CHAPTER 8
REAL PROPERTY MANAGEMENT
SECTION I. GENERAL INTRODUCTION

8-1. Purpose. This chapter describes the general procedures for management of title to and interests in Army (civil and military) controlled real property and for issuing, managing, and administering outgrants authorizing the use of this real property. Air Force policy for AF controlled real property is established by AF regulations, however, these procedures will apply, as applicable, to real estate work performed for Air Force by the Corps of Engineers.

8-2. Applicability. This chapter applies to all division and District Engineers having real estate responsibility, and to the President of the Mississippi River Commission. The term "District Engineer" as used in this chapter means any District Engineer or district Chief of Real Estate, or other authorized representative of the Real Estate element; and the term "Division Engineer" means the Division Engineer, or if applicable, the President of the Mississippi River Commission, or division Director of Real Estate, or other authorized representative of the Real Estate element, unless the text expressly indicates otherwise. Actions related to property controlled by military elements shall be made by Division or District Engineers in their capacity as Division or District Commanders.

8-3. Division Supplementation. Since federal real estate is covered by many local and state laws, the division interprets state legislation and local laws affecting the real property within the division and issues regional policy. Some state requirements may be unique to the division. HQUSACE does not issue policy directives on state or local legislation or regulations. Division Engineer are authorized to issue division policy for districts within the division geographic area amplifying the nationwide policy set out in this chapter only where required to comply with regional, state or local requirements.

8-4. Organizational Responsibility for Civil Works Real Property. Within the Corps, administration of Civil Works real property will involve consultation and coordination among field elements. The references to Operations and Readiness Division are intended to include both the district and project elements.

a. The Real Estate Division will manage all lands acquired at the inception of a project for the purpose of phasing out interests of former owners or tenants, to provide for any interim use of the property before the project is completed, and to phase-in the completed project uses.

b. Operations and Readiness Division is responsible for preparation of master plans, updates, and supplements and operational management plans (OMP). In some districts this work is performed by the Planning element. The Operations elements will insure coordination of these documents with the Real Estate element, and any up-dates or revisions which affect outgrants or disposals of real property.

c. Operations and Readiness Division is responsible for on-site physical management and stewardship of all project lands and renewable natural resources. However, when project real property is leased to non-Army users, the exclusive use of the property is transferred to the non-Army users through lease instruments which are administered by the Real Estate element. Operations and Readiness' on-site oversight is limited by the terms of the agreement. See Section VIII, Outgrant and Outgrant Management-Administration and Compliance. Licenses and easements allow joint on-site management by the grantee and Operations and Readiness Division, with only specified use rights given to the non-Army user through instruments which are administered by the Real Estate element.

d. Operations and Readiness Division, in coordination with Real Estate Division, determines whether a proposed non-Army use is in conformance with the master plan and will not interfere with project operations. Operations and Readiness Division is responsible for identifying site specific environmental, cultural, historical, and operational requirements for non-Army use. In some districts, separate elements perform environmental and cultural technical work. Operations and Readiness Division and Real Estate Division will agree on any site specific conditions for the proposed outgrant document before the outgrant is consummated.

e. The Operations and Readiness Division will prepare and process the General Plan required by the Fish and Wildlife Coordination Act of 1958. (Also see ER 1130-2-400 for fish and wildlife coordination between state and Federal agencies.)

f. The Real Estate Division is responsible for negotiating, issuing, administering and managing all outgrants. Shoreline use permits, Section 10 and Section 404 permits are not considered outgrants. Project representatives, incidental to their usual activities, observing any instance of potential outgrant violation will report the circumstances immediately to the district Real Estate element. Certain delegations to Operations and Readiness elements for compliance inspections are set out in Section VIII of this chapter.

g. The Planning Division, Programs and Project Management, or Operations and Readiness Division, as applicable, and the Real Estate Division will jointly negotiate Project Cooperation Agreements (PCA) and Cooperative Association Agreements which involve leases of project lands to local sponsors. These leases will be maintained in the realty records.

h. The Real Estate Division is responsible for resolving all land title disputes, claims involving damage to real estate or arising under outgrants, boundary disputes and actions involving encroachments; and for coordination of such action with the Operations element and other district elements as necessary.

i. The Real Estate Division, with coordination and assistance by Planning Division and Operations and Readiness Division, is responsible for surveys and reviews conducted in compliance with Executive Order 12512, the Federal Property Management Regulations and the Federal Property and Administrative Services Act of 1949, as amended.

j. Budget - Input into Operational Management Plan. Real Estate must work closely with the Operations and Readiness Division (and with the project staff) to develop priorities and provide cost estimates and work items for the Civil O&M budget and the Operational Management Plan, which sets out the five-year work plan for each project. Open communication is essential to developing budgets which take into consideration the work items which will be funded by the projects.

8-5. Organizational Responsibility for Military Real Property. Responsibilities and policy for determining availability of Army real property for outgranting are found in AR 405-80 and in the supporting Army Technical Manual (TM). The procedures of this chapter are to be used for issuing, managing, and administering outgrants authorizing the use of Army real property. Air Force real property will be determined available in accordance with appropriate Air Force regulations.

SECTION II. REAL ESTATE MANAGEMENT PROGRAMS - UTILIZATION REVIEWS FOR CIVIL WORKS PROJECTS

8-6. Background. Since the early 1940's, the Department of the Army has recognized the importance of our real property resources through a utilization inspection program for Army real property, both military and civil. The Real Estate elements have performed comprehensive surveys and periodic reviews to determine the current use of property, the degree of utilization, management improvement recommendations, and properties excess to Army needs. The success of the program has depended in large degree upon the coordination of the acquisition, management and disposal phases of the real property program. To achieve this, the real estate organization was directed from the beginning by the Under Secretary of War to maintain a high standard of supervision and to continue the application of sound policies. Beginning in 1970, various executive orders have directed all executive agencies to improve their real property asset management. These executive orders have, as a common theme, the identification of property not utilized, underutilized or not being put to optimum use. The most recent, Executive Order 12512, has placed increased emphasis on improved asset management and sets out several requirements to ensure that Federal real property resources are treated in accordance with their value as National assets and in the best interests of the Nation's taxpayers.

8-7. Authorities, Laws, Regulations and Requirements. The Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. § 471, et seq), requires surveys of property holdings to identify excess property. Under Executive Order 12512, Section 1. (b), all executive agencies are required to periodically review their real property holdings and conduct surveys of such property in accordance with standards and procedures determined by the Administrator of General Services and develop annual real property management improvement plans. (See Paragraph 8-18) The implementing Federal Property Management Regulations (FPMR), 41 CFR, Subparts 101-47.2 and 101-47.8, require an annual survey and review of real property holdings to identify property not needed or not utilized, underutilized, or not being put to optimum use. The policy of the Administrator of General Services, stated at 41 CFR 101-47.201-1, is for executive agencies to identify and report excess real property, to achieve the maximum utilization of property, to minimize purchase of real property, and to transfer excess real property among agencies. Real property is defined at 41 CFR 101-47.103-12.

8-8. Utilization Goals.

a. In accordance with the above cited, Real Estate will annually evaluate all Civil Works real property holdings to ensure that they are used efticiently, economically, and for Congressionally authorized and approved project purposes and programs, and to identify any interest not needed, underutilized, or not being put to optimum use.

b. Department of the Army goals are to ensure proper management and use of real property authorized for mission purposes; promote multiple use of project lands, if authorized; minimize additional real estate acquisition; reduce maintenance and custody costs; determine

interim or collateral use which could improve management of project resources; and dispose of real property interests where there is no authorized project requirement.

c. The annual evaluation will generally be performed in a six-year cycle with a detailed on-site survey no less than every three years, and a survey under Executive Order 12512 in the GSA format every six years, with written reviews without on-site survey in all other years. An example of a complete cycle of reports would be: 1993, report on ENG Form 3871 based upon an on-site survey; 1994 and 1995, evaluation documented as a written supplement to ENG Form 3871 without on-site survey; 1996, GSA format report based upon an on-site survey; 1997 and 1998, evaluation documented as a written supplement to ENG Form 3871 without on-site survey; 1999, repeat cycle with ENG Form 3871 based upon an on-site survey, and so forth.

8-9. Scope.

a. It is our policy to evaluate current civil real property holdings in accordance with the current acquisition standards, as shown in Chapter 2 of this regulation, including the 1971 implementation of the 22 February 1962 Departments of the Army and Interior Joint Policy, 32 CFR 644.4, 43 CFR 8. Real estate interests that would not be acquired under current standards interests that would be authorized for acquisition under current standards but were not acquired; and areas outside of the government boundary line now being utilized for operation of the project, should be noted. The acquisition criteria in effect at the time of acquisition for the project does not alter the requirement to re-evaluate. When reviewing real estate interests encompassed by the Joint Policy, the type of estate held should also be reviewed. The Joint Policy provides some latitude in selecting fee or easement estates. If the Government's interest can be fully protected through the use of easements, disposal of the underlying fee should be considered. (Note that the guide acquisition line is not solely a specific elevation or contour line, but may begin with a contour, using the most current meteorological or other data, and then include lands required for project purposes, such as recreation areas, wildlife mitigation, project structures, roads, etc., which are above that elevation). In other words, ask "If we were acquiring this project today, including all Congressionally authorized purposes, and making use of approved planning and operational documents for the project, what would we acquire?"

b. All real property holdings in the civil inventory (including buildings) for which the District Engineer is accountable will be evaluated annually, as set out in subparagraph 8-8.c. Minor land holdings, such as stream gauge stations or radio repeater sites, should be grouped as a system or with projects they support. Capital improvements, cultural and historical resources and forest, grass cover, wildlife habitat and other natural resources are an integral part of the real property and contribute to the utilization of the real property. Outgranted areas must be evaluated for land allocation and use. Real property utilization evaluations are not to be confused with compliance inspections. Compliance inspections are to determine that specific grantees are complying with the terms of their outgrant.

c. The evaluation of civil real property will be broad enough to determine the extent of use, changing trends in use, and to identify unauthorized uses. Data and recommendations will be used in the preparation of the appropriate report. A physical on-site survey will be done in accordance with Paragraph 8-13.

d. Operational structures, such as locks, dams, spillways, powerhouses, switchyards, overflow dikes, saddle dikes, retaining walls, stilling basins, and similarly related structures forming an integral part of the operation of the project, will be noted in the listing of improvements. Lands held for the disposal of dredged materials and navigation channels will also be noted. The Operations element is responsible for the annual evaluation of these structures. Any instances of underutilization, nonutilization or encroachment of these properties will be reported to Real Estate for notation in the annual report and corrective action. Other structures, such as recreation, housing, Government quarters, etc., will be evaluated by Real Estate. Detailed building space utilization surveys under EO 12411, Government Work Space Management Reforms, are described in Paragraph 8-19.

8-10. The Basic Premise for Real Property Utilization Evaluations. Real property utilization evaluations provide the internal control system that ensures effective, economical use of real property in support of mission-related activities, consistent with Federal policies regarding the acquisition, management and disposal of such assets. The evaluation protects the integrity of our land management programs by providing a system of checks and balances.

8-11. Advance Preparation for Real Property Utilization Evaluation. The evaluator must prepare by using various background documents and data about the project. “Authorized and Operating Purposes of Corps of Engineers Reservoirs,” dated July 1992, or more recent versions, should used for those projects listed. Appropriate information should be gathered from the last report and on-site survey; master plans, operational management plans, and other approved project documents; interviews of project staff members; real estate acquisition instruments; REMIS listings of outgrants and the outgrant documents; the annual inventory report, GSA Form 1166, “Annual Report of Real Property Owned by the U. S.” (See Chapter 14 of this regulation); and other applicable sources. This information should show accurately the estates held and outgranted by the Government, use of this property, and changes in use as they affect real estate and utilization of property. Appendix 8-A, Figure 8-A-1 sets out suggested steps.

8-12. Scheduling On-site Survey. Real Estate will schedule on-site surveys at new projects one year after the calendar year in which the project becomes operational. Other real property holdings will be surveyed on-site every three years. (The three year on-site survey also complies with Chapter 16 of this regulation covering accountability of civil and military property under AR 735-5). An on-site survey is not required for other annual reviews, however, the Division Engineer may establish a more frequent schedule for major projects or projects in a state of change. The project manager will be advised before the survey and should accompany the real estate person on the survey, if at all possible. The date of the survey will be provided at least 1 month in advance so that project team members, lessees, representatives of lessees, and any

others knowledgeable about the property can be available for interview. Other reasonable notice can be given, if agreed to by the project manager and the district real estate evaluator.

8-13. Conduct of On-Site Survey.

a. Appropriate transportation by automobile or boat will be used, with walks around the property where necessary. Aircraft or boats may be used to inspect significant remote areas or otherwise inaccessible shorelines where necessary. For land holdings where no significant change in use has occurred, the property may be viewed by using recent aerial photographs or other reliable methods.

b. The person conducting the survey should consider the questions on ENG Form 3871, Report on Utilization of Civil Works Lands and Facilities, those set out in the General Services Administration (GSA) Federal Property Management Regulations (41 C.F.R. 101-47.801(b)), and those in the most recent GSA Executive Order survey format. In addition, the questions set out in Appendix 8-A, Figure 8-A-2b should be considered.

c. Exit Interview. The person conducting the survey should discuss findings and tentative recommendations with the project manager. It is particularly critical to discuss any problems or deficiencies. See para 8-15.c. for coordination of report.

8-14. Unauthorized Use of Property. Evaluations will note any property used without authorization. See Section III, “Real Estate Management Programs - Encroachment and Trespass,” of this chapter.

8-15. Real Property Utilization Reports (On-site Survey).

a. Reports based upon an on-site survey shall be prepared on ENG Form 3871, Report on Utilization of Civil Works Lands and Facilities. Detailed instructions for preparing this form is contained within the form. If this is the year for submittal in the GSA format, prepare the report in accordance with Paragraph 8-18 for Executive Order surveys.

b. The report will note any conflicts or significant deviations between actual land use and the approved master plan, supplements, operational management plans, and appendixes.

c. As soon as possible after the on-site survey, the person who performed the survey will prepare ENG Form 3871 and coordinate it with Operations, Planning, and other interested district elements, so that they may take notice of or action on recommendations or notations within their area. A copy of the report will be forwarded to the project manager for comment. Written comments and recommendations received during this coordination should be attached as an appendix to the final report. If no comments are received, the appendix will note coordination. This report is not a district product which requires an agreed upon district position, but an evaluation for the command performed by Real Estate. The final report will be signed by the preparer and approved by the district Chief, Real Estate Division. A copy will be

provided to the District Engineer and to the coordinating elements. All ENG Form 3871 reports will be submitted to the Division Engineer for review and approval.

d. Any potentially excess property identified in a report will be reviewed to determine if it is, in fact, excess to district requirements. Any property excluded during the EO 12512 evaluation under the criteria of ER 1130-2-400, Appendix 8-F, should be reviewed. The requirement for the property will be evaluated without regard to the existence of outgrants. Outgranted property which is identified as potentially excess requires special sensitivity to the rights of the grantee. The outgrant will not be terminated, however, any outgrant renewal action will take into account the status of any excessing process. The district should allow enough time to give proper notice to a grantee if the decision is not to renew, or to renew for short terms, due to excessing actions. Operational impact, environmental assessments and impact, cultural, historic, wetlands, and endangered species reviews are a part of the determination of excess process. If the property is recommended as excess by the district, a Report of Excess will be forwarded to the Division Engineer for submission to HQUSACE for completion of a Determination of Excess.

e. The identification of additional acquisition requirements using the current Joint Policy does not mean that these interests will be acquired. However, areas outside of the government boundary line now being utilized for operation of the project must be acquired since that constitutes a taking of private property without compensation. In some older projects, property was not acquired to the design elevations due to decisions made to wait for the design event and pay claims rather than acquire. However, under the Uniform Relocation and Assistance and Real Property Acquisition Policies Act of 1970, Title 42, United States Code, Section 4600, as amended, and implementing uniform regulations by the DOT (sometimes referred to as PL 91-646), the government now has an obligation to proceed with acquisition of property interest required for a Federal action and must not wait for a private entity to file a claim or litigation. The potential for taking and/or tort claims and the need to pursue acquisition should be evaluated in the report.

8-16. Real Property Utilization Reports (No On-site Survey).

a. The annual evaluation for those years where no on-site survey is performed will be documented in writing as a supplement to the previous years report.

b. If this written document shows any changes or recommendations, it will be coordinated with Operations, Planning, and other interested district elements, so that they may take notice or action on recommendations or notations within their area. A copy will be forwarded to the project manager. Written comments and recommendations received during this coordination will be attached. The division may require submittal for review and approval.

8-17. Screening for Suitability for Use by Homeless. Property identified as not utilized, underutilized, or not put to optimum use must be reported quarterly to HQUSACE (CERE-M)

for the quarterly reports to Housing and Urban Development (HUD) for determination of suitability to assist the homeless under the Stuart B. McKinney Homeless Assistance Act.

8-18. Executive Order 12512, Federal Real Property Management.

a. As set out in Paragraph 8-7 above, we are required to periodically review our real property holdings and conduct surveys of such property to identify property that is not utilized, underutilized, and not being put to optimum use. The principles set out in Paragraphs 8-8 through 8-13 above should also be applied in those years when the survey is prepared in the GSA format. Districts and divisions will be notified in advance of any special evaluation requirements to be performed by Real Estate based upon standards and procedures issued by GSA.

b. The FPMR, 41 CFR Subpart 101-47.8, covers the implementation of the Executive Order surveys, and limits application to fee-owned real property and supporting leaseholds or lesser interests. As defined in FPMR Subpart 101-47.103-12, real property excludes lands withdrawn from the public domain. Withdrawn lands, facilities that are leasehold interests not directly supporting a fee-owned project, and projects authorized by a Memorandum of Understanding from another installation or agency, are exempt from the requirement for an Executive Order survey, however, they are covered by the annual evaluation requirements set out in Paragraph 8-6 through 8-17. Public domain lands are also evaluated under the Withdrawal Review Program, covered in Section IV of this chapter.

c. Every sixth year, following an on-site survey, the reports for real property covered by FPMR Subpart 101-47.8, to be surveyed under this program, will be prepared in the format required by GSA for Real Property Survey Reports rather than on ENG Form 3871. The report is submitted as our agency survey under Executive Order 12512 and should present a fully coordinated and agreed upon agency position. There will be no duplication of effort. Each District should program one-sixth of the qualifying properties for preparation in the GSA format each year.

d. GSA provides approved formats for these reports to all executive agencies. The format has been shortened and standardized over the years. The person performing the survey should follow the current format without including additional information. Each topic should be listed and addressed. There has been increased emphasis on maps attached to the report. Pay particular attention to the instructions given for the type of map needed. The maps are not intended to add bulk to the report but rather follow the principle that a picture can be worth a thousand words and a good map can be worth a million.

e. GSA Form 1166, Annual Report of Real Property Owned by the U. S., can be included if it would serve a useful purpose.

f. Real estate interests not encompassed by the current acquisition criteria will be reviewed for excessing, however, those areas covered by the guidance set out in ER 1130-2-400,

Appendix 8-F, may not be available for excessing. Retention of property interests outside of the acquisition criteria and not covered by said Appendix 8-F must be fully justified in writing.

g. If no property is identified as excess, then the division will forward the report to GSA as our agency survey, with two copies to GSA Central and one copy to the applicable GSA regional office. If property is identified as excess, then four copies will be forwarded to CERE-MC, in lieu of a separate report of excess. After appropriate action to declare the property excess to DA requirements, CERE-MC will process the survey to GSA. For all reports which must be forwarded to CERE-MC, the person who performed the survey and each coordinated element will be shown on a separate sheet of paper attached to the report. After 60 days or the receipt of comments from GSA, whichever comes first, the report will be returned to the district for any necessary action.

h. Annual Real Property Management Improvement Plan. Executive Order 12512 requires overall real property management plans and productivity and excess property targets. Until further guidance is received from GSA on format and content, the GSA-format reports and the annual reports with supporting comments and recommendations will be considered the district Executive Order 12512 Real Property Management Improvement Plan.

i. The Office of Management and Budget (OMB) reviews, through the management and budget process, the efforts of agencies in achieving its policies. Each agency is required by GSA to provide information on real property in the OMB Annual Data Call for submittal by GSA to OMB. The data for this report is currently submitted on a GSA form, Real Property Inventory Analysis, to GSA. The report requires a listing of the GSA-format, Executive Order Survey reports performed during the year and a list of those projected for the next FY. A separate form is provided for property identified in a survey/review as not utilized, underutilized, or not put to optimum use, as defined in 41 CFR 101-47.801 (a). In addition, separate lists are required for Army, civil and military. The lists include properties reported excess to GSA during the current FY and properties which will have an executed Determination of Excess and are projected to be submitted on an SF 118, Report of Excess, to GSA in the next FY. (Keep your projections realistic). Each district will furnish this report through their respective division to CERE-M no later than 1 August of each year. Appraisals are not required for any informal value conclusions included on the form.

j. Surveys by General Services Administration. The General Services Administration will continue to survey certain projects through their National Survey Teams (NST) to review the utilization of multiple Federal facilities and installations. Also, pursuant to Executive Order 12512, Section 2, GSA may conduct separate surveys. Upon receipt of notice of such a survey, the District Engineer will immediately notify the Division Engineer and HQUSACE (CERE-M), alert appropriate district and project team members, and provide GSA with appropriate information: names and phone number of persons who will represent the District Engineer during the survey; level of any security clearance required of GSA inspectors; and any other information requested by GSA. (41 CFR 101-47.802 (b)) Representatives of the District Engineer will meet the GSA survey team as appointed, accompany them throughout the survey, and furnish additional information as requested.

k. As part of the OMB Data Call, a schedule of those real property management surveys programmed to be prepared in the GSA format will be completed and submitted to CERE-M by 1 Aug of each year to allow GSA the option of assigning qualified observers/advisors to participate in as many of the surveys as feasible.

8-19. Space Utilization Inspection of USACE Installations. Logistics personnel will inspect USACE Installations to determine space utilization and insure compliance with AR 405-70 and Executive Order 12411, Government Work Space Management Reforms. Reference ER 420-1-3.

8-20. Utilization Inspections of Military Real Property. The installation or activity which controls Army space performs utilization inspections and must actively supervise space use and periodically survey space occupied to insure efficiency and economy. See AR 405-70.

