Balance	0

In closing, the purpose of this article is to outline the terms and conditions of the Sublease/Option Agreement between the State of Florida, HRS, DOC and Hillsborough County. This transaction is unique because the State and the State agencies preferred services, facilities and land as the primary forms of consideration, rather than cash. This attitude resulted from the fact that:

- DOC was experiencing problems implementing a prison program in Hillsborough County.
- HRS's primary goal was to improve the working environment of their employees, through a replacement office building.
- The State agencies believed that Hillsborough County staff and the local professional consultants they contracted were able to achieve their respective goals more efficiently and effectively. □

Michael Kelly has 20 years of experience in the field of public land acquisition and is the director of the Hillsborough County Real Estate Department. He has a bachelor's degree in Business Administration from the University of Tampa, and a master's degree in Public Administration from the University of South Florida. He is also a member of several professional organizations including IRWA, Citizens Against River Pollution in the Alafia River, and the Environmental Lands Acquisition Protection Advisory Committee.