8-21. Reserved.

8-22. Reserved.

SECTION III. REAL ESTATE MANAGEMENT PROGRAMS-ENCROACHMENT AND TRESPASS

8-23. General. Encroachments at Civil Works projects and military installations exist both on land over which the United States holds an easement interest where the deed of transfer prohibits structures or other improvements and on land owned in fee by the United States. Encroachments usually occur because the boundaries of the Government's property interests are not clearly marked and, therefore, adjacent landowners inadvertently construct prohibited permanent or semi-permanent structures on land in which the Government has an interest.

8-24. Definitions.

a. The term "encroachment" as used in this section pertains to a structure or improvement built, installed or established which interferes with a real etsate interest of the United States, either a fee interest or an easement if such is prohibited in the deed. An encroachment has occurred where the structure or improvement extends over, across, in or upon lands in which the Government owns a real estate interest which would prohibit such, and the structure or improvement has not been approved. Note that easement estates only acquire those rights set out in the deed, e.g. the right to flood, to deposit dredge, to cut away for channels, height restrictions. There are numerous easement estates which have been acquired over the years and not all easements prohibit the underlying fee holder from building, installing or establishing structures or improvements. Some grandfather in existing structures. If the easement estate does not prohibit structures or improvements, then there is no encroachment.

b. Structure or improvement as used in this section, mean a permanent or semi-permanent facility, such as a habitable dwelling, building, fence, deck, porch, barn, outhouse, permanent storage building, road, pond, leach field and septic tank, utility line, levee, excavation, placement of fill material, oil and gas well, mine entrance and tunnel. Attempts to circumvent the restrictions of a Civil Works flowage easement by the use of landfill or by removal of earthen material which alters the contour may violate the terms of the easement. The landfill would be considered an encroachment. In U.S. v. Fisher-Otis Co., Inc., 496 F.2d. 1146 (l0th Cir; 1974) the court held that the use of landfill in the flowage easement area materially interfered with the Government's rights to occasionally flood the land.

c. The term "trespass" as used in this section pertains to unauthorized transient use and occupancy, such as livestock grazing, mowing, planting, cultivation and harvesting of crops, timber cutting and removal. Trespasses fall into two categories: those at civil works projects for which Title 36 is an appropriate remedy; and those for which the Government has another legal remedy, i.e. state law on timber cutting and removal, or for which a short term outgrant may be appropriate, such as crops until harvest.

8-25. Policy. The general policy is to require removal of encroachments, restoration of the premises and collection of appropriate administrative costs and fair market value for the term of the unauthorized use.

8-26. Exceptions to Removal. Exceptions to this general policy may be considered for unintentional encroachments after a determination that the area involved is no longer required, either temporarily or permanently, for mission or operational purposes. Easements differ in the type of rights acquired and restrictions imposed, so that exceptions to removal will consider the ability of the Government to exercise the easement interest acquired and non-removal may often only be allowable through disposal of the easement interest.

a. In making the determination that the encroachment was unintentional, the following factors may be considered:

(1) The encroaching party acted on the basis of a private survey which was performed before the Government boundary line was surveyed and marked on the ground.

(2) The encroaching party acted on the basis of an erroneous Government survey.

(3) The encroaching party acted on erroneous information provided by the Government for which official documentation is available, and granting an exception to removal will not result in an unacceptable adverse impact.

(4) The encroaching party can establish by affidavit or other credible evidence that the bounds of the land upon which the encroachment is located was reasonably thought to be a part of that party's ownership by historically accepted monumentation, e.g. old fences, hedgerow, roads. See the Paragraph 8-29 on boundary line agreements.

(5) The encroaching party can establish by court degree, affidavit, or other credible evidence that the land was claimed by adverse possession, which ripened into title prior to the Government's acquisition or that title is in dispute. However, see Paragraph 8-39 on Land Title Disputes.

b. Removal action will be pursued for those encroachments which are intentional in nature. In making the determination that the encroachment is intentional, the following criteria may be considered:

(1) The encroaching party constructed without obtaining the proper surveys or title evidence.

(2) The encroaching party continued to build with knowledge or actual notice of the easement restrictions or Government boundary line.

(3) The Government boundary was surveyed and marked prior to the construction date, even if no marker is at this particular spot.

8-27. Special Considerations for Structures at Civil Works Projects.

a. Residences. Human habitation below the flood control or controlled navigation pool elevation is presumed to place an undue limitation on the Congressionally authorized operation of the project. Whether the encroachment is intentional or unintentional, non-removal may be approved under certain conditions, if it can be demonstrated that the continued occupation of the site will not result in a significant threat to human life, health, or safety, and will not place or suggest any restriction on the operation of the project. As with other structures, such developments must meet the requirements of national policies on floodplain management as set forth in Executive Order 11988 and its implementing regulations. Executive Order 11988 requires consideration of alternatives which avoid the floodplain wherever practical. Therefore, any request for non-removal of a human habitation structure in a floodplain or project pool must also demonstrate that there is no practical alternative to removal of the habitable structure. In addition, if there is any threat to human life, the proposal will not be recommended for approval unless it can be demonstrated that there would be adequate warning time to evacuate the structure in the event of a flood event projected to flood the site, and that non-flooded access out of the area would be available for evacuation including non-flooded egress out of the project area (offsite). The release of the human habitation restriction in the flowage easement estate must be by deed. See Paragraph 8-28c.

b. Non-dwelling structure. For easement areas, the encroaching structure or improvement must be of the type for which consent would have been given if consent had been requested. For fee lands, the encroachment must be a substantial structure which would create undue hardship if removal were required. Flag poles are allowed at Civil Works projects but may only fly the American flag.

8-28. Procedures for Resolving Encroachments. There are four basic methods of curing an encroachment: removal, disposal, exchange, and outgrant or consent (for easements).

a. Removal.

(1) An effort should be made to have the encroaching party voluntarily remove the encroachment. When the party demonstrates a willingness to cooperate, a reasonable period of time should be allowed for voluntary removal. The time period should be documented in writing to the encroaching party.

(2) Cases to be referred to the U.S. Attorney for civil action will be reported to Real Estate Division for preparation and submission of a Litigation Report, in accordance with ER 1180-1-1. Investigation and processing of these cases will be given the highest priority possible. Projects or installations will be provided with periodic status reports. By letter dated 15 October 1979, the Chief Counsel has delegated to the districts the authority to directly refer to the local U.S. Attorney cases involving encroachments, trespass and removal of holdover tenants. The case must not contain new or unusual questions of law or disputes relative to title or boundary; the case must have already been the subject of a formal demand on the individual(s) involved; and copies of the request must be furnished to CECC-K and CERE-M.

b. Outgrant. If the encroachment is eligible for resolution by other than removal, an outgrant in accordance with the procedures of this chapter may be considered. A lease, easement or license may be appropriate depending on the nature of the encroachment. In easements areas, a consent to structure, if applicable under the easement estate, may be issued after the fact.

c. Disposal or exchange. A disposal by negotiated sale or exchange is processed under the procedures of ER 405-1-12, Chapter 11. Generally, disposal of fee or release of easement restriction on human habitation will not be recommended. The release of the human habitation restriction in a Civil Works flowage easement is a property right that must be disposed of by deed.

8-29. Boundary-line Agreements.

a. At the time of acquisition of property for many of the older Civil Works projects, the property was described and later mapped by interpolation of a contour line onto aerial photographs. Some military installations may have similar acquisition issues. This has resulted in the description in the deeds being erroneous when applied to the property on the ground. These uncertain boundaries have resulted in technical encroachments by adjoining private owners and possible encroachment by the United States which could lead to a taking claim. Resolution by written boundary line agreements between the adjacent landowner and the United States may be appropriate.

b. Some state laws provide that boundary lines between adjoining owners may be established or changed by mutual agreement between them; that these agreements may be recorded and that such agreements are binding upon all successors in interests and privities to the parties. Under the laws of those states, the boundary line agreement is not a conveyance, but merely an agreement between the District Engineer and the affected landowner to make certain a line which has been disputed or uncertain.

c. In the laws of states where a boundary line agreement must be in the form of a conveyance deed to bind future parties, the agreement/quitclaim deed must be done in accordance with negotiated disposal procedures or an exchange. See ER 405-1-12, Chapter 11.

d. No standard format has been prepared due to variations in state law, however, samples may be obtained from HQUSACE (CERE-M) of both a “Boundary Line Agreement” and a “Boundary Line Agreement and Quitclaim Deed”.

8-30. Ongoing Litigation. Litigation filed under previous policies are not intended to be adversely impacted by any changes in criteria for resolution of encroachments set forth herein.

8-31. Reserved.

SECTION IV. REAL ESTATE MANAGEMENT PROGRAMS - PUBLIC LAND WITHDRAWAL REVIEW

8-32. General. Section 204(1) of the Federal Land Policy and Management Act of 1976 (FLPMA), Title 43, United States Code, Section 1714(1), directs the Secretary of the Interior to review certain classes of public domain land withdrawals in eleven western states: Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. The review will determine whether continued withdrawal of these lands will be granted, and for how long. FLPMA, section 204(f) also sets out that every withdrawal will be reviewed towards the end of the withdrawal period. Therefore, once the initial review is completed, the process will continue.

8-33. Schedule of Withdrawal Reviews. The District Engineer will prepare a list of the withdrawals to be reviewed, grouped by military installation and Civil Works project within the district, if located in any of the specified eleven states. For Civil Works projects, the schedule will be developed to review the project's withdrawals at the same time that the project is scheduled for an on-site utilization survey. The District Engineer should work with the MACOMS to set installation schedules. The schedule will be submitted to the state Bureau of Land Management (BLM) office.

8-34. Review Coordination. The District Engineer will coordinate with the district BLM office to review all Army (military and civil) withdrawals within the specified eleven states. The review will be a team effort with the installation commander for a military withdrawal or with the Operations and Readiness Division for a Civil Works withdrawal. The review will be prepared in a report or Rejustification Statement.

8-35. Rejustification Statement. The report should contain the following elements:

a. General information on location and acreage (use most recent Real Property Utilization Survey). BLM has indicated that a field survey should be a part of the review whenever possible.

b. The present and future uses of the land and justification for continuing military or civil works use of the land.

c. Narrative on how the present use serves the original purpose of the withdrawal. The review is an opportunity to correct use statements, add areas, or terminate areas.

d. The period of time the withdrawal will be needed to fulfill the authorized purposes and future mission of the installation or Civil Works project. A definite number of years must be specified, normally to coincide with the duration of the intended use. The estimated life of the facilities and improvements located on the land may provide supporting justification. For civil works, the life of the project up to 100 years will be used.

e. Whether the land, if previously closed to operation of mining and mineral leasing, can be opened to mining or to mineral leasing. Army policy on mineral leasing is set out in AR 405-30. The operation of the mining acts for locatable minerals (generally metallic and hardrock minerals) could open the land to claims for title from private parties and should be reviewed carefully. Recommendation for "exclusive military use" which closes the land to multiple use must show that co-use is incompatible with mission. Areas previously open may be justified for segregation.

f. Whether a lesser interest in land, such as a permit, right-of-way or Cooperative Agreement, can meet mission or project requirements, in lieu of withdrawal.

g. Maps, photos, plans, etc.

8-36. Procedure.

a. Neither the MACOM nor the Division Engineer has the delegated authority to present the final Army position. When the District Engineer, with concurrence by the Installation Commander, reaches agreement on the terms of the proposed modification with the District BLM, the District Engineer will submit a withdrawal review transmittal assembly through the Division Engineer to HQUSACE (CERE-M) for review and approval by the Secretary of the Army. The assembly will include the Rejustification Statement; the draft PLO; a draft letter for the signature of the Secretary of the Army, notifying the Secretary of the Interior of the Secretary's consent to the proposed withdrawal modification; any disputed or unusual circumstances; and a brief summary of the negotiations and coordination with BLM.

b. A copy of the signed letter by the Secretary of the Army will be sent to the District Engineer, and the MACOMs if military. The Department of Interior will handle its own internal review procedures with its state and district offices.

c. The Rejustification Statement will be the basis for negotiation with BLM for the terms and conditions of the withdrawal order. This will result in either a reaffirmation of the existing Pubic Land Order (PLO), (or for older cases the Executive Order or legislative withdrawal), or a modification of the withdrawal. In some cases overlapping orders or unneeded orders may be found so that either whole orders or parts of orders can be terminated. BLM will, by draft (PLO), recommend a withdrawal modification at least to establish a review period, for further action by the Secretary of Interior. A modification to the existing order to establish a review period is preferred, since this does not call into question the current status of mining and mineral issues. A new order will only be used in extreme circumstances or if the intent is to change the status.

8-37. Reserved.

8-38. Reserved.

SECTION V. REAL ESTATE WAGEMENT PROGRAMS - MISCELLANEOUS

8-39. Land title disputes. The specific case must be evaluated as to whether or not it is an encroachment or a disputed title action. Direct referral of cases under the Federal Quiet Title Act has not been delegated. Close review of the acquisition files is necessary. See Paragraph 8-29 for a discussion on boundary line agreements.

8-40. Claims involving damage to real estate or arising under outgrants.

a. Claims involving takings of private property by the Army or damages to real estate arising from an inlease, right-of-entry, maneuver permits or other contracts are covered by ER 405-1-12, Chapter 10, and AR 405-15.

b. Claims as defined by the disputes clause in the outlease document are discussed in the section in this chapter on leases.

8-41. Development of Hydropower by Non-Federal Interests.

a. Under Title 16, United States Code, Section 791a, et seq., the Federal Energy Regulatory Commission (FERC) issues permits to non-federal interests to investigate and prepare feasibility studies on development of hydropower projects on Federal property. FERC is authorized to issue licenses to construct and operate such projects on Federal property. Under a Memorandum of Understanding between FERC and the Department of the Army, regarding non-federal hydropower development, dated November 1981, applications by non-federal interests for licenses to construct on Corps projects must be coordinated by FERC with the Corps. Upon referral by FERC of applications for permits or licenses, investigation of applications should be coordinated with all interested Corps elements and must report a discussion of Corps interests which could result in recommendations for provisions to be included in subsequent licenses. (See ER 1110-2-1454).

b. Real Estate should determine the adequacy of the Federal interest in the real property proposed for inclusion in the hydropower project, and whether the project would interfere with existing or proposed outgrants. Real Estate will also determine the value of Federal resources which will be damaged or destroyed as a result of the construction or operation of the project, and recommend provision for relocation, restoration or reimbursement by the prospective licensee. Affected outgrants to other parties will be modified or terminated in accordance with this regulation.

8-42. Reserved.

8-43. Reserved.

8-44. Reserved.

8-45. Reserved.

SECTION VI. OUTGRANTS AND OUTGRANT MANAGEMENT - PRELIMINARY PROCEDURES

8-46. Purpose. This section describes the general procedures for the clearance process prior to issuance of the instruments, generally called outgrants, which authorize Federal agencies, state or local governments, private organizations, or individuals to use Army (military or civil) controlled real property, and administering those interests in real property.

8-47. Authorities. These preliminary procedures involve various legal, policy or regulatory procedures required, regardless of the type of outgrant.

8-48. Outgrants on Withdrawn Public Domain Lands. Under the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. § 1701 et seq.), the Secretary of Interior is authorized to issue certain outgrants on public domain lands. Outgrants on withdrawn public domain lands are generally issued by the surface management agency under existing authorities. However, the withdrawal document should be reviewed to determine if any such authority was reserved by BLM. Outgrants on withdrawn public domain lands will be informally coordinated by the district with the appropriate Bureau of Land Management (BLM) state or district office, which will be furnished copies of the executed outgrants upon request.

8-49. Compliance with Applicable Laws and Regulations. The outgrant instrument may specifically require compliance with particular state and local laws, ordinances, and regulations; however, all outgrant instruments will include a general provision as shown in each approved outgrant format. Site specific environmental, cultural, and historical requirements may be added. The standard condition shown in the applicable format for a specific outgrant type may include additional language tailored to the type of outgrant and shall not be deleted or modified.

8-50. Energy Conservation. Districts and divisions will give highest priority, as appropriate, to energy conservation in management actions. Federal energy conservation goals described in DOD Directive 4170.10, Energy Conservation, are to be met and exceeded where possible, but such energy conservation measures will not impair training, readiness, combat capability, or health and safety requirements.

8-51. Environmental and Cultural Considerations in Real Estate Management Actions. Environmental and cultural considerations in real estate management actions are constantly becoming more important, receiving greater scrutiny, and are the subject of rapidly changing guidance. It is extremely important that the most current versions of all applicable laws and regulations be consulted and complied with before taking any action that will have an effect on the environment or on cultural resources. These regulations include, but are not limited to:

a. “Reporting Hazardous Substance Activity When Selling or Transferring Federal Real Property”, found at 40 CFR Part 373, for additional background see Federal Register Volume 55, Number 73, page 14208, published 16 April 1990;

b. AR 200-1, “Environmental Protection and Enhancement”, as revised;

c. AR 200-2, “Environmental Effects of Army Actions”;

d. 41 CFR 101-47, Utilization and Disposal of Real Property;

e. ER 200-2-2, “Procedures for Implementing NEPA”, 33 CFR 230, 40 CFR 1500;

8-52. Real Estate Files.

a. The regulations discussed in Section 8-51. were sometimes written before the full impact of the environmental laws on real estate transactions was realized. Accordingly, these other regulations lack uniform consideration of environmental factors in the outgranting of Army real property. These variations present a potential source of problems in assuring Corps compliance with the various environmental laws.

b. To correct this situation the Report of Availability (Paragraphs 8-68 and 8-69) will be included in the Real Estate file for any outgrant action and in the transmittal assembly if the action must be forwarded to higher headquarters, to show the environmental review that was conducted, when it was done, and by whom it was reviewed. The environmental requirements with which we must comply fail into three general groups; they are to be addressed separately and specifically: (i) NEPA; (ii) Other environmental laws, compliance with which is required notwithstanding NEPA; and, (iii) CERCLA, especially 42 U.S.C. § 9620 (h).

8-53. Compliance with NEPA.

a. Depending on the impacts of the proposed action, the environmental review required by NEPA will be result in either: (i) A Record of Environmental Consideration (REC); (ii) An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI); or (iii) an Environmental Impact Statement (EIS). There may also be cases where both an EA and an EIS are prepared.

b. When an action qualifies as a Categorical Exclusion (CX), a REC, following the format discussed in AR 200-2, shall be included, along with a citation to the section of ER 200-2-2 or AR 200-2 that provides for this type of action to be a CX. The REC in not required by NEPA, but, rather is Army procedure to document the files as to the environmental action. The REC may be executed by the District Engineer for Civil Works property.

8-54. Other Environmental Laws. To show compliance with environmental laws whose requirements are not subsumed in NEPA, the Report of Availability and/or the Real Estate file and the transmittal assembly should indicate if there has been compliance with any of the following statutes and Executive Orders which are applicable. Permits, such as Section 404 or Section 10, will be obtained, where applicable, before the outgrant is issued. However, to increase efficiency, outgrants may be executed with the stipulation that use and occupancy may

not commence until issuance of any required permits. It should be noted, some of the following are applicable in most cases while others may not be applicable.

a. The National Historic Preservation Act, 16 U.S.C. § 470 et seq.;

b. The Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.;

c. The Endangered Species Act, 16 U.S.C. § 1536 et seq.;

d. The Clean Water Act, 33 U.S.C. § 1251 et seq., including the Section 404 wetlands permitting process and Section 311;

e. The Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq.;

f. The Clean Air Act, 42 U.S.C. § 7401, et seq.;

g. The Antiquities Act, 16 U.S.C. § 431, et seq.;

h. Archaeological and Historical Preservation Act, 16 U.S.C. § 469;

i. American Indian Religious Freedom Act, 42 U.S.C. § 1996;

j. Archaeological Resources Protection Act, 16 U.S.C. § 470aa-ll;

k. Native American Grave Protection Act;

l. Toxic Substances Control Act, 15 U.S.C. § 2601;

m. The Solid Waste Disposal Act, 42 U.S.C. § 6901, this is also known as RCRA the Resource Conservation and Recovery Act);

n. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135;

o. Executive Order 11990, Protection of Wetlands; and,

p. Executive Order 11988 as amended by Executive Order 12148, Floodplain Management.

8-55. Compliance with CERCLA.

a. Compliance with CERCLA will be documented by including in each file and transmittal assembly, a Environmental Baseline Study (EBS) as that procedure is described in AR 200-1. The Report of Availability is to be combined with the EBS and included in each file

and assembly. The EBS bridges between CERCLA and NEPA and is integrated into a REC or the affected environment portion of the EA or EIS, as appropriate.

b. An EBS is prepared for a specific action (e.g. the leasing of a particular parcel of land) and should not be confused with environmental inventories of a generalized nature such as the Environmental Review Guide for Operations (ERGO) for Civil Works projects or Environmental Compliance Assessment System (ECAS) for military installations.

c. An EBS may be prepared for any outgrant, if desired, to document the environmental condition of the property.

d. Keep in mind, when considering compliance with CERCLA and RCRA, that federal agencies are legally obligated to follow state law and procedure implementing these laws, and that state law under an EPA approved RCRA program may determine the definition of, for example, "hazardous substances".

e. CERCLA requires that all "transfers" of real property from the Federal Government to another party, including another federal agency, must contain in the "contract" for the transfer a notice indicating if the property had been the site of a release, storage, or disposal of hazardous substances. Army policy is to apply this notice requirement broadly. There is to be a "complete search of agency files" to determine if a notice is needed. Additionally, if there was a release, storage, or disposal, the notice is to identify the nature of the substance involved, when the substance was on the property, and a description of the remedial action taken. For the purpose of this guidance, all applicable documents will contain CERCLA notices, if the threshold hazardous substances are found as set out in the Finding of Suitability. The standard EBS Condition, will be renumbered as "a." and the following "b." added:

> b. CERCLA Notice. The information contained in this notice is required under the authority of regulations promulgated under Title 42, United States Code, Section 9620(h). The (Lessor/Grantor) has made a complete search of its records concerning the property subject to this (outgrant). Those records indicate that the following hazardous substances have been stored for one year or more (S), released (R), or disposed of (D) on the premises:
>
> (List each incident, giving the substance as defined under CERCLA, Section 101(14) and appearing at 40 CFR 302.4; the quantity; the Chemical Abstracts Services Registry Number, where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the date(s) that the storage, release, or disposal took place. If information is either not available, is incomplete or requires further explanation as set out in the EBS, so state.)
>
> The (lessee/grantee) should consult the EBS described in sub-paragraph a. above for more details.

not commence until issuance of any required permits. It should be noted, some of the following are applicable in most cases while others may not be applicable.

a. The National Historic Preservation Act, 16 U.S.C. § 470 et seq.;

b. The Coastal Zone Management Act, 16 U.S.C. § 1451 et seq.;

c. The Endangered Species Act, 16 U.S.C. § 1536 et seq.;

d. The Clean Water Act, 33 U.S.C. § 1251 et seq., including the Section 404 wetlands permitting process and Section 311;

e. The Wild and Scenic Rivers Act, 16 U.S.C. § 1271 et seq.;

f. The Clean Air Act, 42 U.S.C. § 7401, et seq.;

g. The Antiquities Act, 16 U.S.C. § 431, et seq.;

h. Archaeological and Historical Preservation Act, 16 U.S.C. § 469;

i. American Indian Religious Freedom Act, 42 U.S.C. § 1996;

j. Archaeological Resources Protection Act, 16 U.S.C. § 470aa-ll;

k. Native American Grave Protection Act;

1. Toxic Substances Control Act, 15 U.S.C. § 2601;

m. The Solid Waste Disposal Act, 42 U.S.C. § 6901, this is also known as RCRA the Resource Conservation and Recovery Act);

n. Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. § 135;

o. Executive Order 11990, Protection of Wetlands; and,

p. Executive Order 11988 as amended by Executive Order 12148, Floodplain Management.

8-55. Compliance with CERCLA.

a. Compliance with CERCLA will be documented by including in each file and transmittal assembly, a Preliminary Assessment Screening (PAS) as that procedure is described in AR 200-1. The Report of Availability is to be combined with the PAS and included in each

file and assembly. The PAS bridges between CERCLA and NEPA and is integrated into a REC or the affected environment portion of the EA or EIS, as appropriate.

b. The PAS is prepared for a specific action (e.g. the leasing of a particular parcel of land) and should not be confused with environmental inventories of a generalized nature such as the Environmental Review Guide for Operations (ERGO) for Civil Works projects or Environmental Compliance Assessment System (ECAS) for military installations.

c. A PAS may be prepared for any outgrant, if desired, to document the environmental condition of the property.

d. Keep in mind, when considering compliance with CERCLA and RCRA, that federal agencies are legally obligated to follow state law and procedure implementing these laws, and that state law under an EPA approved RCRA program may determine the definition of, for example, "hazardous substances".

e. CERCLA requires that all "transfers" of real property from the Federal Government to another party, including another federal agency, must contain in the "contract" for the transfer a notice indicating if the property had been the site of a release, storage, or disposal of hazardous substances. Army policy is to apply this notice requirement broadly. There is to be a "complete search of agency files" to determine if a notice is needed. Additionally, if there was a release, storage, or disposal, the notice is to identify the nature of the substance involved, when the substance was on the property, and a description of the remedial action taken. For the purpose of this guidance, all applicable documents will contain CERCLA notices, if the threshold hazardous substances are found as set out in the Finding of Suitability. The standard PAS Condition, will be renumbered as "a." and the following "b." added:

> b. CERCLA Notice. The information contained in this notice is required under the authority of regulations promulgated under Title 42, United States Code, Section 9620(h). The (Lessor/Grantor) has made a complete search of its records concerning the property subject to this (outgrant). Those records indicate that the following hazardous substances have been stored for one year or more (S), released (R), or disposed of (D) on the premises:
>
> (List each incident, giving the substance as defined under CERCLA, Section 101(14) and appearing at 40 CFR 302.4; the quantity; the Chemical Abstracts Services Registry Number, where applicable; the regulatory synonym for the hazardous substance, as listed in 40 CFR 302.4, where applicable; the date(s) that the storage, release, or disposal took place. If information is either not available, is incomplete, or requires further explanation as set out in the PAS, so state.)
>
> The (lessee/grantee) should consult the PAS described in sub-paragraph a. above for more details.

f. The Environmental Protection Agency has issued regulations implementing Section 9620, see reference 8-55.b. The regulations do not diminish the all inclusive nature of the language of the act.

g. The records search required by CERCLA is to be a complete search of the agency records. Therefore, the District should have in its files, written confirmation of such a search, from all elements of the District (or division) e.g. operations, construction, safety, logistics, planning, etc. that might have records indicating if the CERCLA "threshold" on the quantity of hazardous substances has been exceeded.

h. If the records check indicates that the "threshold" for reporting the storage, release, or disposal of hazardous substances has not been exceeded, and there is no other actual or constructive notice indicating that it has, the outgrant of such property from the Federal Government need not contain language referencing CERCLA i.e., 42 U.S.C. § 9620. A site inspection is only required if the records search indicates the need for further investigation.

i. AR 200-1 is being revised. The PAS may also be called an Environmental Baseline Study (EBS). These are synonymous.

j. When a PAS is completed pursuant to an outgrant it should be attached to the outgrant as an exhibit. The initial PAS form will then form the baseline in determining responsibility for any future restoration work. At the conclusion of the outgrant, a PAS and such other investigations as are warranted should be completed to determine what if any environmental restoration work is needed.

8-56. Documentation and Liability. Care should be taken to ensure that compliance with the environmental statutes is adequately documented both to prevent potential financial liability to the Government, and because several of the laws (e.g. RCRA and CERCLA) have provisions whereby individual employees of industry and government may be held personally liable for their acts or omissions that violate the laws. Such liability may be both civil and criminal depending on the facts of the case. Federal Facilities Compliance Act, (**cite)

8-57. Protection and Enhancement.

a. AR 405-80, "Real Estate, Granting Use of Real Estate," which applies to both military and civil properties, states that the Department of Army will not authorize use of real estate, water or natural resources when the use conflicts with the goals and intent of Federal policy and legislation on overall environmental quality.

b. All outgrants will be drafted and administered to conform with this policy. Environmental factors of grants covering Civil Works projects will be coordinated with Operations and Engineering elements. This Chapter specifies outgrant formats which contain general environmental protection conditions. However, the general conditions may not be adequate in specific cases; therefore, the District Engineer will carefully consider the proposed

use of the property by the grantee and the report of availability conditions and will supplement the general conditions to assure adequate protection of the environment.

c. Formats for specific outgrants may include additional language tailored to the type of outgrant. If this condition is in the standard format, it shall not be deleted or modified except to add site specific requirements.

8-58. Protection of Wetlands.

a. Executive Order 11990, Protection of Wetlands (1977), applies to all Federal agencies which acquire, manage, and dispose of Federal lands and facilities; provide federally sponsored construction and improvements; and conduct Federal activities and programs affecting land use.

b. Section 4 of the Executive Order requires that "when federally owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way, or disposal to nonfederal public or private parties, the Federal agency shall reference in the conveyance those uses that are restricted under identified Federal, state or local wetlands regulations, and attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or withhold such properties from disposal. " To comply with this requirement, site specific requirements may be added, as necessary, to protect wetlands adequately.

c. To implement this policy, all areas considered for outgrants should be evaluated for the presence of wetlands.

8-59. Floodplain Management. Executive Order 11988, Floodplain Management (1977), as amended by Executive Order 12148 (1979), establishes a Federal policy to "avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative." See ER 1165-2-26.

8-60. Coastal Zone Management. The Coastal Zone Management Act of 1972, as amended, requires a "Consistency Certification" in all applications for outgrants to use Federal real property for a purpose which is subject to review by a state coastal zone management agency.

8-61. Waste Disposal. The Solid Waste Disposal Act, as amended (42 U.S.C. § 6901, et seq., also known as RCRA), and Executive Order 12088, Federal Compliance with Pollution Control Standards (1978) make Federal agencies responsible for all waste disposal on federally controlled property. Solid Waste Management Units may also require a state or Federal RCRA permit to construct or operate.

8-62. Storage of Toxic or Hazardous Materials. Army policy generally prohibits the storage or disposal of non-DOD owned toxic or hazardous materials on Army installations or projects. (See AR 75-15.) If such use is authorized, environmentally sound procedures will be followed.

8-63. Real Property Contaminated with Ammunition, Explosives or Chemicals. It is Army policy to remediate real property known to contain hazards from ammunition, explosives, or chemical agents using the most appropriate technology consistent with the proposed use of the property. Limited use land transfers may be arranged with other Federal agencies for the compatible use of surface remediated real property. Such use may include wildlife refuges, safety zones for federal power facilities, or for other purposes not requiring entry except by authorized personnel. The land transfer documents shall detail the extent of residual hazard and shall include all restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection. Access rights should also be reserved to implement any monitoring plan. Reports of Availability should show coordination with HQDA, DACS-SF and DAMO-SWS and have attached the Land Disposal Site Plan (LDSP). Reference AR 385-64, "U.S. Army Explosives Safety Program."

8-64. Outgrant Applications. Whether in response to a Notice of Availability, discussed in the section on leases, or unsolicited and initiated by the non-Army party, a written outgrant application will be prepared providing material to identify the proposed use, the site requested, and other information which the applicant has readily available. In addition, the application will include an agreement to provide non-discrimination and Civil Rights assurances, as applicable. No standard format is required and a letter or other written document may be considered the application, as long as appropriate information is contained. See the section on leases for information required for lease applications.

8-65. Non-discrimination and Civil Rights Assurance.

a. Existing provisions of federal law combine to prohibit discrimination on the basis of race, color, national origin, handicap, or age under any program or activity receiving federal financial assistance. In addition, public accommodations must not discriminate on the basis of sex and religion.

b. All non-federal grantees under outgrants issued for less than full fair market consideration are considered to be receiving federal financial assistance and the outgrant must contain the condition which includes the Civil Rights Act of 1964 and the Rehabilitation Act, as shown in the format on Park and Recreation Leases. Execution of the outgrant by the grantee is sufficient to signify assurance of compliance with the law. A separate assurance instrument is not required.

c. Outgrants issued for full consideration, such as the Agricultural and Grazing or Commercial Concession leases, contain a general non-discrimination clause, which includes the Americans with Disabilities Act. Refer to those formats.

d. If the grantee is a non-profit club or non-federal, quasi-public entity, use whichever condition is appropriate for the consideration paid. However, if the premises will not be used as a public accommodations, then "sex" and "religion" may be deleted from the list in the first

sentence of the standard clause and the following added at the end of that sentence: "; and will not unlawfully discriminate on the basis of sex or religion".

8-66. Access by the Disabled.

a. Public accommodations for full fair market consideration. Grantees who pay full consideration, including commercial lessees who pay rent under the Revised Graduated Rental System are not recipients of federal financial assistance, and, therefore, are not subject to the Rehabilitation Act or the Uniform Federal Accessibility Standards (UFAS). These grantees are, however, subject to the requirements of Title III, Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities, of the Americans with Disabilities Act (ADA) and the implementing regulations by the Office on the Americans with Disabilities Act, Civil Rights Division, Department of Justice (36 CFR subparts 1 to 6) and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board. Compliance with the ADA, as with all other applicable federal laws and regulations, is an enforceable lease term. However, compliance is the responsibility of the grantee - not the Corps. While ADA compliance must be an element of outgrant compliance inspections, and grantees must be informed of perceived compliance violations in order to enforce outgrant terms, the Corps is not an ADA enforcement entity. The grantee must be made aware, therefore, that an outgrant compliance inspection is not a federal endorsement of compliance which will preclude liability from federal or private enforcement actions, but is merely a determination of compliance with outgrant terms.

b. Public Accommodation for less than full fair market consideration. State and political subdivision entities and non-profit organizations which hold Corps public park and recreation leases or fish and wildlife licenses, for which they are paying less than fair market value, are subject to the Rehabilitation Act and UFAS. Any such grantee paying fair market value for its lease and not receiving federal financial assistance as defined by the Rehabilitation Act and attendant regulations is subject to the ADA.

8-67. Alaska Lands. The Alaska National Interest Lands Conservation Act of 1980 (Public Law 96-487) provides that a special application forms for proposals on transportation and utility systems in any conservation system unit, national recreation area, or national conservation area in Alaska. Applicants should contact the District Engineer, ATTN: CENPA-RE-MD, PO Box 7002, Anchorage, Alaska 95510-0898.

8-68. Determination of Availability--Mi1itary. The availability of military property for outgrant will be determined according to AR 405-80 and supporting TM for outgrants. The Report of Availability (ROA) and Determination of Availability (DOA) format are shown in the TM. If a District Engineer receives outgrant applications when no determination of availability for the property has been made, the District Engineer will forward the applications to the appropriate installation commander. Where an entire installation is permitted to a DOD agency, availability will be determined by the Defense Agency concerned, with concurrence of the MACOM or using service of the military department with primary jurisdiction. For part of an installation

permitted to a DOD agency, the MACOM will make the determination of availability with concurrences of the DOD agency. Where a Title 10 Report is required, be sure the information required to complete a Disposal Report, is provided (reference Paragraph 8-110).

8-69. Determination of Availability--Civil Works.

a. During the construction phase of a project, the Construction Division will decide whether the proposed use will interfere with construction of the project. The District Engineer may determine availability of lands and improvements during the construction period without further approval; these outgrants for interim uses may not exceed 5 years or the end of construction, if less.

b. Operations and Readiness Division, in cooperation with Real Estate Division, determines whether a proposed non-Army use is in conformance with the master plan and will not interfere with project operations. If the proposed use is found not to be in conformance with the Master Plan but is otherwise in furtherance of project purposes or is in the public interest, amendment of the Master Plan may be recommended. If the initial determination is positive and/or further processing is in order, a Report of Availability (ROA) will be prepared and Operations and Readiness Division will identify site specific environmental, cultural, historical, or operational requirements for non-Army use. The ROA will be included in the outgrant file. The Determination of Availability (DOA) will be made by the approving official at the level delegated authority to execute the outgrant, e.g. the Division Engineer for those actions to be executed at that level. A recommended draft DOA with attached ROA will accompany all outgrants to be executed at division, HQUSACE or Army Secretariat level.

c. Priority leasing commitments to former owners and tenants will continue to be honored as in Section X, this chapter.

d. The Report of Availability format has been set up so that different sections can be prepared and staffed separately and signed by different Army elements, if required. Flexibility is essential, yet still yielding a final product which can be staffed and finally put in the outgrant file. It is becoming more and more important to have a document that contains all the pieces to the process and that provides written confirmation of what issues were considered. The Report of Availability (ROA) will contain, substantially in the form of Appendix 8-A, Figure 8-A-3, the following:

(1) Project designation.

(2) The proposed use and term.

(3) United States property interest (fee simple title, easement, in-lease, or Army jurisdiction (primary jurisdiction, permit from a Federal Agency, withdrawn from the public domain).

(4) Description of property, including any improvements. If the land is not included in the grant, explain why the improvement is not excess.

(5) Estimate of consideration, giving the source of the estimate. If outgrant is issued under Title 10, United States Code, 2667, list any in-kind offsets to case consideration.

(6) Is a waiver of competition recommended/not recommended, giving full justification and proposed grantee, if negotiated.

(7) Describe or enclose relevant technical specification for the proposed area or facility.

(8) A finding that the grant will not interfere with operation of the project, or with contemplated development and other activities as shown in an approved Master Plan; if the use will further the project purpose or the public interest or national defense, so state.

(9) Documentation of environmental and cultural considerations described in this section.

(10) Other pertinent information or recommendations and any additional restrictions or site specific limitations.

(11) Attach maps showing the nearest project boundary; acreage, character of land, and the number and type of improvements, if both land and improvements are included. If only building space is involved, attach a floor plan. Existing maps and drawings should be utilized to the greatest extent possible to minimize costs.

(12) Attach environmental reports and assessments.

e. After coordination and approval of the ROA, the property will be determined to be available for the proposed use by approval and execution of a Determination of Availability by the approving official at the level delegated authority to execute the outgrant. The DOA will contain, substantially in the format of Appendix 8-A, Figure 8-A-4:

(1) A finding that the proposed. use is in the public interest or in the interest of national defense and is consistent with delegated authorities and Government regulations.

(2) A finding that the property is not excess.

(3) Coordination.

(4) A determination that the property is available for the proposed use with the restrictions as stated in the ROA and as added, if any, and may be outgranted in accordance with applicable laws, rules and regulations.

(5) A finding that the consideration is no less than the fair market value, if applicable.

(6) Signature of approving official.

f. Renewals do not have to have a ROA, but will require a DOA to reaffirm the continued availability.

8-70. Prior Approval of Assistant Secretary of the Army. The Assistant Secretary of the Army (Installation, Logistics & Environment) (SAILE) must give prior approval to certain types of outgrants of military real property as set out in supporting TM for outgrants. Those involving value may not become evident until after the appraisal or opinion of value. In such cases, if prior approval was not obtained during the installation/MACOM approval process, the District Engineer, in coordination with the installation commander, will forward a report with supporting justification to HQUSACE (CERE-M) for transmittal to SAILE. A draft Title 10 report should be included, if appropriate.

8-71. Provision of Certain Reports by Non-Army Party.

a. For outgrants initiated by non-Army parties, the initiating non-Army party may be requested to provide appraisals, surveys, mapping, legal descriptions suitable for recording in the local land records, and environmental, cultural and historical assessments, and other non-internal work products which result in a report or written document. Outgrant which are to be recorded in the local land records should be recorded at the expense of the non-Army grantee. The Army proponent will assure completion of the required supporting documentation and should ensure that the products supplied by the non-Army party are in accordance with our requirements.

b. If the outgrant benefits the Army proponent or the initiating non-Army party is unable to provide these products, then the Army proponent may do the work, if funds are available or on a reimbursable basis. Refer to AR 200-1 for policy on environmental assessments.

c. The Army must do those inherent governmental functions, such as internal review, policy reviews, decision making and the processing of the documents through Army channels, as required.

d. The selection of an administrative costs category for determination of consideration will be based on the work effort performed by the district for the grantee. If significant work products are provided by the grantee, then a lesser category may be selected than the type of action would usually rank. See Paragraph 8-81, Consideration.

8-72. Rights-of-entry. Rights-of-entry are not technically an outgrant, but are merely a short-term permission to enter the property. They are similar to licenses. A right-of-entry will not be granted unless it is authorized by the office in which the final outgrant will be executed. The availability process must be substantially complete. Rights-of-entry will be conditioned to clearly show that the grantee is agreeable to all terms and conditions of the follow-on formal outgrant instrument.

8-73. Reserved.

8-74. Reserved.

SECTION VII. OUTGRANTS AND OUTGRANT MANAGEMENT - PROCEDURES FOR DRAFTING AND ISSUANCE

8-75. Purpose. This section describes the general procedures for the drafting, executions and issuance of the instruments, generally called outgrants, which authorize Federal agencies, state or local governments, private organizations, or individuals to use Army (military or civil) controlled real property and administering those interests in real property.

8-76. Formats For Outgrant Instruments.

a. Formats containing the conditions that have been approved for use in the various outgrant instruments issued by the Corps of Engineers are shown in formats at the end of this chapter (or as numbered forms until replaced). These formats are available in electronic form for use with computers. The formats may be copied from the distribution disks and District specific data filled in appropriate blanks to create templates for local use. Under no circumstances should the files on the distribution disks be altered because they may be needed later to restore a template to its original condition. Updated disks will be furnished periodically when changes to the formats are approved by HQUSACE (CERE-M).

b. The template for each type of outgrant should always be the starting point for any outgrant. Site specific conditions for environmental, cultural, historical or operational protection may be added for individual outgrants as appropriate, however, other deviations will not be made to the conditions shown in the formats, except as indicated in the format, without approval of HQUSACE (CERE-M). Site specific conditions must be truly site specific and will not be used by the district as a subterfuge for district unique templates, unless approved by HQUSACE (CERE-M).

8-77. Legal Review. Any site specific conditions to be added to a proposed outgrant will be reviewed. All outgrant instrument required to be submitted to the Secretariat will be reviewed for legal sufficiency by an attorney-advisor (real property). This review will be documented in writing with the file (a stamp “Reviewed for legal sufficiency by:” may be used) and will be stated in the transmittal of any action to HQUSACE (CERE-M), including the name and telephone number of the attorney. If this review can not be performed, the transmittal must so state, giving justification for the omission. The purpose of a review for legal sufficiency is not to validate standard format provisions, which have already received extensive review prior to issuance of the format, but rather the selection of conditions where alternatives are provided, deviations, if any, and added conditions or requirements by the district. District Engineers and their Chiefs of Real Estate are encouraged to require involvement by an attorney from the beginning of negotiations in cases involving large transactions, difficult, or unusual situations, especially if the negotiations can be expected to develop deviations to the standard formats or numerous site-specific additions.

8-78. Designation of Grantees. Individuals, and individuals trading as a firm, a partnership, a corporation, or an association can be designated as a grantee. A corporation will be designated:

The _____ Company/Corporation, duly organized and existing under and by virtue of the laws of the state of _____, with its principal office at _____.

Grants will not be made to unincorporated associations unless they are legal entities that can hold property, sue, and be sued under the laws of the state where the property is located.

8-79. Term.

a. Grants of Fee-Owned Land. The term of an outgrant on fee-owned land of the United States will accord with the provisions of this chapter for each type of outgrant, unless different instructions are given in individual cases.

b. Grants of Property In-Leased to the United States. If all or part of the land or improvements in an outgrant is inleased to the United States, the term of the outgrant will not be longer than the term of such inlease. If there are no instructions to the contrary, outgrants of inleased land and improvements will be submitted to HQUSACE (CERE-M), since delegations of authority to execute outgrants are generally limited to fee-owned land. Outgrants may be issued where the ingrant is less than a lease, such as an easement. The outgrant may only be for an equal or lesser interest. If the inlease to the United States must be renewed annually, the basic term of the outgrant will be the same as term of the current inlease. If the ultimate term is to extend beyond that time, the granting clause should provide for “renewal as hereinafter provided” and adding one of the following conditions:

(1) If all or part of the premises is leased to the United States, subject to renewal upon notice, add the following condition:

That (a portion of) the land (and improvements) covered hereby is (are) occupied by the United States under Lease No. _____, from _____ for the period beginning _____ and ending _____, subject to renewel annually to _____, and in the event the United States elects to exercise its option of renewal, this lease (license) (permit) shall automatically be renewed to cover such annual renewal periods, but not to extend beyond _____ years from the commencement date hereof, and this lease (license) (permit), together with any renewals thereof, shall be subject to all provisions and conditions of said Lease No. _____.

(2) If all or part of the premises is leased to the United States from year to year, unless and until the Government shall give notice of termination, add the following condition:

That (a portion of) the land (and improvements) covered hereby is (are) occupied by the United States under Lease No. _____, from _____ for the period beginning _____ and ending _____, which provides that, unless and until the Government shall give notice of termination in accordance with the terms

thereof, the said lease shall remain in force thereafter from year to year without further notice but in any event it shall expire automatically on _____. That for such yearly periods that the United States shall allow said lease to remain in effect, this lease (license) (permit) shall be automatically renewed, but not to extend beyond _____ years from the commencement date hereof, and this lease (license) (permit), together with any renewals thereof, shall be subject to all provisions and conditions of said Lease No._____ _.

8-80. Description. The description must be sufficient to locate the premises and should clearly identify the property to be outgranted. An already-prepared metes and bounds, or other legal description, if available, plus a marked map or aerial photograph are the best and most effective description. A map or photograph should be marked or delineated with cross-hatch or other marks so as to be reproducible by mechanical means available to the district so as to minimize costs. Use existing maps, legal descriptions, aerials, etc. to the greatest extent possible. Water and land area to be included in the outgrant should both be described as part of the outgranted premises.

8-81. Consideration.

a. General.

(1) Title 31, U.S.C. § 9701 (Independent Offices Appropriation Act of 1952) expresses that sense of Congress that "each service or thing provided by an agency...is to be self sustaining to the extent possible," and states specifically that regulations establish the charge for a service or thing of value provided by the agency. Each charge shall be fair and based upon the costs to the government; the value of the service or thing to the recipient; the public policy or interest served; and other relevant facts."

(2) Office of Management and Budget Circular A-25 which implements the act, states that where a federal activity provides special benefits to a recipient above and beyond those accruing to the public at large, a charge should be imposed to recover the cost to the federal government. When federally-owned property is leased or sold, the fair market value should be obtained. The fair market value is determined in accordance with commercial rates and prices for similar property in the geographical area and is not limited to recovery of costs. Fees to recover costs should cover direct and indirect costs of providing the special benefit.

(3) DODI 7230.1, "User Charges" implements this act, and states that real estate leases shall recover the higher of the fair market value of the asset being leased or the administrative costs of issuing and processing the outgrant. Charges may be reduced or waived for certain exceptions.

b. Determination of Consideration. The consideration for all outgrants shall be either the fair market value or the estimated administrative costs, based upon the full term of the outgrant, whichever is greater, unless excepted in sub-paragraph c. below.

(1) Fair Market Value. Appraisals are not required when the estimated fair market rental for the full term is less than $2,500. Other simple evaluations and per annum rental values that do not exceed $10,000 for the term of the instrument are authorized to use a brief narrative style report. Refer to ER 405-1-12, Chapter 4, and various Real Estate Policy Guidance Letters on appraisal requirements. Appraisal questions should be referred to HQUSACE (CERE-E). The district Chief Appraiser may periodically estimate values for types of outgrants issued for identical purposes in order to establish a schedule of charges.

(2) Administrative Costs.

(a) For the purpose of determining basic administrative costs, outgrants have been separated into categories which reflect the work effort involved in issuing and managing the outgrant. An estimated cost schedule will be sent out periodically by CERE-M, using cost data from the districts. The costs reflect a range of categories established for civil and military outgrants and the basic administrative costs for each category. Additional charges may be added for monitoring/ compliance costs and extraordinary or unusual incidental costs, excluding any expenses incurred to serve independent public interest. Costs do not have to be exact but must bear a reasonable relationship to the cost of services rendered by the agency to the grantee. Renewals will be based upon the effort involved and not the original category.

(b) In New England Power Company, et al, v. NEC, 683 F.2d 12 (1982) citing Mississippi Power & Light Co., et al v. NRC, 601 F.2d 223 (5th Cir. 1979), cert. denied, 444 U.S. 1102, 100 S. Ct. 1066, 62 L. Ed.2d 787 (1980), the court upheld fees for the cost of environmental reviews of specific applications which are a prerequisite to the issueance of a license. Since the reviews were a necessary part of the cost of providing a special benefit. Cost of programmatic, project/installation-wide or project/installation master plan environmental reviews are not included.

(c) When the non-Army party provides reports or other work products, a lesser category in the cost schedule may be selected. See Paragraph 8-71.

c. Exceptions. Only the fair market value of an outgrant will be charged when required by law or the consideration is determined by competition, such as agricultural and grazing leases. A cottage site lease issued under the authority of Title 16, United States Code, Section 460d, as amended by section 1134 of the Water Resources Development Act of 1986, must by law be issued for fair market rental. Certain oil and gas pipeline rights-of-way require both fair market value and an administrative charge, as set out in the section on Easements. Because of public policy or interest served, all monetary consideration for outgrants may be waived or reduced when:

(1) The recipient of the benefits is engaged in a nonprofit or public activity designed for the public safety, health and welfare.

(2) Payment of the full fee by a state and local governments or nonprofit group would not be in the interest of the program or payment may be waived or reduced because of specific authority.

(3) Furnishing the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis.

8-82. Statement of Payments. All outgrants shall clearly state the consideration reserved.

a. If monetary consideration for an outgrant is waived for a non-profit, public activity or governmental entity, as set out above, the outgrant shall state that the consideration is the operation, maintenance, and repair of the property for the public purpose served. The remaining portions of this paragraph do not apply.

b. If monetary consideration is reserved, the outgrant shall specify the amount due, payment due date, and a requirement that payments be received no later than the due date. Monetary consideration will be stated using words and numerals (e.g., one hundred ninety-two and 50/100 dollars ($192.50). Indicate the frequency of periodic payments after the word "payable" in the payment clause (e.g., annually, semi-annually, quarterly). Payments are payable, in advance, to Finance and Accounting Officer, U.S. Army Corps of Engineers. Insert the words "in full for the term" after the word "payable" in the payment clause if there is one payment for the entire term. If consideration is based on gross receipts or other special calculations, indicate this clearly in the payment clause; show also the method of calculation, period covered, and when payments are due. Rental offsets or abatements are discussed in the Section on outgrants under 10 U.S.C. § 2667.

c. Collection Costs. To minimize collection costs and avoid the sanction of an interest charge, rentals should be paid in advance in the largest practicable increments. Monthly payments are discouraged, but may be permitted in cases of hardship or where the annual rent is substantial.

d. Charges for Late Payments. Public Law 96-304 and the Department of the Treasury Fiscal Requirements Manual require Federal agencies to impose and collect late payment penalties for overdue payment obligations under outgrants with parties outside the Federal Government. Penalties must be imposed for each month or part of a month payment is not received.

e. Existing outgrants will not be amended solely to incorporate a late penalty provision; rather when delinquent rentals or other payments require a follow-up letter, the grantee will be informed that a late charge, as prescribed above, will be assessed if the due amount is not paid in 30 days. The Department of Treasury determines the applicable percentage rate for late charges for each quarter and informs all District Finance and Accounting Offices before the first day of each calendar quarter. The District Engineer may waive collection upon a determination that administrative cost of collection is more than the late charge.

8-83. Changes, Additions, or Deletions: Merger Clause.

a. Elements preparing outgrant instruments are encouraged to use word processing equipment so that approved modifications of prescribed formats can be made in a professional manner. In such cases, the document will stand on its own and no merger clause is necessary.

b. If preprinted forms are used, any changes should be noted at the end in a merger clause as follows:

Prior to execution of this (instrument) Condition No(s)._____ were modified, Condition No(s)._____ were deleted,_____ Condition No(s)._____ were added on page_____ which is hereby made a part of this (instrument).

c. Where conditions have been added by rider, all parties executing the instrument should also initial the rider.

8-84. Termination. An outgrant cannot be simultaneously revocable at will by the United States and revocable with a specified number of days' notice by the United States. If the format includes a revocable at will condition, the following notice provision may be substituted, if the ROA or the grantee object to the standard condition: "The Government may terminate this lease at any time in the event of national emergency as declared by the President or the Congress of the United States, base closure, deactivation or substantial realignment, or in the interest of national defense. "

8-85. Execution. Delegations of authority to execute real estate instruments are derived from the authority granted by the Secretary of Defense or the Secretary of the Army to the Assistant Secretary of the Army (I,L&E). These delegations, with applicable limitations, requirements and conditions, are delegated down through the Commander, USACE and the Director of Real Estate, to Division Engineers and division Director of Real Estate, with redelegation authority to the District Engineer and district Chief of Real Estate. After complying with preleasing clearances, specific delegations should be consulted for determining execution authority in individual outgrant actions. The form of the execution will then be selected as follows:

a. By District, Division, or HQUSACE. For outgrants to be executed in the office of the District or Division Engineer or the HQUSACE, the testimonium clause should read: "IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army this_____day of_____ , 19_____ ."

b., By Secretariat. For execution at the Secretarial level, the testimonium clause for Army (Military and Civil Works) should read: "IN WITNESS WHEREOF, I have hereunto set my hand this_____ day of_____ 19_____by direction of the Assistant Secretary of the Army (I,L & E). "

c. By Air Force. “IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Air Force this_____ day of_____ 19 ."

d. By Grantee. Outgrants which contain assurances or conditions to be met by the grantee must be signed by the grantee prior to submittal to the Secretary. Outgrants requiring the signature of the grantee will be signed with the name of the party, or parties, typed below the signature, as follows:

(1) An Individual. The legal name of the individual. Use AKA, nicknames in quotes, or NEE as appropriate, for example:

John “Spike” Jones, AKA J.J. Jones
Amanda J. Jones, NEE Amanda Johnson

(2) An Individual Trading as a Firm or Doing Business Under a Firm or Trade Name. The name of the individual, followed by the notation “doing business as_____".

(3) A Partnership. The name of all the partners or the name of the partnership by one partner who signs as one of the firm; for example:

Thomas R. Jones
Henry C. Smith
Partner in the firm.

or

Jones & Smith
By: Thomas R. Jones

The signer will furnish, for filing with the outgrant, extracts from the Partnership agreement, which indicates the names of the general partners. In lieu of this evidence, the signer may furnish a Partnership Certificate, certifying that the signer has authority to bind the partnership as follows:

> I, (Partner X) certify that I an a General Partner in the Partnership named as Grantee in the attached outgrant, I certify further that (Partner Y), who signed said outgrant on behalf of the Partnership, is also a General Partner and has the authority to bind the Partnership by virtue of the powers vested in him/her in the Partnership agreement.

(4) A Corporation or Association. The name of the corporation and the name of the officer with official capacity signing on its behalf; for example:

The Jones Power Company
By: Thomas R. Jones
President

The corporation seal will be affixed. The signer will furnish, for filing with the outgrant, extracts from the articles of incorporation, the by-laws, or the minutes of the board of directors,

duly certified by the custodian of such records, under the corporate seal (if there is one), which properly vest the signer with authority to bind the corporation. In lieu of this evidence the grantee may furnish a certificate signed by an appropriate corporate officer, other than the person executing the outgrant, as follows:

CORPORATE CERTIFICATE

I _____(Name)_____ certify that I am the (Secretary) of _____, Inc., that _____ who signed the foregoing instrument on behalf of the corporation was then _____ of the corporation. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the corporation in executing said instrument.

Date _____

Corporate Secretary or
Appropriate Officer
(AFFIX CORPORATE SEAL)

(5) State or local governmental entities. The name of the entity and the name of the officer with official capacity signing on its behalf; for example:

VILLAGE OF ZOAR, OHIO
By Thomas R. Jones
Mayor

The signer will furnish, for filing with the outgrant, an extract from the minutes of the entity indicating that the outgrant was approved by the governing body of the of the entity and authorizing a named individual to execute the outgrant on its behalf. In lieu of the minutes, the grantee may furnish a certificate signed by an appropriate official, other than the person executing the outgrant, as follows:

CERTIFICATE OF AUTHORITY

I _____ (Name)_____ certify that I am the _____(Clerk) of _____, that _____ who signed the foregoing instrument on behalf of the grantee was then_____ of _____. I further certify that the said officer was acting within the scope of powers delegated to this officer by the governing body of the grantee in executing said instrument.

Date_____

Clerk or
Appropriate Official

8-86. Acknowledgments and Witnesses.

a. Easements will contain an acknowledgment or provisions for witness as necessary to comply with local recordation statutes. For other outgrants, the grantee may request such provisions, or the law of the state in which the property lies may require one. The outgrant should then include such provisions, written according to local recordation statutes.

b. Use the following formats for instruments to be executed by the designated individual, unless local recordation statutes dictate otherwise. If a different format is used to comply with local statutes, the transmittal assembly must state the reason for the deviation.

c. Use the following format for instruments executed by the Secretary of the Army:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)

: ss

COUNTY OF ARLINGTON)

BEFORE ME, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, personally appeared_____ to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument in the capacity therein stated for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this_____ day of_____ , 19.

_____
NOTARY PUBLIC

(SEAL)
My Commission Expires:

d. Use the following format for instruments executed in SAILE:

ACKNOWLEDGMENT

COMMONWEALTH OF VIRGINIA)

: ss

COUNTY OF ARLINGTON)

BEFORE ME, a Notary Public in and for the Commonwealth of Virginia, County of Arlington, personally appeared_____ , to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument by direction of the Assistant Secretary of the Army (I,L&E) for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this day of_____ 19____ .

_____
NOTARY PUBLIC

(SEAL)
My Commission Expires:

e. Use the following format for instruments executed by the Director of Real Estate:

ACKNOWLEDGMENT

CITY OF WASHINGTON)

: ss

DISTRICT OF COLUMBIA)

BEFORE ME, a Notary Public in and for the District of Columbia, personally appeared _____,to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument by authority of the Secretary of the Army for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this day of_____ ,19 _____,

_____
NOTARY PUBLIC

(SEAL)
My Commission Expires:

f. Use the following format for instruments executed by the Secretary of the Air Force or his designee:

ACKNOWLEDGMENT

_____of_____)

: ss

_____of_____)

BEFORE ME, a Notary Public in and for the jurisdiction above shown, personally appeared _____to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that (he) (she) executed the said instrument by authority of the Secretary of the Air Force for the purposes therein expressed as the act and deed of the United States of America.

GIVEN under my hand and seal, this day of_____,19___ .

_____
NOTARY PUBLIC

(SEAL)
My Commission Expires:

8-87. Numbering. All outgrants and consents will be numbered. Place the number in the space provided on the form or in the upper right corner of instruments not prepared on forms. A separate series of numbers will be maintained for military, NASA, and Civil Works outgrants. Begin with “l” at the start of each fiscal year, except for NASA outgrants which begin with “9000”.

a. Outgrants and Consents Involving Military Army and NASA Property. The complete instrument number will consist of the capital letters “DACA” and fiscal station number of the activity issuing the outgrant, a dash, the instrument identification code (1 for outlease, 2 for easement, 3 for license, 4 for permit, or 9 for other type instruments), a dash, the fiscal year, and a dash followed by the instrument serial number, e.g., DACA03-1-79-1.

b. Outgrants and Consents Involving Civil Works Property. “DACW” will precede the fiscal station number, e.g., DACW03-1-79-1.

c. Modifications or Supplemental Agreements. Changes to outgrant instruments will be consecutively numbered and attached to the basic instruments. Supplemental agreements will not be used to renew an outgrant, rather, the latest version of the outgrant form will be used. A supplemental agreement may extend the term, but not in lieu of or to avoid a renewal action. A

Supplemental Agreement may be used to modify the outgrant document for any item which was supplied by the district in the original outgrant, e.g. the description, the names and addresses of the parties, but may not be used to modify standard outgrant clauses.

8-88. Transmittal of Outgrant Instruments. Correspondence which transmits outgrants to HQ USACE (CERE-M) for execution or approval will include one complete copy of the outgrant assembly for the files of each higher reviewing office. The division may waive this requirement for division file copies. The assembly, with required copies, must include the following:

a. The original instrument and amendments, or proposed amendments or renewal.

b. One duplicate copy of a. above.

c. Draft Determination of Availability with the Report of Availability and supporting environmental and cultural documentation. See Section VI.

d. Statements on the following:

(1) Cite authority for outgrant with citations to the appropriate sections of this regulation.

(2) Administrative findings required by the legislative authority for the outgrant, if not covered by the DOA.

(3) Amount of consideration deemed adequate, data to support the recommended compensation, and date of any appraisal. If consideration was not reserved, explain.

(4) If competition is required, describe competition in selecting grantee; if waiver of competition is being requested, or if competition was impractical, give reasons why and justifications. No explanation is required for outgrants authorized by this regulations to be granted without competition.

(5) Explanation of any deviation in forms.

(6) Information whether the grantee has concurred in the terms, when the grantee has not yet executed the outgrant. Outgrants which contain assurances or conditions to be met by the grantee must be signed by the grantee prior to submittal to the Secretary.

(7) Information for grants under authority of 10 U.S.C. § 2668, 10 U.S.C. § 2669, and 43 U.S.C. § 961, whether the grantee is an American citizen, and whether public domain land is involved.

(8) Any other desirable information.

e. Correspondence on approval or execution of outgrants for oil and gas pipelines will include information required in the Section on Easements.

f. Instruments which are forwarded for execution at Secretariat or HQUSACE level shall be protected from damage in transit.

8-89. Distribution of Outgrant Instruments.

a. General Distribution. The districts will distribute all outgrants, supplemental agreements, notices of revocation, notices of termination, etc., as follows:

(1) One fully executed copy to the grantee.

(2) One fully executed copy in the district realty records.

(3) One conformed copy to the installation commander or the civil works project manager.

(4) One conformed copy to F&A, if required.

b. Special Distribution. Additions to the general distribution above are:

(1) One conformed copy of road easements and licenses to take borrow material: to the Federal Highway Administration, ATTN: General Counsel, Washington, D.C. 20591-0001. Such documents will not be sent unless the Federal Highway Administration has formally requested the grant under 23 U.S.C. § 107 or 23 U.S.C. § 317.

(2) One conformed copy of 10 U.S.C. § 2668 easements for right-of-way over withdrawn public domain lands to the Secretary of the Interior, through the state office of the Bureau of Land Management.

(3) A conformed copy of grants for National Guard activities to the Chief, National Guard Bureau, Washington, D.C. 20310-2500.

8-90. Reserved.

SECTION VIII. OUTGRANTS AND OUTGRANT MANAGEMENT - ADMINISTRATION AND COMPLIANCE

8-91. Purpose. This section describes the general procedures for the management and administration of the instruments, generally called outgrants, which authorize Federal agencies, state or local governments, private organizations, or individuals to use Army (military or civil) controlled real property and administering those interests in real property.

8-92. Administration of Outgrants. District and Division Engineers real estate elements will manage and administer the terms and conditions of outgrants. In discharging this responsibility, they will coordinate closely with representatives of the using service or, for civil works projects, the Operations and Readiness Division, maintain records submit periodic reports, inspect for compliance with terms and conditions of grants and proper utilization and development of granted premises, collect payments, and terminate or revoke outgrants.

8-93. Collection of Monetary Consideration.

a. The District Engineer will collect payments according to the terms of the outgrant. Leases for trailer sites granted by installation commanders or, if delegated in accordance with supporting TM for outgrants, outgrants issued by the installation will be collected by the installation. Grantees will pay in cash, check, money order, or other negotiable sight instrument payable to the F & A Officer,_____ District. The first at payment will be collected when the executed outgrant is delivered to the grantee. Any payments required after the first payment will be billed and collected by fiscal representatives of the District Engineer. If an outgrant is terminated between rent days, advance rent payments may not be refunded unless the outgrant instrument provides for such a refund; a refund may, however, be made under a supplemental agreement to the outgrant if such a refund is in the Government's interest. If termination of an outgrant is considered, rent should be collected only to the effective date of termination.

b. Prompt enforcement of conditions is essential to proper outgrant administration, particularly conditions related to payment of rent. The District Engineer should ensure coordination between Finance and Accounting and Real Estate to achieve certain goals:

(1) grantees will be notified shortly after they are delinquent in payment;

(2) the Real Estate Division will be notified promptly of rent delinquency so that immediate collection efforts may begin; and

(3) when appropriate, termination action will be initiated within delegated authority after the rent payment becomes delinquent, usually within 60 days.

c. The case record should include documentation and justification of any extensions of time to pay rent granted by the District Engineer; however, the imposition of late charges will not be affected by extension of time to pay.

d. The rent owed to the government is a claim. Appropriate Finance and Accounting procedures for processing, collecting or litigating a claim owed to the government will be followed.

8-94. Forgiveness or Modification of Compensation. Where compensation has accrued and is due, the Secretary of the military department may not relieve the grantee of obligation to pay: vested contractual rights of the Government cannot be forgiven. Future consideration may be modified if there is consideration to the United States for the change (consideration does not have to be money but must be valuable). The poor financial condition of a grantee is not sufficient justification to reduce the consideration or otherwise modify the contract. 16 U.S.C. § 460d-1 does specifically authorize the amendment of leases for commercial recreational facilities at Civil Works projects to provide for the adjustment of future rental or other consideration when it is deemed to be necessary or advisable in the public interest. Adjustments may be made only to future payments and this section may not be used as authority for adjustments for any period prior to the date of the amendment of the concession lease. Past examples justifying modification have included drought conditions or extreme flooding.

8-95. Disposition of Funds.

a. General. Payments from outgrants will normally be deposited to the credit of Miscellaneous Receipts.

b. Rental payments for outgrants under authority of 10 U.S.C. § 2667, which provides for abatement of any payment contingent upon a particular event, should be held in a special deposit account until possibility of abatement has passed; the Finance and Accounting Officer will then be advised on the final disposition of the money and action to be taken according to fiscal regulations. Also, receipts from military agricultural and grazing leases will be deposited into a special account of the appropriate military department to cover the administrative expenses of such leasing and to finance multiple land use management programs at installations. Receipts from other military leases issued under 10 U.S.C. § 2667, will be deposited into the special Treasury account for the 50/50 return to the installation and Army.

c. According to an Act of Congress, approval 20 October 1976 (31 U.S.C. §§ 6901-6903 the Secretary of the Interior pays money to local governments on account of the amount of "entitlement lands" in each jurisdiction. As defined by the law (31 U.S.C. § 6901), entitlement lands include the following: Federally owned water resource development project land; Federally-owned areas under Corps of Engineers jurisdiction used for dredge material disposal; inactive or semi-active installations, excluding Army industrial installations retained for mobilization and for reserve training. Send all information on entitlement lands to the Department of the Interior for administration and payment. All public inquiries on entitlement lands payments should be referred to the U.S. Department of Interior, Bureau of Land Management (520), Washington, D.C. 20240-0001.

d. Payments for Utilities or Services. If utilities or services are furnished to the lessee in connection with a lease, Title 10 U.S.C. § 2667 provides that payment for such utilities or services may be covered into the Treasury to the credit of the appropriations from which the costs of such utilities or services were paid.

8-96. Existing Grants on Acquired Lands. Whenever the Army acquires lands subject to grants made by the Government's predecessor in title (including public road and utility easements), the District Engineer administers such outstanding grants. If rents, royalties, or other rights pass to the United States under the terms of the option or pursuant to condemnation proceedings, the District Engineer will inform the grantee by letter that the United States has acquired title, and that payments will be made to the United States. Copies of this letter, the grantee's reply, the outstanding grant, and the deed or other title document will be placed in a file and a Contract Number will be assigned following the procedures used for other outgrants. Copies and distribution will be the same as for the outgrant, except that the grantee will not be given a copy. See Paragraph 8-119 a (9) for a discussion of acquired oil and gas leases.

8-97. Termination, Revocation. Relinquishment and Expiration.

a. By the Government. Refer to the specific paragraph for each type of outgrant for the authority to terminate. A general distinction should be made between termination for cause referred to as revocation, which usually follows a violation of outgrant conditions, and termination at will or for other governmental purpose, when the Government has an overriding need to use the granted property and termination is in accordance with the outgrant. If an outgrant is revoked, document the basis in case the action is appealed or litigated. Care should be taken to follow exactly the provisions of the outgrant condition and the disputes clause of the particular outgrant involved. If revocation or termination of an outgrant is in the interest of the United States but the Division Engineer, District Engineer or Chief of Real Estate do not have authority to revoke, a recommendation and other pertinent information will be submitted to HQ USACE (CERE-M), along with a notice of revocation prepared for execution by direction of the Assistant Secretary of the Army. ENG Form 931, Notice of Revocation, for Army property, or a substantially similar notice will be used.

b. By the Grantee. Certain grants contain provisions for termination by the grantee, or relinquishment, upon notice in writing. Such notice must be unequivocal and must be submitted within the period specified in the grant instrument. If in the best interest of the Government to accept the relinquishment, strict adherence to the time limitations may be waived.

c. Report of Termination. When an outgrant expires by limitation or term, or is revoked, relinquished, or terminated pursuant to the provisions of the instrument, a report will be made on ENG Form 1368, Report of Termination of Instrument, with distribution as provided for outgrants, except that the grantee shall not receive a copy. The District Engineer will determine that restoration obligations have been properly discharged in accordance with the terms of the outgrant.

8-98. Renewal. The District Engineer should initiate renewal action in sufficient time to complete action before the termination date to preclude occupancy without formal authorization. The grantee, in the absence of a written agreement otherwise, has neither a legal nor equitable right to a renewal of the outgrant. Any agreement to renew must be supported by new consideration. A renewal allows the grantee the privilege of a new outgrant for an additional term. An option to extend the term, on the other hand, continues the original outgrant for the additional term. Waivers of competition to continue the current use with the same grantee may be made by the District Engineer if within delegated authority. Use the most recent version of the outgrant format rather than a supplemental agreement to renew the use.

8-99. Compliance Inspection.

a. Purpose. The Compliance inspection is the vehicle for enforcing the grantee's obligations and responsibilities as set out in the outgrant document. The outgrant document establishes a legal relationship with the grantee. No other inspection is authorized to determine compliance. Non-compliance must be enforced through the remedies and procedures set out in the outgrant document.

b. Responsibility.

(1) The Department of the Air Force will inspect all outgrants on its installations for compliance. For those outgrants executed by the Corps, a record of all violations will be sent to the District Engineer for corrective action.

(2) District Engineers having real estate responsibility are responsible through their Real Estate element for periodic compliance inspections and management of outgrants of Army military real property. Compliance inspections will determine whether grantees are complying with the terms of the outgrants. Installation commanders and his/her representatives provide general supervision over real property at the installation, and, in connection with their usual administrative activities will report any observed instances of outgrant violation immediately to the District Engineer. Installation representatives may be delegated authority by the District Engineer to perform compliance inspection of lands outgranted by easement for roads, streets, powerlines, pipelines, underground communication lines, and by minor licenses. They may also be delegated authority to perform compliance inspections of selected agricultural and grazing outgrants. The Real Estate Division will perform compliance inspections of all other outgranted lands, including non-delegated agricultural and grazing leases and port or industrial use, commercial concession, bank and credit union, and fish and wildlife purposes, without the power to redelegate their accomplishment. When the Commander reports instances of noncompliance, district Real Estate personnel will make inspections of such cases and take corrective action as appropriate. All determinations as to questions of outgrant compliance will rest in the Real Estate Division, subject to the District Engineer's final approval.

(3) District Engineers having real estate responsibility are likewise responsible through their Real Estate element for all compliance inspections and management of outgrants of real

property on Civil Works projects and activities. The Project Manager or his/her representatives provide general supervision over all real property at the project, and, in connection with their usual administrative activities, will report any observed instances of outgrant violation immediately to the district Real Estate element. Project representatives may be delegated authority by the Real Estate Division to perform compliance inspection of lands outgranted by easement for roads, streets, powerlines, pipelines, underground communication lines, and by minor licenses. They may also be delegated authority by the Real Estate Division to perform compliance inspections of selected agricultural and grazing outgrants. The Real Estate Division will perform compliance inspections of all other outgranted lands, including non-delegated agricultural and grazing leases and port or industrial use, commercial concession, public park and recreation, and fish and wildlife purposes, without the power to redelegate their accomplishment. When the project manager reports instances of noncompliance, district Real Estate will make inspections of such cases and take corrective action as appropriate. All determinations as to questions of outgrant compliance will rest in the Real Estate Division, subject to the District Engineer's final approval.

c. Frequency, Scheduling and Coordination.

(1) The District Engineer will inspect all Army military and civil outgrants annually for compliance. As an exception, state park and recreation leases as well as leases and licenses to states for wildlife management purposes will be inspected no more than once every three years. Inspections delegated for performance by project/installation representatives will be accomplished on a once-every-5-year basis, unless non-compliance is suspected.

(2) Successful compliance inspections and outgrant management require effective communication and cooperation between Real Estate Division and Operations/Civil Works project offices or MACOM/installation representatives, the Safety and Occupational Health office and the grantees. We encourage a partnering approach to compliance inspections, with representatives from all appropriate district elements participating. Real Estate will notify the project manager or installation commander in advance of an inspection so that a project/installation representatives may attend. Efficiency, protection of the Government's assets and service to the public are primary goals.

(3) When requested to conduct compliance inspections, the project manager/installation commander will be furnished a list of outgrants to inspect and a schedule for inspections, If prescribed mission assignments will not allow this, the district Real Estate Division will make required inspections. The Real Estate Division will provide the project manager/installation commander with criteria and procedures for inspections and will provide training. Requested inspection reports will be forwarded directly to the District Real Estate element upon completion.

(4) The Real Estate Division will furnish the installation commander or project manager copies of all outgrants, supplemental agreements, inspection records, and correspondence relating to outgrants. Real Estate Division will also provide copies of any correspondence to or

from the project concerning inspection of outgrants to the District Operations and Readiness Division. The Real Estate Division will be the office of record for outgrants and associated actions and will responsible for preparation of all correspondence in connection therewith.

(5) The unit cost of making compliance inspections will be kept to a minimum; therefore, project representatives will charge the Real Estate Compliance Inspection Cost Account only with the time onsite specifically devoted to the requested compliance inspection. Time spent on the overall supervision of project lands will be charged to other appropriate accounts.

(6) Work units reported by Real Estate on ENG Form 4564, Real Estate Schedule/Cost and Performance, will include the requested efforts of project personnel. These units may not be included under the requirement for contracting out.

d. Inspection Records.

(1) ENG Form 3131, Report of Compliance Inspection of Army and Air Force Property Occupied Under Lease, License, Easement, or Permit, or its companion form ENG Form 3560, Report of Compliance Inspection - Outgrants, is used to record inspections. Use ENG Form 3560 if several outgrants are inspected at the same installation or project and no violations are found. However, if corrective action is recommended on ENG Form 3560, record details of the violation on ENG Form 3131 and attach documentation, such as maps, video tapes or photographs.

(2) Where authority is delegated to do so, the District Engineer may revoke outgrants if compliance violations continue after notice is served and after specified time for correction has elapsed. Unless specified otherwise, forms of revocation are Notice for Revocation, ENG Form 931 for Army property. If revocation would be controversial or the District Engineer lacks authority to revoke, a recommendation, full documentation on the violation, and a partially completed revocation form will be submitted to CERE-M. The District Engineer will notify the grantee by certified mail, with return receipt requested, of the action recommended to higher authority and the basis for that action.

(3) Compliance inspection checklists are valuable for reminder purposes especially with regard to environmental and safety requirements, but preoccupation with lists should not obscure the primary purpose of compliance inspections, which is good management of the land under our jurisdiction and compliance by the grantee with the terms of the use.

e. Special Procedure and Requirements for Compliance

(1) Compliance with either the ADA or the Rehabilitation Act is a required element of outgrant compliance inspections. However, effective immediately, the District will use a grantee self-certification process. CECW-ON is developing an internal checklist to be included in their ER 1130 series which may be provided to the grantee for use in the self-certification process. Outgrantees subject to the ADA and ADAAG will provide a statement of compliance noting any

deficiencies and providing a schedule for correction. Outgrantees subject to the Rehabilitation Act and UFAS may self-certify both. Again, deficiencies and planned corrective action must be noted. The statement of compliance will be maintained as a part of the outgrant documentation. Continued failure to comply with the ADA or the Rehabilitation Act, following adequate notice of lease violation and opportunity to remedy, may be cause to terminate or not renew an outgrant .

(2) Health and Safety.

(a) Upon discovery of any condition that presents an imminent danger to the safety/health of the public, the installation commander/project manager or the district Real Estate element, may require that any appropriate part or all of the outgranted premises be closed to the public until such condition is corrected and the danger to the public eliminated. Imminent danger is defined as a condition or practice which poses a danger that reasonably could be expected to cause death or severe physical injury before the imminence of such danger could be eliminated through normal procedures. Special care should be taken to comply with rights of the grantee under the outgrant. The district Real Estate element should be consulted prior to any closure action. The discoverer of a dangerous threat should not unilaterally shut down operations, unless consultation with the district Real Estate element is not possible or the threat is so severe as to preclude such consultation. If approved during consultation with the district Real Estate element or due to the circumstances as set out above, the installation or project staff will immediately take appropriate action. A written report of any closure action will be forwarded to the Chief of Real Estate.

(b) Grants will not reference, and grantees will not be required to comply with, EM 385-1-1, Safety Manual. Typically safety inspections performed using this Manual are general in nature and focus on protection of the Corps employee under OSHA requirements, hazards related to fire prevention and protection, electrical safety, safe transportation and access, sanitation, caution and warning signs, and pressurized systems. Compliance inspectors should be trained to recognize such hazards and shall be familiar with pertinent provisions of EM 385-1-1, as a guide. Our compliance inspections are not intended to ensure safe working conditions for the grantees employees nor do we wish to expose Army to liability for giving the appearance that we have assumed this duty.

(c) Since many of our outgrants provide public accommodations and facilities, we have a duty to the public to see that the grantee provides a safe facility. The compliance inspectors should be generally familiar with Federal, state and local health and safety laws and regulations for the outgranted purposes. The current commercial concession lease format also requires compliance with the National Fire Protection Association (NFPA) handbooks: NFPA 303, Marinas and Boat Yards, and NFPA 70, National Electrical Code (Article 555 on Marinas and Boat Yards); and other applicable codes and standards. The concessionaire is required to certify compliance. Should a substantial change occur in the standards from one year to the next, we should work with the concessionaire on a written schedule for bringing the facility into compliance similar to that provided for under ADA. Although detailed inspection are not

required by the compliance inspector, he/she should be generally familiar with the industry standards and aware when the standard has changed.

(d) If inspections of outgrant areas reveal conditions that potentially endanger public health and safety or that damage Government property interests, division and District Engineers will request that the appropriate USACE Safety and Occupational Health Office participate in a follow-up compliance inspection. Other Federal, state or local agency experts may also be requested to make technical inspections of such outgrants and to obtain sufficient data to determine whether grantees are actually in noncompliance. Division and District Engineers are responsible to notify grantees of required corrective action. If grantees fail to act promptly, the matter may be referred to Federal enforcement agencies or to state agencies with jurisdiction.

(3) Environmental Aspects.

(a) Within the last several years, Army has placed increased emphasis on environmental stewardship with a strategy based on compliance, prevention, restoration and conservation. While environmental compliance has been required of grantees since the 1970's, the environmental portion of the compliance inspection has become increasingly more important.

(b) Environmental assessment systems have been developed for both military and Civil Works properties, using protocols developed by the Construction Engineering Research Lab (CERL). The Environmental Review Guide for Operations (ERGO) applies to Civil Works and the Environmental Compliance Assessment System (ECAS) applies to military. Neither of these assessments replaces the outgrant compliance inspection. The purpose of ERGO/ECAS is to freeze a moment in time and self-audit our projects or installations for compliance with numerous environmental statutes. The results are factored into the budget process for restoration or remedial action. Although not to replace outgrant compliance inspections, the protocols may be used as a tool when performing the compliance inspection. As a minimum, the District Engineer should consider incorporating the ERGO/ECAS preassessment screening checklist into the inspection. Items noted in the ERGO/ECAS assessment must be reported to the district Real Estate element for corrective action through the compliance process.

(c) In cases involving discharge of waste or effluent, specific compliance inspection comments are required on whether or not the outgrant area contains waste or effluent treatment facilities and whether the grantee has constructed adequate treatment facilities and complied with outgrant instrument provisions, including NPDES and RCRA permits. If discharge of waste or effluent is observed or if sufficient evidence of discharge exists, or where improper discharge of waste or effluent or sufficient evidence of violation is observed, the grantee will immediately be informed of the Government's concern and will be asked for a prompt corrective plan, including a firm time schedule with milestones. The grantee should further be informed that prompt corrective action is required; otherwise the matter may be brought to the attention of the local or state regulatory authorities and the regional office of the Environmental Protection Agency and may warrant revocation of the outgrant.

(d) When doing an outgrant compliance inspection, a distinction must be made between a finding of noncompliance with a specific outgrant condition and a finding of a potential violation of a Federal, state or local law or regulation administered by another agency. Once an item of potential regulatory violation is identified, whether environmental, health or otherwise, then the grantee must be notified, in writing, and be given an opportunity to work with the appropriate regulatory agency to achieve compliance. We must be very careful not to usurp the regulatory agency's authority to "find violations" and to determine when compliance is achieved. Potentially severe violations can be reported to the appropriate regulatory agency directly, but their finding of compliance is binding. We must work with the granted and the regulatory agencies to develop reasonable milestones for achieving compliance, especially if significant monetary investments are required to correct the problem.

(e) Each grantee operating a commercial concession or public park or recreation area will annually submit certification that water and sanitary systems meet Federal, state, and local standards.

f. Non-compliance corrective action.

(1) Compliance inspections often discover significant compliance violations, which, if not corrected, are significant enough to warrant revocation. However, prompt district follow-up usually ensures corrective actions are taken by the grantee. The districts should, however, be aware that under a recent Engineer Board appeal, once corrective actions are accepted, especially if negotiated to less than originally designated, the grantee will be considered to be in compliance for that year. Patterns of repeated violations, even if for the same compliance issues, can not be cumulated to a greater non-compliance status than that warranted by that year's report. In fact, patterns of repeated negotiation of less than the action requested in the compliance report can establish an expectation of compliance status at less than the original request. To preserve the non-compliance status, the district should document in writing that the proffered actions do not bring the grantee into compliance and set out a new timeline for full corrective action. Reasonableness and a partnership attitude in working with the grantees is still expected and encouraged, however, we must preserve the Government's rights if litigation results.

(2) A informational copy of the compliance inspection report will be forwarded to HQUSACE (CERE-M), through the Division Engineer, whenever substantial non-compliance is reported, follow-up correction action has not corrected the situation, and the district expects litigation, formal dispute, Congressional interest or controversy.

8-100. Audits. The District Engineer shall have the right to perform audits of the grantee's records and accounts, and to require the grantee to audit its records and accounts and those of third party concessionaires and furnish the District Engineer with a copy of the audit, in any grants that requires maintenance of records and accounts or the sending of periodic financial statements to the District Engineer. Leasing of real estate is considered a "commercial function" under the Financial Managers' Financial Integrity Act (FMFIA), as amended, Title 31,

United States Code, Section 3515, and verification of monies owed to the United States and charges for real estate is necessary to fulfill our reporting requirements.

SECTION IX. OUTLEASES - GENERAL

8-101. Purpose and Scope. This section defines responsibilities and procedures for executing, renewing, amending, revoking and terminating leases on Army and Air Force controlled real property. General procedures in preceding sections for processing applications, determining availability, drafting outgrants, execution, management and administration apply here, except as provided. The Bureau of Land Management has the responsibility for leasing Federally owned mineral interests.

8-102. Leasing Objectives.

a. A lease is a written agreement which conveys a possessory interest in real property, usually exclusive, for a period of time for a specified consideration. A lease carries a present interest and estate in the land for the period specified. The estate of the lessee, or tenant, is called the term and the estate of the lessor, or landlord, is the reversion. Generally, the lessee may occupy and use the premises for any lawful purpose not injurious to the reversion. However, the lease may contain express provisions or conditions restricting the use of the property, i.e. park and recreation use, no timber harvesting, prior approval of assignment.

b. Real property available for non-Army use may be leased for commercial or private use not inconsistent with its authorized purposes and the policies of the department concerned. Principal objectives are: promotion of the national defense or economy; maintenance and protection of property by lessees to minimize expenses from appropriated funds; mission support; service to the public at Civil Works projects; maximum return to the United States consistent with these objectives.

8-103. Authority.

a. Article IV, section 3, clause 2 of the Constitution grants to Congress alone the ultimate authority to determine under what terms and conditions property of the Federal Government may be disposed. Included in the power of disposition is the power to authorize leasing of real property, as well as its sale. US v. Gratiot, 14 Pet. 526 (1840). The United States has all rights of proprietorship as well as the power of a sovereign over its property and can prohibit absolutely or fix the terms on which its property may be used. Light v. US, 220 US 523, 536-538 (1911); US v. Midwest Oil Co., 236 US 459 (1914). The two leasing authorities used by the Army are Title 16, United States Code, Section 460d (civil) and Title 10, United States Code, Section 2667 (civil and military). There is no statutory requirement that leases of Government real property be issued after formal hearings or public comments.

b. Title 10, United States Code, Section 2667 authorizes the Secretaries of the military departments to lease property under their control. Title 16, United States Code, Section 460d authorizes the Secretary of the Army to lease property at water resource development projects.

Holding agencies may lease excess or surplus properties on an interim basis, providing consent of GSA is first obtained (41 CFR 101-47.203-9).

8-104. Competition.

a. General. Competition is not generally required for leases to governmental entities. Real property determined available for leasing will be authorized for use by non-governmental parties only after reasonable efforts have been made to obtain competition through advertising. Request for use initiated by a non-governmental party must have a waiver of competition prior to granting the use. Exceptions will be made only where general instructions applicable to the type of outgrant or express instructions in individual cases provide otherwise. Based on long-standing principles of fairness, advertising is intended to give all qualified persons equal opportunity to compete for use of the property, to secure for the Government the benefits which flow from competition, and to prevent charges that Government employees have shown favoritism, collusion or fraud in authorizing use of public property. The District Engineer will determine the method of obtaining competition and will consider all pertinent facts such as type of property, prospective uses, and probable public interest in the property. Competition for use of public property by non-governmental parties is the general rule; waivers are the exception.

b. Notices of Availability.

(1) General. Competition may be stimulated in several ways, i.e., circulation of notices to interested parties, posting notices in public places, and publication of notices in newspapers, magazines, or trade journals. Appendix 8-A, Figure 8-A-5, Notice of Availability for Leasing Real Property of the United States, is a guide for requesting applications for standard leases of lands or improvements, pursuant to existing delegations of authority. Paid advertisements will be placed whenever the rental value of the proposed use justifies the expense. A proposed notice will be devised to meet requirements of leasing conducted pursuant to a special delegation of authority or of circumstances in which this Notice format is inappropriate; the proposed advertisement will be forwarded to HQUSACE (CERE-M) for approval, when it contains unusual terms and conditions, involves special circumstances or requires advance approval of policy deviations.

(2) Special Situations. If paid advertising of the notice of availability is not warranted because of low property value or some other reason, the Notice of Availability will be circulated as widely as possible. When a conceptual ROA is used, the Notice may also be used to obtain expressions of interest to determine feasibility of leasing.

(3) The Notice will include information which enables submission of applications on a uniform basis; proper identification of the property; the Government use (unless classified); availability for inspection; address, telephone, date, and time for contacting the Government representative; suitable uses for the property; conditions for use; and term of the proposed grant.

c. Selection.

(1) The District Engineer will determine the responsibility of applicants by evaluating information in the application, reviewing supplementary information required for proper consideration of the applications, and reasonable investigation. The District Engineer may award the grant to the best responsible applicant whose application responds fully to the advertisement.

(2) For leases issued under Title 10, United States Code, Section 2667, where monetary consideration is a primary selection factor, such as agricultural and grazing leases, and the estimated annual rent is less than $200,000 (military property only), the District Engineer may enter into a lease for the highest rental offer even if less than the estimated rental value, if the lease offerings were well publicized and where it is considered that the rental would be in the best interest of the United States since the competitive rental is evidence of the true fair market rental. The District Engineer should fully document such actions in the file.

(3) If all applications are rejected or if no applications are received, within a reasonable time after advertising, the District Engineer may negotiate with any qualified party. Unsuccessful applicants must first be informed and given the opportunity to submit new applications at no less than the appraised market value. Otherwise the property may be readvertised.

8-105. Waiver of Competition.

a. Division and District Engineers, are authorized to grant waivers of competition for the renewal or extension of existing commercial leases, priority leases previously approved as such, grants to public agencies and public utilities, and transportation licenses. Authority has been delegated to the districts to waive competition where an adjoining landowner has the only means of access to land that is to be leased. Such waivers will be fully justified in the files.

b. Forward other requests for a waiver of competition to HQUSACE (CERE-M) for approval or transmittal to the Office of the Secretary of the military department concerned, as appropriate. Waivers of competition will be limited to certain cases, i.e., where forgoing competition will be in the public interest or promote national defense, installation or project mission. Information included in or with the correspondence must fully support the recommendations. Ordinarily it is not sufficient justification to negotiate or renew an outgrant only if the fair market rental value does not justify advertising, if similar property is available or if there are no other known interested parties. These considerations may limit the scope of the advertising proposed but not preclude advertising.

8-106. Format. Outgrants will be prepared using applicable formats attached as figures to this Chapter or applicable numbered Engineer Forms. Conditions may only be deleted if so indicated in the format or in this Chapter. Conditions necessary for site specific environmental, cultural, and operational requirements may be added, provided that such additions are

consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified by the District Engineer and forwarded to HQUSACE (CERE-M) for approval before the lease is executed.

8-107. Revocation of Leases. Except as provided in succeeding parts of this section or in separate authorizations, the same person authorized to execute a lease may revoke that lease using ENG Form 931, Notice of Revocation, for nonpayment of rental, breach of any lease conditions, or need for the property in the public interest or for national defense. Leases may not be revoked or terminated retroactively.

8-108. Priority of Other Federal Agencies. Before leasing any space more than 2,500 square feet suitable for office or storage purposes, the District Engineer will inform the GSA regional office by letter. The letter should include a description of the property, terms and conditions of availability, and a statement that the lease will be withheld for 30 days pending GSA determination whether any other Federal agency requires the property. Appropriate representatives of the Navy, Army, or Air Force will be sent a copy of the letter. If clearances for leasing are required, as in Paragraphs 8-109 or 8-110 below, a copy of the letter to GSA will be included with the assembly sent to HQUSACE (CERE-M), if execution authority is not otherwise delegated.

8-109. Secretariat Approval. Real property will be offered for use according to AR 405-80. Prior Secretariat approval is required for any leases which require a Title 10 Report as set out in Paragraph 8-110 below, and as set out in AR 405-80 and this regulation.

8-110. Report to Committees on Armed Services (Military Property only).

a. Title 10, United States Code, Section 2662, requires that a report of the proposed transaction be made to the Armed Services Committees of the Senate and House of Representatives (SASC, HASC) before leasing property with an estimated annual fair market rental of more than $200,000 (including maintenance, protection, repair, improvement and restoration performed by the lessee) located in the United States, Puerto Rico, Guam, U.S. Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands. The threshold is based upon the estimated value and not the amount of cash to be collected. Before advertising availability or negotiating leases covered by this paragraph, the District Engineer will submit to HQUSACE (CERE-M) a draft report following Appendix 8-A, Figure 8-A-7, Real Estate Disposal Report. The estimated fair market rental must be based either upon an appraisal or an opinion of value approved by the district Chief, Appraisal Division.

b. If the committees should request a hearing, the District Engineer may be requested to support Army witnesses before the committees with the installation site plan showing the property clearly and a real estate map, color-coded with legend, showing the area and acreage to be leased. Maps and plans furnished must be of excellent quality, current, accurate, and visible at 30 feet or more.

c. HQUSACE (CERE-L) will send a copy of the report to the SASC and HASC for the 30 day review period. Final action will not be taken by the District Engineer without further instructions that approval has been given. The lease will state: The requirements of Title 10, United States Code, Section 2662, have been met. If no such report is required, the lease will state: This transaction is not subject to Title 10, United States Code, Section 2662. Reports are not required for leases of property for agriculture or grazing, or for excess properties, except properties excessed as a result of a defense installation realignment or closure and leased under 10 U.S.C. § 2667f. Civil river and harbor projects or flood control projects are not subject to these reporting requirements and no report or statement is required for leases at these projects.

8-111. Consideration. Except as otherwise specifically provided in succeeding paragraphs of this section, or by express instructions in individual cases, all leases will reserve, as a consideration, no less than the fair market rental value of the property leased or the established estimated administrative cost, whichever is greater, as set forth in Paragraph 8-81 of this regulation.

8-112. Valuable Improvements. In general, there is no obligation on the part of the lessor to pay the lessee for improvements that the lessee elects to erect on the premises, though the improvements are such that by reason of their annexation to the land they become a part of the realty and cannot be removed by the lessee. On the other hand, if the lessor requires the construction of the improvements, the lessee may be entitled to compensation. Therefore, the lessee will not be required to construct any valuable improvements unless offset from the rent or commensurate with the term of the outgrant, so that the term allows the lessee to amortize the value of the improvements. To allow otherwise could open the United States to a taking claim or claim for reimbursement when the lease terminates or is revoked. If the value of the improvement is an offset to rent, then title to the improvement should vest in the United States at the end of the lease term.

8-113. Insurance. If a lease authorizes the lessee to possess and use Government-owned improvements, the lessee must insure such improvements for full insurable value, where practicable, to assure future Government use. The insurance provision is not required where the lessee has use of improvements acquired incidentally with land and serving no present or foreseeable Government need; however, at the District Engineers' discretion, the provision may be included.

8-114. Lease Assignments and Subleasing. No lease or sublease may be assigned without written approval of the District Engineer. Assignments or subleases may be authorized after coordination with the installation commander or project manager. The District Engineer must determine that the assignee or sublessee is a responsible party. In making that determination, the same criteria should be applied as that used in the original lease. All rental payments for the lease being assigned and for any other Government lease of the assignor, assignee, or sublessee must be current. Lessee must be in compliance. Lease assignments may be accomplished by executing a new lease or by supplemental agreement.

8-115. Leasing to Employees of the Federal Government. Federal employees are not prohibited from leasing Government property, but extreme care must be taken to avoid appearance of impropriety. Accordingly, all employees, including military personnel, whose access to special knowledge would give them an advantage over the general public may not lease Army or Air Force properties. This includes all civilian and military employees of division, district, and project offices. Leases may be granted to other Federal employees only after advertising using sealed application procedures. The Provisions of this paragraph do not affect the authority in AR 210-10 for furnishing quarters to civilian employees of the Army.

8-116. Payments to States - Leasing on Civil Works Projects. Section 7 of the Act approved 18 August 1941, as amended (33 U.S.C. § 701c-3), provides that 75 percent of all monies:

> received and deposited in the Treasury of the United States during any fiscal year on account of the leasing of lands acquired by the United States for flood control, navigation, and allied purposes, including the development of hydroelectric power, shall be paid at the end of such year by the Secretary of the Treasury to the state in which such property is situated.

When the leased land is situated in more than one state or county, the share to each from the proceeds shall be proportional to the leased area in each. This provision of the law applies only to receipts from leases on lands acquired by the United States for the above purposes, but not to receipts from easements or licenses. Each district office will maintain accounts in accordance with existing fiscal procedures to carry out this law.

8-117. Choice of Instrument Type. Since a license is a lesser interest than a lease, a license may be issued under the authority of either leasing authority when use is for the grantee personally without right to assign or non-Army use will be concurrent with Army use. The distinguishing characteristic of a lease is that it conveys a present interest and estate in the land for the period specified. While a license to do an act upon land involves the exclusive occupation of the land by the licensee, so far as is necessary to do the act, and no further, a lease does more; it gives the right of possession of the land, and the exclusive occupation of it for all purposes not prohibited by the terms of the lease agreement.

8-118. Disclosure of Lease Provisions. AR 340-17 regulates release of lease instruments or information to third parties. Proprietary data, business secrets, and financial information are considered confidential and are not generally released.

8-119. Minerals Exploration and Exploitation. It is the Department of Defense policy to make as much land as possible available for mineral exploration and extraction, consistent with military operations, national defense activities, and civil works activities.

a. Mineral Leases on Army Controlled Lands. Guidance is provided in AR 405-30, Mineral Exploration and Extraction.

(1) Civil Works Lands. Interested parties apply to the Bureau of Land Management (BLM) which reviews applications and forwards them to the District Engineer. On approval of the Report of Availability, Figure 8-A-3, and development of title information by the District Engineer, consent to leasing may be granted to BLM by letter from the District Engineer. Determinations of non-availability require approval by CERE-M, and withholding of consent to lease requires Army Secretariat approval before the Division Engineer or delegate advises BLM.

(2) Military Lands. Interested parties apply to BLM which reviews applications and forwards them to the Installation Commander. The Installation Commander reviews the request as to availability, conditions of availability, and the presence of unusual environmental conditions (e.g. endangered species). Meanwhile, the installation will forward a copy of the application to the Division and District Engineers for preliminary action on title information and for advice on mineral leasing. The request is then forwarded through channels to the MACOM for approval and then to CERE-M for a final determination of availability. Withholding consent to lease requires Army Secretariat approval. On determination of availability or approval for withholding consent to lease, OCE will forward the action to the Division Engineer who grants BLM consent to lease, or advises BLM of the Army decision to withhold consent. A copy of the consent letter with all enclosures will be forwarded to the installation commander and the MACOM.

(3) Stipulations. Required stipulations are stated in AR 405-30. All notices required in the mandatory stipulations will be furnished to CERE-M, the affected MACOM, the District Engineer, BLM, the lessee and the operator. Other reasonable stipulations may be added to protect Army interests without duplicating lease conditions or other existing regulations. The District Engineer will require the BLM in the consent letter to advise of any changed or added lease terms or stipulations prior to execution by BLM. Leases issued by the BLM without stipulations provided in the District Engineer's consent may be cancelled based on administrative error. Once a lease is properly issued, stipulations may be added only by mutual agreement of the United States and the lessee.

(4) Title Information. District Engineers will furnish data to BLM from the District's realty records showing the basis of the Government's claim of title to land that is being evaluated for mineral leasing. This data may consist of audit reports, pertinent abstracts, title papers, or other documents. District Engineers are authorized to negotiate with BLM concerning the extent of the title evidence to be furnished and for reimbursement of the costs associated with compiling the title information.

(5) Notice to Third Party Grantees. Third party grantees should be notified when a lease is issued.

(6) Conditions of Approval for Drilling. These conditions are furnished by the installation or District Engineer to the BLM District Manager, after the lessee proposes drilling plans for specific sites (usually about 1 acre each) in the leased area. The BLM District Manager incorporates the conditions in the approved APD. See BLM Oil and Gas Order No. 1 (48

Federal Register 48916 (1983) as amended by 48 Federal Register 56226 (1983)). The conditions of approval should address detailed concerns about activity at the proposed site. For example, the lessee should be required to stack any merchantable timber cut in accordance with the approved drilling plan for disposal by the District Engineer or designee.

(7) Monitoring. BLM has primary responsibility for monitoring mineral leasing activities. However, if a condition is observed which appears to be in violation of lease terms or approved drilling plans, the District Engineer should notify the appropriate BLM office.

(8) Drainage. If it appears that oil or gas is being drained from acquired lands by wells outside the installation or project boundary, the Army may request the BLM to investigate the situation and determine whether to issue a protective lease.

(9) Acquired Leases. When a mineral lease is acquired and rents and royalties are to be paid to the United States, furnish a copy of the lease with the first lease payment to the appropriate BLM office. Any subsequent payments should be sent, with MMS Form 2014, to the Minerals Management Service, Royalty Management Program, Post Office Box 25165, Denver, Colorado 80225-0165, which is also the source for MMS Form 2014.

b. Mineral Leases on Air Force Controlled Lands. Guidance is provided in AFR 87-9, Mineral Exploration and Extraction on Air Force Lands. The real estate role is limited to furnishing available title information to the Air Force on request.

c. Licenses and Permits for Mineral Exploration on Army-Controlled Lands. See Paragraph 8-208.

8-120. Reserved.

SECTION X. OUTLEASES - TITLE 10 U.S.C. § 2667

8-121. General. This law is the general leasing authority of the military departments and is used for all Army leasing not specifically authorized by other statutes. Leases can be granted under this authority for any legitimate purpose except as otherwise provided herein. Title 10 U.S.C. § 2667 is applicable to military and civil works project lands.

8-122. Mandatory Statutory Provisions. Leases granted under this authority must satisfy the requirements of the statute, generally:

a. the lease has been determined to promote the national defense or be in the public interest;

b. the property is under the control of Army;

c. the property is not for the time needed for public use;

d. the property is not excess property, as defined by Section 3 of the Federal Property and Administrative Services Act of 1949, as amended;

e. the lease will not be for more than 5 years, unless the Secretary determines that a longer period will promote the national defense or the public interest;

f. the interest of the lessee of property leased under this section may be taxed by State or local governments. All leases shall provide that, if and to the extent that leased property is later made taxable by state or local governments under an act of Congress, the lease shall be renegotiated; and

g. the total consideration, in cash or in kind, is not less than the estimated fair market rental of the leased interest. The fair market value of the leased interest should take into account the property, the restrictions on use and access to the property, the terms and degree of Government control in the lease document, the termination rights, and any other specifics of the type of use.

8-123. First Right to Buy. The statute provides discretionary authority to include a provision in such leases giving the lessee the first right to buy the property if the lease is revoked to allow the United States to sell the property under any other provision of law. This right is not routinely provided and is only considered in long term leases, such as industrial, where the lessee will make significant improvements and repairs.

8-124. Offset of Rental for Maintenance. Protection, Improvement, Repair, or Restoration. Title 10, United States Code, Section 2667 authorizes the consideration to be offset for maintenance, protection, repair, improvement, or restoration. To the fullest extent practicable, lessees may be required to maintain, protect, repair, improve and restore government facilities

on leased properties, exteriors as well as interiors, as well as the leased premises, as all or part of the rental. These obligations may extend to an entire lease unit or installation if a substantial part thereof is being leased pursuant to Title 10, United States Code, Section 2667. However the Comptroller General of the United States has ruled that offset of rental income for an entire or major portion of an installation or building by a lessee leasing only a minor part or portion of the facility may be considered a subterfuge to obtain maintenance of the facility without charges to appropriations and thus be violative of 10 U.S.C. § 2667. In any case, the value of the rental offset for maintenance, protection, restoration, improvement or repair and/or any cash rent reserved to the Government must be equal to or exceed the fair market value of the leased interest granted. The District Engineer should coordinate with the using service whenever any question exists as to the amount of such responsibilities which a lessee should be required to assume. Environmental, cultural and historical activities can be included in rental offsets, including restoration. See Paragraph 8-112. Offset for improvements will not include the value of the grantee's structure, but should be viewed more broadly as improvement to the premises, e.g. upgrade of roads, landscaping, or capital improvements, beyond repair or maintenance. Environmental remediation must be accomplished in consonance with applicable environmental laws and regulations.

8-125. Execution and Revocation.

a. The Division Engineer and the Division Director of Real Estate are hereby delegated the authority to execute leases for Army controlled real property in accordance with the guidance, policy and procedures set forth in this chapter, provided that:

(1) fee simple title is vested in the United States or included in a condemnation proceeding and the court has granted the United States immediate possession.

(2) the property is available for lease.

(3) preleasing clearances are obtained.

(4) prescribed lease format is used without deviation, except as shown in the format or in this regulation. Site specific environmental, cultural and operational requirements may be added.

(5) the conditions of the statue have been met.

(6) the term does not exceed 5 years (unless a longer term is shown in this regulation, having been determined that the longer period is in the national defense or public interest for the leased purpose).

(7) the lease is revocable at will or the substitute condition shown in Paragraph 8-84 is used.

(8) the estimated fair market rental does not exceed $200,000, except for Agricultural and Grazing leases. (military property only)

b. This authority may be redelegated to the division Chief/Assistant Director, Management and Disposal, to the District Engineer and the district Chief, Real Estate and to the district Chief, Management and Disposal. Any significant deviations from these requirements will be submitted to HQUSACE (CERE-M) with fully substantiated recommendations.

c. The persons delegated the authority to execute above may also revoke leases for the following reasons:

(1) Non-payment of rent;

(2) Breach of any condition or conditions of the lease;

(3) The need for the property by the United States in the public interest or in the interest of national defense.

8-126. Agricultural and Grazing Purposes.

a. General. Military or civil works lands may be leased concurrently or exclusively for agricultural and grazing (A&G) purposes. Civil Works project lands may be leased during acquisition or after a project becomes operational. In accordance with the concept of multiple use, areas which are required to support mission may also be leased for A&G purposes. This use is a beneficial management tool as a means of wildlife habitat development, prevention of undesirable vegetation or prevention of wildfire danger. For military lands, reference AR 420-74, “Natural Resources--Land, Forest, and Wildlife Management.”

b. Land Use Regulations.

(1) All A&G leases will have land use regulations attached. These regulations translate the project/installation management objectives into specific requirements and schedules for conducting the agricultural and/or grazing activities. It is critical for these regulations to be developed in a timely manner prior to advertising or negotiations in order to recognize local farming customs and seasonal limitations . The following provision should appear first in the land use regulations where the lease authorizes crops:

“The lessee agrees to conduct all farming operations in accordance with the land use practices set forth herein and in accordance with the crop rotation plan attached hereto and made a part hereof; provided, however, that the crop rotation plan may be modified by the District Engineer upon application of the lessee, in the event of crop failure, or other unusual circumstances warranting such modification”.

(2) The regulations should specify any government materials, supplies or equipment to be furnished to the lessee; safety and security regulations the lessee must observe as to entry, egress, use and occupancy; any necessary crop rotation plans where the lease term will exceed 2 years. Since the lessee must return the land in a condition that is as good as when initially leased, routine maintenance, protection, or repair will be performed at the lessee's expense. The requirements to accomplish this will also be set forth in the land use regulations.

c. Rental Offsets

(1) Leases granted under 10 U.S.C. § 2667 may provide for the value of maintenance, protection, improvement, repair or restoration of the leased property, or of the entire unit or installation where a substantial part is leased, as all or part of the consideration. This is applicable only to those activities which are in addition to the routine maintenance, protection and repair requirements shown in Paragraph b.(2) above.

(2) the value of certain required activities which exceed the routine standards maybe used as rental offsets. All activities to be required of the lessee as rental offsets must be specifically described in the Notice of Availability For Leasing, as well as the land use regulations. The value of each required activity to be offset against the cash rental must also be shown. Prospective lessees must know in advance what is expected of them as well as how much their cash rental may be offset. Monitoring the timely completion of rental offset activities is a matter which must involve installation/project and district staff and a mutually agreed upon procedure for this is essential.

(3) The value of a required activity maybe offset against cash rental if:

(a) it is performed on the leased premises, or on the entire installation/project where a substantial portion of the installation/project is included in the lease.

(b) it is of direct benefit to the installation/project purposes, or it promotes the leasing program.

(c) it is related to the lessee's use of the land.

(4) When all of the above criteria are met, cash rental may be offset by activities to conserve land, wildlife and other resources and accomplish soil erosion control, conservation of natural resources, reforestation, revegetation, and wildlife food plots. Activities for maintenance or improvement of the land for continued leasing, such as mowing, weed control, seeding, fertilizing, construction of wells, springs, ponds, fences, firebreaks, roads, etc are also allowable rental offsets.

(5) Under Title 10, United States Code, 2667 (d)(4) rental receipts from A&G leases of military property may be used for administrative expenses for leasing and to cover the financing of multiple-land use management programs. The Report of Availability should indicate whether

the installation requires offsets or full cash rental. Reference supporting TM for outgrants for additional guidance on rental offsets on military installations.

d. Competition. See Paragraph 8-104. Any waiver of that policy requires prior approval by CERE-M, except that negotiated A&G leases may be granted at the District level in the following situations:

(1) If a commitment was made prior to 21 July 1956 to a former owner or to the tenant on the land when it was acquired, the District Engineer may negotiate successive leases with that person or the surviving spouse of either, without limitation, for periods not exceeding 5 years, for not less than the fair market rental. Priority rights are lost if the lease is assigned or the lease expires without exercise of the priority right.

(2) Under the provisions of Public Law 91-646, the former owner, or the tenant in possession at the time of acquisition, may continue occupancy for a period of time specified in the acquisition agreement, to harvest crops and effect orderly relocation. The District Engineer may negotiate an A&G lease with a former owner or with the tenant on the land when it was acquired, for not less than the fair market rental value, for up to 1 year, and in certain cases for one additional year, to offset difficulties encountered in relocating. As this is an exception to the policy to vacate the land and remove all improvements at the earliest practicable date, the circumstances justifying the lease must be documented and made a part of the file.

(3) In determining whether to negotiate with the former owner or tenant, the District Engineer will lease to former owner if the owner intends to manage the property with the tenant in possession; or lease to the tenant, if the owner does not intend to continue their arrangement and if the tenant will suffer a greater dislocation impact than the owner because of the project.

e. Consideration. Reference Paragraph 8-81.b.(1) and c. for fair market value estimates used to evaluate bids. Competitive leases do not require imposition of administrative fees. The rental is the fair market value as determined through the competition. Many soil conservation practices eligible for cost sharing under Department of Agriculture programs may also be in land use regulations as rental offsets. To prevent duplicate payment to lessees for soil conservation practices, all leases will provide that the lessee will not accept any Federal cost sharing payments for such practices, nor will the lessee accept any other Federal or state subsidy for lease activities without the written approval of the Division or District Engineer. The Division or District Engineer may approve acreage diversion payments under programs administered by the Agricultural Stabilization and Conservation Service, Department of Agriculture. CERE-M must approve all others.

f. Term. In accordance with Paragraph 8-122 above, the Secretary has determined that it is in the public interest to allow A&G leases for a five year term with the right of renewal for a second five year term without competition. If this option is selected, such leases will provide for a review and update of the annual rental at the end of the first five years.

g. Format. The approved format for an A&G lease is shown in Appendix 8-B, Figure 8-B-1. This is intended to be a generic format for use at civil works projects as well as Army and Air Force Installations. Completion of wording in the title block, granting clause, Condition 5 and the witness clause will be necessary to identify the proponent of the lease. All leases negotiated without competition as set out in 8-126.d. above will require the lessee to personally conduct or supervise the operation (e.g., employ a manager, tenant farmer, or sharecropper)

h. Execution and Revocation.

(1) See Paragraph 8-125.

(2) To accommodate the condition of the A&G lease format on rental adjustment, when the lessee has been prevented from harvesting crops because of a Federal requirement for the property which results in lease revocation or material reductions of the leased area, the following procedures should be followed:

(a) Deliver a notice to the lessee, following ENG Form 931, DA Notice of Intention to Revoke, giving the lessee sufficient time to appear at the designated place to negotiate a supplemental agreement.

(b) Secure an appraisal for crops to be taken on the premises; the appraisal will accompany the supplemental agreement.

(c) In case of revocation, negotiate a supplemental agreement providing a rental adjustment for prepaid rent, compensation for the value of crops on the premises at the time of taking, and an unconditional release of the United States from any further claim arising from the lease revocation.

(d) In cases of reduction of the leased area, negotiate a supplemental agreement providing a rental adjustment for prepaid rent, compensation for the value of crops on the premises at the time of taking, rental reduction for the diminution of the leased area, and an unconditional release of the United States from any further claim for taking the crops and reducing the leased area.

(e) If the lesse fails to appear in accordance with notice given or an agreement cannot be reached, the notice revokes the lease effective on the date given in the notice. Where the leased area is reduced, the lesse will also be given written notice affirming his right to harvest, gather and remove crops from land not required. A supplemental agreement may be negotiated at a later date providing for rental adjustment for prepaid rentals, compensation for crops taken and unconditional release.

(f) Obtain CERE-M approval for proposed settlements which exceed appraised values.

(g) Rental adjustments will be paid from rentals collected and placed in a special deposit account. Compensation for crops on military lands will be paid from the military appropriation causing the revocation. Compensation for crops on civil lands will be paid from the District Engineer's acquisition or construction funds causing the revocation. If no funds are available, forward a request and explanation to HQUSACE (CERE-M).

(h) The supplemental agreement should be distributed in the same manner as the original lease. When the lessee fails to appear, a notice of intention to revoke should also be distributed in the same manner. If a supplemental agreement has been executed, the notice of intention to revoke is not distributed. These documents support payment on Standard Form 1034, Public Voucher for Purchases and Services Other than Personal, and will be distributed according to existing instructions for preparation and payment of such vouchers.

8-127 Civil Defense Purposes. Issue a lease or license depending upon use requested, using standard formats for each. Competition not required to state or local governmental entities. Consideration for a lease will be fair market value.

8-128 Quarters for State Paid Employees of the National Guard.

a. General. National guard personnel may not be quartered on areas licensed to states for national guard purposes, except when they are in Federal service. However, caretaker and maintenance personnel who are paid by Army or Air Force disbursing officers from appropriated National Guard Bureau funds are considered Federal employees and may be assigned quarters Leases for quarters which are not required for regular military personnel, may be granted to states as quarters for state-paid national guard personnel when they are employed at the installation under license to the state.

b. Determination of Availability. If the quarters to be leased are in an area licensed to the state for National Guard purposes, no further determination of availability is necessary. However, the license should be amended to exclude the building or buildings to be leased. If the buildings are on a portion of the installation not under license to the state, a lease request should be forwarded by the state Adjutant General through the Army or Air Force MACOM to the Chief, National Guard Bureau. That request will be forwarded to CERE-M for distribution to the appropriate Division office for action.

c. Competition. Not required.

d. Consideration. No less than the fair market rental of the property leased or the established estimated administrative cost, whichever is greater, will be charged. See Paragraphs 8-81 and 8-111.

e. Term. The lease term will not exceed 5 years.

f. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-2. This is intended as a generic format for use at both Army and Air Force installations.

g. Execution and revocation. See Paragraph 8-125.

8-129. Public Schools on Military Installations.

a. General. Leases may be granted to states or political subdivisions thereof, and the Commonwealth of Puerto Rico for public school purposes specifically limited to school facilities, classroom and closely related academic uses at the high school level or below. Where bare land is leased for school construction, the acreage will not exceed criteria established by the appropriate state authority or the Department of Education for the particular type of school. Real property may also be leased to public educational institutions for other educational purposes after first consulting the Department of Education. Any benefits accrued through the use of such property go to the US. Permits may also be issued to the Department of Education for school purposes.

b. Competition. Not required.

c. Consideration. The consideration will be based upon the estimated fair market value of the lease interest and take into account the condition of the land granted, restrictions on use, oversight and degree of Army control, termination rights, and limited commercial value or market of the school-use granted. The value may be offset by the maintenance, protection, repair, improvement or restoration of the property by the lessee as a public school.

d. Term. Leases of land will be for 25 years with an option to renew for another 25 years. Leases for buildings and space will not exceed 5 years, unless CERE-M approves a longer term.

e. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-2. This is intended as a generic format for use at both Army and Air Force installation.

f. Execution and revocation. See Paragraph 8-125.

8-130. Leases for Banks and Credit Unions on Military Installations.

a. General. Outgrants for banks and credit unions are extensively regulated, primarily by DOD Instructions 1000.10, 1000.12, and DOD Directive 1000.11. AR 210-24 and AR 210-135 are predicated on these Directives and Instruction and prescribe policies and procedures for banks and credit unions on military installations. General guidance on outgrants for these purposes is also shown in AR 405-80 and TM 405-80. All outgrants for banks and credit unions must comply with these regulations in selection of grantees, consideration, term of lease, and other conditions.

b. Competition. Competition for selection of the bank or credit union is performed by ASA(FM). Execution of the license or lease does not require additional competition.

c. Consideration and term. Banking facilities are classified as either self-sustaining or non-self-sustaining by the Assistant Comptroller of the Army(Finance & Accounting). Credit unions are classified as either 95 percent membership or less than 95 percent membership. Each is discussed by type below.

d. Automated Teller Machine (ATM) Service. Leases are not required when the ATM is sited within an existing bank or credit union office. However, the existing outgrant should be amended to provide for the use of ATM. Banks or credit unions requesting up to 100 s.f. of additional space in an existing structure and agreeing to bear all expenses for modifying the structure or requesting up to 200 s.f. of land to construct at its expense a kiosk or other structure for the ATM shall be issued a lease using the criteria and authority for the type as set out above. The cost of utilities and services shall be borne by the bank or credit union.

e. Format. The format for these leases or licenses are shown in Appendix 8-B, Figures B-3 and Appendix 8-E, Figure 8-El. These are intended to be generic formats. The license or lease will include a standard restoration clause requiring restoration by the grantee or at the option of the Government, restoration at the grantees expense or title to the improvements will vest in the Government without compensation. Title to the improvements will not pass to the Government while the grantee occupies the premises. Leases will include a provision whereby at the option of the Government, the Government may terminate the lease in the event of national emergency, base closure, deactivation or substantial realignment, default by the lessee or in the interest of national defense.

f. Execution or Revocation. Authority to execute or revoke leases over 5 years has not been delegated and all such instruments will be forwarded for execution in OASA(I,L&E). See Paragraph 8-125. See Section XVI, Licenses. Existing leases may be extended before expiration of the term, if determined to be in the Government's interest. Extensions shall be for periods not to exceed 5 years. The bank or credit union will continue to maintain the facility and pay for utilities and services provided. Request for leases extensions for more than 5 years should be submitted through channels to HQUSACE (CERE-M) for approval by the Secretariat with justification as to why a longer term will promote the national defense or be in the public interest.

(1) Domestic Banks.

(a) Nonself-sustaining (as determined by the Director of Finance and Accounting, ASA(FM)). Building space may be provided by a no-cost license for a term of up to 5 years. In exceptional cases, a no-cost license may be issued for land when a bank is authorized to construct its own building or to expand, modify or renovate Government space. Duration of the license will be commensurate with the extent of improvements or until the bank is determined to be self-sustaining by ASA(FM). Upon determination by ASA(FM) that a bank has become self-

sustaining, the no-cost license shall be terminated and a lease shall be issued in accordance with the guidance for self-sustaining banks below.

(b) Self-sustaining (as determined by the Director of Finance and Accounting, ASA(M). Building space may be provided by lease at appraised fair market value (FMV) rent for up to 5 years subject to renewal by mutual agreement. If the bank uses its own funds to modify or renovate Government building space or to construct a separate facility, a lease at FMV rent for a term not to exceed 25 years may be issued. The lease term should be commensurate with the extent of the improvements.

(c) FMV rental maybe paid in cash or with appropriate rental offsets. Rental charges for any existing lease granted at FMV rent is applicable for the term of the lease, however, an extension of any such lease may provide for the FMV rent to be paid in cash or with appropriate rental offsets for the term of the lease extension.

(2) Credit Unions.

(a) 95 percent membership. Credit unions must provide written certification, prepared in credit union letterhead, that it has membership of at lease 95 percent of individuals who are or were at the time of admission, military personnel, Federal employees, retired military personnel, or members of their families. Before each renewal, the credit union must provide written certification that it continues to meet the 95 percent criteria. Building space may be provided by a no-cost license for a term of up to 5 years under authority of Section 124 of the Federal Credit Union Act of 1934, as amended, (12 U.S.C. § 1770). A no-cost license may be issued for a term up to 25 years when a credit union, at its own expense, expands, modifies or renovates Government space. Duration of the license will be commensurate with the extent of improvements. Land for construction of credit union facilities will be issued at FMV rent to be paid in cash or with appropriate offsets.

(b) The no-cost license or FMV rent with offsets lease shall be canceled and a lease negotiated at FMV rent when the credit union ceases to meet the 95 percent criteria.

(c) Less than 95 percent membership. Building space may be provided by lease at appraised fair market value (FMV) rent for up to 5 years subject to renewal by mutual agreement. If the credit union uses its own funds to modify or renovate Government building space or to construct a separate facility, a lease at FMV rent for a term not to exceed 25 years may be issued. The lease term should be commensurate with the extent of the improvements.

(d) FMV rental may be paid in cash or with appropriate rental offsets. Rental charges for any existing lease granted at FMV rent is applicable for the term of the lease, however, an extension of any such lease may provide for the FMV rent to be paid in cash or with appropriate rental offsets for the term of the lease extension.

8-131. Trailer Site Leases. Installation commanders may lease trailer sites to certain military and civilian personnel (AR 405-80). Rent is collected locally and turned over to the nearest Army finance and accounting officer for deposit. The Division or District Engineer receives a copy of DD Form 1131, Cash Collection Voucher.

8-132. Industrial Facilities for Private Manufacturing and Commercial Purposes.

a. Industrial leases are specialized and usually unique.

b. Competition. Refer to Paragraph 8-104. Negotiation without competition is authorized when converting from Government Owned Contractor Operated (GOCO) facility to an industrial lease arrangement with the current contractor.

c. Consideration. Refer to Paragraph 8-81 and 8-124

d. Term. Leases for industrial facilities will be for a term up to 25 years.

e. Format. Use the standard lease format,

8-133. Reserved.

8-134. Reserved.

8-135. Reserved.

SECTION XI - OUTLEASES - EXCESS, SURPLUS, AND BASE CLOSURE

8-136. Base Closure Property.

a. General. Pursuant to the Base Realignment and Closure legislation, as amended, authority has been delegated from the General Services Administration to the Secretary of Army to determine availability for leasing and to execute such leases of land on installations identified in the legislation for realignment or closure. Reports of availability will be approved by the MACOM having accountability for the property, and will be forwarded to the district for preparation of the lease document.

b. Competition. Not required.

c. Consideration. An amount less than the fair market value may be charged if the Secretary determines that:

(1) a public interest will be served as a result of the lease,

(2) and the fair market value of the lease is either not obtainable or is not compatible with such public interest.

d. Term. Interim leasing will be for short periods, usually not to exceed five (5) years. Leases to the Local Redevelopment Authority, or in furtherance of the disposal plan, may be for longer terms.

e. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-3. There is no longer a separate format for interim leases and leases in furtherance of conveyance. The title of the lease can be revised to reflect whether it is an Interim Lease, a Master Lease, or a Lease in Furtherance of Conveyance. If the lease format is being used for a lease in furtherance of conveyance, several modification should be made to the format, as follows:

(1) WHEREAS clauses may be added to reflect the circumstances, for example:

WHEREAS, the United States, acting through the SECRETARY OF THE ARMY, hereinafter referred to as "the Secretary", has made a final disposal decision with regard to property located at _____ Installation, dated _____; and

WHEREAS, due to the ongoing environmental cleanup (and unexploded ordnance (UXO) clearance) being undertaken by the Secretary, in order to implement the intentions of the Secretary and the Buyer/Lessee as set forth in the

Contract to Purchase/Sell, hereinafter referred to as the "Contract"; (to further the public benefit of _____ (briefly describe)) (to facilitate economic recovery and reuse of the property) (to provide for the homeless); and to relieve the Secretary of the expense of continued care, custody, control, operation, and maintenance of the property, the Secretary and the Buyer/Lessee have agreed to a lease pending conveyance(s) so as to provide immediate possession of certain parcels to the Buyer/Lessee, said parcels being more particularly described in Exhibit A, and hereinafter referred to as the Leased Premises.

WHEREAS, as soon as the Finding of Suitability to Transfer (FOST) is executed by the Secretary for the Leased Premises, or a portion of said Leased Premises, and said Leased Premises may be conveyed consistent with the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9620(h), as amended, and other legal and policy requirements, the Secretary intends to (assign or transfer to the Secretary of _____ for conveyance) (convey) to the Buyer/Lessee by one or more quitclaim deeds, (in a format determined by the Secretary of _____) (substantially in the format shown in the Contract) for said property or portions of said property, subject to any necessary restrictions, reservations, conditions and exceptions, and the Buyer/Lessee hereby agrees to accept such conveyance(s) as soon as the above-referenced conditions are met; and

[Include the following finding if the lease is for less than fair market value:] WHEREAS, the Secretary has determined in accordance with the authority contained in 10 U.S.C. 2667(f) that the surplus property hereby leased would facilitate state or local economic adjustment efforts and that the lease would be advantageous to the United States and be in the public interest; (and that the fair market value of the lease is unobtainable or obtaining fair market value is not compatible with the public benefit.)

(2) The **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT** condition should be revised to reflect that the agreement to sell has been reached. Subcondition a., Termination, should be revised. Sample substitutions are:

Termination. In the event the Buyer/Lessee dissolves; is terminated as the approved LRA; or if either party exercises their termination rights under the Contract or should the Contract become void, this lease will be terminated. If the Buyer/Lessee is unable or unwilling to take title to all or a portion of the Leased Premises at the time the Secretary is able to convey in fee, as agreed to in the Contract, then the lease shall terminate on the date of execution of a Finding of Suitability to Transfer (FOST) by the Secretary with respect to that portion of the

Leased Premises covered by the FOST. Reasonable time to vacate the Leased Premises will be negotiated as part of the termination and restoration of the Leased Premises shall be in accordance with the condition on **RESTORATION**. This lease will terminate upon delivery by the Secretary of a quitclaim deed conveying the Leased Premises to the Buyer/Lessee. If only a portion of the Leased Premises is being conveyed, a revised description of the Leased Premises will be prepared and the lease will be supplemented to revise the Leased Premises and the lease will terminate as to that portion conveyed.

(3) Since an agreement on sales price and other reuse has been reached, the condition on **PROTECTION OF PROPERTY** can be modified to state that the Buyer/Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at the expense of the Buyer/Lessee, and that the Buyer/Lessee shall exercise due diligence in the protection of all property located on the Leased Premises against fire or damage from any and all other causes.

(4) The condition on **INSURANCE** also may be revised to reflect that the values used in the Contract to Purchase/Sell for the conveyance of the Leased Premises included value for the improvements and structures on the Leased Premises constructed by or owned by the United States, and that it is the Buyer/Lessee's obligation to obtain insurance on those structures and improvements, for such periods as the Buyer/Lessee is in possession of the Leased Premises pursuant to this lease, to protect its interest. It should be clear that nothing in the lease shall be construed as an obligation upon the United States to repair, restore, or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed nor will the purchase price be altered should such damage occur and the Lessee has failed to obtain insurance. Any proceeds paid to the United States shall be applied to the purchase price.

(5) The condition on **NO COMMITMENTS FOR FUTURE USE** may be deleted or revised to show the agreement to convey.

f. Execution and Revocation. See latest guidance from HQUSACE (CERE-M).

8-137. Other Excess Property

a. General. Pursuant to the Federal Property and Administrative Services Act, 40 U.S.C. § 471, GSA has delegated authority to disposal agencies and holding agencies, with disposal agency approval, to lease excess and surplus property, provided that such leasing will not interfere or delay disposal of the property. This authority does not apply to any Base Realignment and Closure Act property.

b. Approval and Clearance. Prior to any such leasing of excess or surplus property, coordination and approval by the appropriate GSA regional office is required.

c. Competition. The property will be advertised as available for lease unless the disposal agency authorizes a negotiated lease.

d. Consideration. No less than the fair market rental value of the property leased or the established estimated administrative cost, whichever is greater, will be charged. See paragraphs 8-81 and 8-111.

e. Term. The lease term will not exceed one year.

f. Format. The approved format for these leases is shown in Appendix 8-B, Figure 8-B-2. This is intended as a generic format for use for both Army and Air Force installations. The following changes in the approved format will be made for leasing excess property:

(1) The granting authority will be deleted and the following words will be substituted: "conferred upon him by law".

(2) In condition 1 on TERM, after the word "Secretary", the following words will be added: "or the officer of the Government having jurisdiction over the property."

(3) In Condition 5 on SUPERVISION, the same wording as mentioned above will be added after the name of the district or installation.

g. Execution and Revocation. See paragraph 8-125.

8-138. Reserved.

8-139. Reserved.

SECTION XII. OUTLEASES - TITLE 16 U.S.C. § 460d.

8-140. Background.

a. The 1944 Flood Control Act (16 U.S.C. § 460d) authorized the Secretary of the Army to enter into licenses at water resource development projects for recreational development and other public uses. This law created a new authority which allowed longer term uses with nominal consideration and preferences to other Federal, state or local governmental agencies. Civil lands had been leased until that time under the general Army leasing authority of 40 U.S.C. § 303 (replaced in 1947 by 10 U.S.C. § 1270, now 10 U.S.C. § 2667).

b. The 1954 Flood Control Act amended the 1944 Act. It added the authority to grant leases, as well as licenses, to Federal, state or local governmental agencies where appropriate to facilitate the construction of substantial improvements and to permit the expenditure of non-Federal governmental appropriated funds. It also added the authority for the grantee to cut timber and harvest crops, where the lease or license involved lands utilized for fish and wildlife, forests, or other natural resources purposes, to further such beneficial uses and to collect and utilize the proceeds from sales of timber and crops in the development, conservation, maintenance and utilization of such lands with the balance of any proceeds not utilized paid back to the United States at such times as the Secretary determined appropriate.

c. The legislative history of this 1954 amendment to 16 U.S.C. § 460d (House Report No. 2247 on H.R. 9859) discusses that existing law did not permit licensees "to undertake certain conservation practices such as the felling and disposal of timber on a sustained yield basis or otherwise, since this is considered to be property of the United States. " It goes on to state that the "receipts from the sale of timber under a sound management program would normally be much less that the cost to the licensee of carrying out the entire land and forest management program for park or recreational purposes and therefore it is only equitable that these receipts be used for furthering the basic development program." The provision to have the balance of these proceeds return to the United States was a safeguard against unjust enrichment or profit from the sale of Government real property. Until this amendment, the Corps took the position that it lacked the authority to authorize the States to dispose of these items of real property.

8-141. Water Resource Projects Only. Title 16, United States Code, Section 460d authorizes leases or licenses only at water resource development projects. Other real property on the civil inventory or jurisdiction must use the general leasing authority of Title 10, United States Code, Section 2667.

8-142. Use of Lease or License. Leases, or licenses where appropriate, may be granted for the use of all or any portion of a water resource development project upon such terms and for such purposes that the Secretary determines is in the public interest. The distinction has been made that fish and wildlife activities only need a license, which grants a non-exclusive use to perform only specified acts, while park and recreation activities, which requires construction of improvements, needs a lease which grants an interest in land. However, in many instances the

grantee's use of the lands for fish and wildlife management is substantially more than a non-exclusive license, especially where mitigation and other improvements are present, and, therefore, a lease is appropriate.

8-143. Timber and Crops. The Corps will as a general rule, manage forest and woodlands on all Civil Works projects, including outgranted areas. However, if the District Engineer determines and documents that such action is in the best interest of the federal government, forest management may be available for assumption by a Federal, state or local governmental agency. In any such lease or license to a non-Federal governmental agency which authorizes fish and wildlife, forests or other natural resources purposes, the licensee or lessee may be authorized to cut timber and harvest crops and to use the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Funds received from the sale of timber and crops and not utilized are required by law to be paid back to the United States. The Secretary has determined that the reasonable period is five years. Separation of the funds between uses is not required. If both recreational use and fish and wildlife use is authorized under one instrument, see Paragraph 8-145. The heading of the outgrant will show the purposes covered. If the outgrant authorizes forest management, forest management and timber sales shall follow a forest management plan approved by the District Engineer.

8-144. Grazing. The District Engineer will lease lands available for grazing under conditions which he deems compatible with the Government's use of the property. The grantee is not authorized to enter into grazing leases or agreements under a lease issued under this authority. (This position is based On a Chief Counsel Opinion that grazing 1eases were Primarily for generating money and were not used as a land management tool. Since there is extensive evidence that this has changed and grazing is now used extensively as a land management tool both by Army and by state agencies, we have requested the opinion be revisited.)

8-145. Separate or Consolidated Purposes. Only if the outgrant document includes fish and wildlife activities may the lessee or licensee be authorized to cut timber and harvest crops; if the instrument does not include these purposes, such as the standard park and recreation lease, the grantee may not be authorized to do these particular revenue producing activities, even though the United States may do so itself. Leases which consolidate fish and wildlife and park and recreation purposes into one instrument will only work in those states where the park and recreation and fish and wildlife activities are also consolidated under one department or agency so that there is one lessee. The Park and Recreation form will be used, adding "Fish and Wildlife, and Forest Management Purposes" in the title and the purposes section and Paragraph 5 and 6 from Appendix 8-C, Figure 8-C-3, Department of the Army Lease for Fish and Wildlife Management Purposes, with the land and water areas for each purpose clearly shown. The Fish and Wildlife Service should be consulted if state is receiving money under one of their programs to ensure that F&WS requirements for separation of monies are met.

8-146. Separate or Consolidated Areas. Leases and licenses have in the past been issued by project. However, language of Title 16, United States Code, Section 460d authorizes the

Secretary of the Army to lease lands, not projects, upon such terms and for such purposes in the public interest. Therefore, if the state wishes to operate projects or areas as a unit so that funds generated at one may be used at another, a single lease or license will be issued to cover all areas to be included in the unit. Operation of separate projects as a unit for forestry management purposes does not mean that separate instruments can not be used for park and recreation areas, or vis versa. Use the standard form, deleting the site from the title and listing the project/projects; identify each project or areas in an Exhibit, so that the premises refers to all areas; if more than one district is involved, modify the condition on notices to state if x project notice to x district and y project to y district; and add a Development Plan for each project covered. The lease may be signed by the Division Engineer if more than one district is involved.

8-147. Public Interest. This Act authorizes leasing of lands at water resources development projects if those leases are in the public interest. The real estate element will determine that any proposed leasing action is in the public interest.

8-148. Sale or Storage of Alcohlic Beverages. In accordance with state and local laws and regulations, lessees may sell, dispense or store, or permit the sale, dispensing or storage of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of any alcoholic beverages outside of any buildings is not permitted. Carry out package sales of hard liquor is prohibited. Any proposed deviation from the above policy must be forwarded to HQUSACE (CERE-M) for submission to the Office of the Assistant Secretary of Army for prior approval.

8-149. Transient Use. The current Corps policy prohibits camping, to include transient trailers and other recreational vehicles, at one or more campsites for a period longer than 30 days in any 60 consecutive days. Any proposed exception in this length of stay policy must be forwarded for approval by the Division Engineer. This approval authority cannot be delegated to a District Engineer. Lessees are required to maintain a ledger or reservation system in order that compliance with this requirement can be verified. The rationale for this policy is to insure a reasonable degree of availability to camping facilities by the general public within the capacity of the facilities. Hotels, motels, and similar structures are not covered by this policy.

8-150. Residential Use. The use of land or facilities of any kind within the leased premises for the purpose of a full or part-time residence is prohibited. As an exception, the District Engineer may approve residential use by the lessee or an employee(s) of the lessee for the purpose of providing security to the leased premises.

8-151. Timeshare.

a. General. Timeshare can be broadly divided into two basic components, ownership and right-to-use. Both programs typically sell increments of time in a specific unit. Many programs, however, use a “floating” or “open use” system where the purchaser buys annual time

or seasonal time for a certain type of unit. Timeshare ownership in real estate is an arrangement where the purchaser acquires a fee simple interest and receives the protection of a deed, legal title, and title insurance. Timeshare ownership in personal property is similar with a bill of sale and legal title. In right-to-use programs the purchaser does not acquire any form of legal title but merely a possessory or use right. There are three basic types of right-to-use timeshare arrangements: Lease, where the purchaser receives a lease for a specified period of time; Vacation license, where the purchaser obtains a right of occupancy for a specified annual period, sometimes for a specified unit; and Club Membership, where the purchaser buys a membership for a period of years in an association or group which owns, leases, or operates the timeshared premises for use by club members.

b. Timeshare activities are not permitted. Timesharing is defined, for purposes of this policy, as providing a possessor or use right of a specific facility or piece of personal property for a specified period of time each year for a number of years. Timeshare ownership is not possible since legal title is held by the United States. This definition would prohibit lease or license right-to-use timeshare programs for improvements, such as cabins, cottages, and campsites, or for personal property, such as mobile homes, RV's, houseboats, docks, and boats.

c. Membership plans, where the public is also given equal access, will not be prohibited since this is a type of prepaid fee. For membership programs, any implementing agreements will allow for district review of signs, advertising, and brochures to insure that no representations are made that would imply use exclusively by the member or which imply any claims of title to Government property.

d. Timeshare sales of personal property, where title to the property is not retained by the lessee, are not prohibited. The sale of such property must be an approved activity under the lease. The key to approval of sale to multiple owners is the divestiture of control and title by the lessee. A separate owners association or group should be the governing body which makes assessments, regulates and manages the property. Any approvals must delineate between the sale of the personal property by the lessee and the use of the property by the timeshare holders so that there is no appearance of a private group having exclusive use of lessee property. Once the property is sold, it becomes like any other property held by the public and is subject to applicable rules and regulations. The lessee involvement should be no greater than provided to any other member of the public.

8-152. Financing by Private Investor. The financing of recreational overnight lodging facilities by individual private investors is approved so long as the ownership of the units is subject to a "lease-back" provision to the lessee who will then operate the facilities as overnight accommodations available to the general public. The owner may be allowed to stay up to 30 days in the unit annually and must not give the appearance of private exclusive use. Any implementing agreements will allow for district review of signs, advertising, and brochures to

insure that no representations are made that would imply use exclusively by the investors or which imply any claims of title to Government real property. This is considered a type of condominium in some states, so that the district should review state law for any restrictions on the control of the units use by the Government.

8-153. Execution of Leases.

a. The Division Engineer and the Division Director of Real Estate are hereby delegated the authority to execute leases for Army controlled real property in accordance with the guidance, policy and procedures set forth in this chapter, provided that:

(1) fee simple title is vested in the United States or included in a condemnation proceeding, and the court has granted the United States immediate possession.

(2) the property is available for lease.

(3) preleasing clearances are obtained.

(4) prescribed lease form is used without deviation, except as shown in the form. Site specific environmental, cultural and operational requirements may be added.

(5) the conditions of the statue have been met.

b. This authority may be redelegate to the District Engineer and the District Chief, Real Estate. Any significant deviations from these requirements will be submitted to HQUSACE (CERE-M) with fully substantiated recommendations.

c. The persons delegated the authority to execute above may also revoke leases for the following reasons:

(1) Non-payment of rent;

(2) Breach of any condition or conditions of the lease;

8-154. State and Local Government Agencies for Public Park and Recreational Purposes.

a. General.

(1) State and local governments serve the needs of state and local residents. They manage regionally significant resources and impact regional economies. As public agencies, state and local governments have an inherent stewardship responsibility to manage the recreation resource under their jurisdiction. The availability of natural resources, funding and professional expertise needed to carry out this responsibility, varies widely among regional

providers, depending on the fiscal health and political nature of the particular government entity.

(2) States and political subdivisions will be encouraged to develop and administer project lands allocated for public park and recreational purposes in approved master plans through lease agreements. The size of areas leased must be commensurate with public demand and the experience and financial capabilities of the lessee (with the assistance of concessionaires) to furnish facilities and services required to serve the general public.

b. Reinvestment of Revenue. For sites leased only for park and recreation purposes, it is policy to require receipts generated on the leased premises to be used for the development, operation and maintenance of the leased premises. Funds generated from timber and crops on fish and wildlife outgranted areas are discussed in the Paragraph 8-143. As discussed in Paragraph 8-146, to realize the most flexibility and public benefit, operation of the park and recreation sites as a unit using revenue generated at each separate leased sites to support all sites may be desirable. As a good management and auditing practice, funds generated on the unit should be used on that unit, whether the unit is a portion of a project, a whole project or several projects. The development of individual operational management plans by project would still be required. The revenue generated at all sites in the same lease may then be shared for development, operation and maintenance purposes as the lessee sees fit on this site.

c. Competition. Competition is not required; applications will be used instead, following the format of Appendix 8-A, Figure 8-A-6, Application.

d. Consideration. The consideration is the lessee's assumption of obligations as defined in the lease to operate and maintain the leased premises for the benefit of the United States and the general public. No administrative fee will be charged.

e. Approval of third party activities. Public Park lessees may provide facilities either directly or through concession agreements or sub-leases. All third party documents must state that they are subject to the prime lease and that third party activities must be approved by the district engineer. In carrying out this approval of the third party activities, care must be exercised to avoid assumption of any liability through formal approval of the third party document itself. Review should consist of such points as: is the rental to be paid by the third party reasonable when compared to rent paid by our direct concession rents; does the third party agreement contain appropriate provisions from the prime lease, such as insurance requirements; are the activities in furtherance of the development, and is the third party agreement subject to the prime lease. Third party agreements may include the procedures under which third party activities may be continued in the event of termination of the prime lease through either expiration, relinquishment or revocation. These procedures must include (1) approval of a waiver of competition, (2) a determination that the service being provided by the third party is satisfactory and remains needed, (3) the site remaining available for the activities being provided and (4) the lessee accepting a direct commercial concession lease.

f. Term. Leases and renewals will be limited to a term commensurate with the extent of an approved development plan. Nebulous plans for future development are not adequate for this purpose. A term of 25 years is permitted under the current delegation of authority and is considered adequate and should be encouraged. Any proposal for a term between 25 and 50 years requires prior approval at the Secretariat level. These requests will receive favorable consideration with proper justification. Terms in excess of 50 years also requires prior approval at the Secretariat level and must be strongly supported. Where the lessee seeks a termination notice of less than 1 year, prior approval by the Division Engineer is required.

g. Fish and wildlife activities may not be performed under a Park and Recreation lease. Normally, a separate instrument is issued for fish and wildlife management. However, see discussion in Paragraph 8-145 above.

h. Lease Provisions. Separate formats are approved for leases to states (see Appendix 8-C, Figure 8-C-1) and those to political subdivisions of states (see Appendix 8-C, Figure 8-C-2). These formats will be used without deviation, except as shown in the form. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE (CERE-M). Sub-paragraphs (l), (2) and (3) below provide guidance on the conditions that are applicable to both.

(1) An inventory and condition report is to be used only when federally owned improvements or personal property are included in the leased premises.

(2) Fees. Lessees are free to establish the amount and to impose entrance or user fees, except that no fees may be charged for the use of facilities developed in whole, or in part, with Federal funds, if such charge is prohibited by 16 U.S.C. § 460d-3, as amended. The fact that a lessee is required to provide operation, maintenance or replacement of facilities developed with Federal funds does not authorize charging of fees if such charge is otherwise prohibited. The lessee may charge for any facilities or service provided without federal assistance or funding.

(3) CERCLA notice. If the EBS shows threshold quantities of hazardous substances are been stored, disposed or released, a sub-paragraph (b) needs to be added to the EBS Condition in the form as set out in Paragraph 8-55.e.

i. Format for use in leases to states. The approved format shown in Appendix 8-C, Figure 8-C-1, Lease to States for Public Park and Recreational Purposes will be used. (This format is intended for use in leases to states only. The lease format for use in leases to other public bodies for public park purposes is discussed in sub-paragraph j. below.) The following sub-paragraphs (1) through (5) provide guidance on certain conditions included in the state lease format.

(1) Development Plan. The Implementing Plan of Recreation Development and Management (Development Plan) may be conceptual, general or narrative. Detailed plans and site layouts will not be required. The Development Plan is a guide for future activities not a detailed

construction plan. The same plan as that included in the lease application should be used if possible. An annual management plan shall not be required. A copy of any amendment to the Development Plan will be provided by the lessee before implementing such change. We do not assume the liability for engineering review, therefore, our engineers will not review plans and specifications.

(2) Accounts, Records and Receipts. Even if no monetary consideration is paid, receipts generated on the premises are to be reinvested in the premises or, if not, paid back to the United States. The following may be inserted after the first sentence, where state law requires receipts from operations on the premises to be deposited in a general fund of the state:

> "The lessee agrees that its expenditures in the administration, maintenance, operation and development of the leased premises will not be less than the income obtained from operations on the premises".

(3) Right to Enter and Flood. In addition to other rights, this condition reserves the right for the Government to conduct compliance inspections. As an exception to the general policy, scheduled compliance inspections on park leases to states are required no more than once every three years. However, the annual certifications pertaining to water and sanitary systems and Rehabilitation Act/Americans with Disabilities Act set out in the condition on Applicable Laws and Regulations remain as annual requirements.

(4) Insurance. States are not required to obtain liability insurance. Any concessionaire or sublessee is required to obtain liability insurance protection commensurate with the risk involved in the services and facilities provided. Insurance policies should be examined to assure compliance with the requirement, however minimum coverage amounts will not be prescribed.

(5) Transient Use. Full or part-time residential use of the leased premises is not permitted (except for security purposes as shown in Paragraph 8-150 above). Should a state propose development for such use in an application for leasing, the District Engineer should (1) advise the state this is not permitted on leased premises and (2) offer to work with the state to develop legislation that would authorize the transfer of project lands, lying above the base flood pool/plain, to the state for such residential development.

j. Form for use in leases to political subdivisions of states.

(1) The approved lease format shown in Appendix 8-C, Figure 8-C-2 is to be used when granting leases to political subdivisions of states. This format recognizes that, when compared to states, local entities do not normally have the financial resources to employ a full time professional resource management staff. There are instances where we have had excellent experience with local governmental entities, however the bulk of lease management problems result from their limited capabilities. The lease administration responsibility of the district Chief of Real Estate creates a contractual obligation for overseeing proper use of leased recreation

areas. For this reason alone, a common lease document for both state lessees and local lessees is inappropriate.

(2) In those instances where a smaller entity does have the financial and staffing resources which permit reduced oversight responsibilities as are in the state lease format, the District Engineer may determine that the lessee's capability for planning, constructing and managing a public park and the attendant facilities qualifies the lessee for use of the state format. The following is a list of questions to be addressed in making this determination.

(a) Does the entity have an established full time park and recreation staff responsible to operate and maintain the leased premises?

(b) Does the entity have qualified planners and engineers to design, review and approve construction plans?

(c) Does the entity have adequate financial resources to operate and maintain the leased premises independent of any proposed fee collection?

(d) Does the entity have appropriate equipment or contracting expertise to adequately operate and maintain the leased premises?

(e) Does the entity have the ability to insure compliance with federal, state and municipal building, health and safety codes?

(f) Does the entity have established building, health and safety codes in addition to state codes?

(3) The guidance shown below provides information on differences between conditions used in the state political subdivision lease format and that used for leases to states.

(a) The Condition on development plans corresponds to the same condition in the state lease, however it calls for a much more complete plan of development, operation and maintenance plan and operating budget information.

(b) Prior district approval is required for any structures to be erected or altered, however, we will not provide engineer review of the plans and specs. This requirement is not included in the state lease.

(c) Accounts, records and receipts contains a requirement for establishing and maintaining records on receipts and expenditures which is not required in the state lease.

(d) Proof of self insurance or a liability insurance policy on the lessee as well as any concessionaires is required. It also provides the minimum amount of coverage to be obtained. These requirements are not included in the state lease.

(e) Although not discussed in either of the lease formats, the administration of the state lease and the state lease format is intended to reflect a reduced amount of oversight than leases to political subdivisions of states. This is also reflected in the compliance inspection program which continues to require annual inspection on all leases except those to states, which are conducted every three years.

k. Execution. Leases are executed in accordance with 8-153.

8-155. Leases for Fish and Wildlife, Forests and Other Natural Resources Management.

a. Purpose. This section prescribes procedures and responsibilities for authorizing states or local governmental agencies to use lands at water resource development projects for fish and wildlife management not subject to cost-sharing arrangements, and other fish and wildlife, forest, and other natural resource management purposes. Where joint use by the grantee and the district is proposed see Paragraph 8-202, Licenses for Fish and Wildlife Management purposes for public park and recreation purposes are covered above.

b. Authority. Title 16, United States Code, Section 460d and, if applicable, Title 16, United States Code, Section 663, Section 3, Fish and Wildlife Coordination Act of 1934, as amended.

c. Application of Authority.

(1) Based on an approved General Plan, leases or licenses are granted under authority of the Fish and Wildlife Coordination Act to a state for fish and wildlife management purposes only. The procedure for developing such plans is found in ER 1105-2-100.

(2) Since it is occasionally in the public interest to do so, Title 16, U. S. C., Section 460d, authorizes granting of a lease or license to a state to manage fish and wildlife at a project before a General Plan is approved, or if the natural resource management is not covered by Title 16, U.S.C. Section 663.

(3) Both Title 16, U. S. C., Section 663 and Title 16, U.S. C., Section 460d, as amended, may apply to leases or licenses which authorize use of a reservoir area for natural resource purposes other than fish and wildlife management, for example, forest management. Use of a portion of the same area for public parks and recreation requires a separate lease or a consolidated lease as discussed in Paragraph 8-145. above.

(4) The Forest Cover Act, Title 16, United States Code, Section 580m, et seq., provides a statutory mandate for multiple use forest or other vegetative cover management and authorizes the Corps to harvest timber for these purposes. The management of natural resources, timber and crops by the states or other governmental agencies is authorized by Title 16, United States Code, Section 460d. Refer to Paragraph 8-143 and 8-144.

(5) Title 16, U. S. C., Section 663 does not authorize timber management nor cultivation of crops for food or habitat for wildlife. An outgrant for fish and wildlife management under Title 16, U. S. C., Section 460d may authorize state or other governmental agencies to cultivate food or habitat for wildlife on project lands directly, by service contract, or by sharecrop agreements. An outgrant which authorizes use of project lands to produce food or habitat for wildlife and forest management should cite both Title 16, U. S. C., Section 460d and Title 16, U. S. C., Section 663. All standard fish and wildlife outgrants will contain Condition 5 as shown in Appendix 8-E, Figure 8-E-2. License For Fish and Wildlife Management, without deviation, except that licenses containing old Condition 5 will continue to be administered under that condition.

d. Consideration. The consideration is the lessee's assumption of obligations as defined in the lease to operate and maintain the leased premises for the benefit of the United States and the general public. No administrative fee is charged.

e. Term. Neither of the above statutes limits the term of the outgrant; it is considered desirable that the term not exceed 25 years. Longer terms may be submitted to HQUSACE (CERE-M) for approval. These licenses are not revocable at will.

f. Format. Format for preparation of a lease or license is shown at Appendix 8-C, Figure 8-C-3 or Appendix 8-E, Figure 8-E-2. Recommendations for deviations will be sent to HQUSACE (CERE-M) and explained in the transmittal correspondence.

(1) Annual Management Plan. Outgrants to other federal agencies or to states will not require an annual management plan. Outgrants to state political subdivisions will include a requirement for an annual management plan mutually agreed on by the grantee and District Engineer. This plan may be an annual increment of a management plan of 5 years or longer. The District Engineer will review the plan for: activities planned; areas for propagation of fish and wildlife; areas for outgrant by agricultural agreement or sharecrop; crops and rotation of crops; areas for wildlife cover and types of cultivated cover; all structures and improvements. The plan should estimate annual revenues and expenditure of these funds. Activities of third parties which will generate income for the grantee and expenditures by the grantee should be carefully scrutinized for conformance with the outgrant conditions and with the approved plan. A proposed management plan will be considered in light of the grantee's operations of the preceding year, conformance with approved plans, and assurance that the previous year's expenditures were authorized in the plan. Expenditures should be authorized in advance, not after the fact. If a management plan is prepared for the Fish and Wildlife Service, then the grantee will not be required to develop a separate plan, but will provide the district with a copy of the F&WS plan.

(2) Authorized Expenditures. The grantee may pay reasonable expenses directly related to the particular outgrant out of income generated by the operation. The expenses must be for such purposes as: planning and developing wildlife habitats, including wildlife food plots; incidental timber cutting; erosion control, fire breaks and fencing; farming and construction equipment; patrol or work boats; road and parking lot construction equipment; enforcement

check stations; shelters for habitat improvement; restocking of fish or wildlife; and protection of endangered species. The grantee may pay salaries of employees immediately involved in carrying out the activities of the management plan at the project. Other general administrative costs, including planning activities away from the premises, may not be paid. Outgrants which preclude payments for the above purposes must be administered individually. If a grantee requests modification of pre-1985 Condition No. 5, the amendment is subject to the condition: funds which the grantee accumulates will be paid to the District Engineer or escrowed for uses authorized in the outgrant; the grantee must account separately for such funds annually. Funds remaining after the 5-year accounting period or after the term of the outgrant, whichever occurs first, will be administered according to paragraph (3) below.

(3) Payment of Proceeds to the Government. Grantee's monetary proceeds which are not required to further activities as in paragraph (2) above are required by law to be paid directly to the Government at the end of a reasonable period, determined by the Secretary to be each 5-year period; monies committed for authorized, approved expenditures in the 5th year may be withheld for up to 1 year. State laws may require that monies from operations on the premises be deposited in miscellaneous receipts or similar state funds; in such cases, an amount from the state equal to the monies generated must have been expended on or committed to the project which generated the funds and a clause as in the state park and recreation lease format Paragraph 8-154.i.(2) above should be added.

(4) Sharecrop Agreements. Sharecrop agreements with farmers are expected to provide crops as food or habitat and for compensation to the farmer. Certain services may also be required of the farmer toward development and conservation of fish and wildlife, land, water, forests, and other natural resources. The District Engineer should have copies of each sharecrop agreement to monitor the grantee's compliance with the approved management plan.

(5) Agricultural Agreements. Agricultural agreements may provide for planting and harvesting crops, including hay. Rental paid to grantee may be in cash and/or services to further lease/license purposes. Where possible, these agreements will be granted by competitive bid. The District Engineer should have copies of each agricultural agreement to monitor the grantee's compliance with the approved management plan.

g. Administration. The district real estate element will obtain current management plans from grantees and coordinate them with the Operations Division and other interested district elements. Real estate personnel will perform outgrant administration including the required annual compliance inspection.

h. Execution. Leases are executed in accordance with Paragraph 8-153.

8-156. Leases for Recreation Cost Sharing Purposes.

a. Authority.

(1) According to Public Law 89-72 approved 29 July 1965 (16 U.S.C. § 4601-13), non-federal public bodies must cooperate in projects authorized during and after 1965 and must share in the separable costs of recreation or fish and wildlife development. Where non-federal public bodies indicated in writing an interest in cost-sharing this development, lands were authorized to be acquired for this purpose. Land was provided to the non-federal public body by a lease. The cost sharing provisions of § 103 of Public Law 99-662 (33 U.S.C. § 2213) apply to any recreation project or separable element thereof on which physical construction is initiated after April 30, 1986. Project Cooperation Agreements (PCA's) with non-federal public bodies will be developed in accordance with WRDA 86, ER 1165-2-131, and Chapter 12 of this regulation.

(2) New projects envision that real property generally will be acquired by the non-federal public agency (non-federal sponsors). There are instances where the Federal government, at the request of the non-federal public agency, acquires the land and ultimately quitclaims title to the land to the non-federal public agency. The authority for the conveyance to the non-federal sponsor is the project authority. During the time that the United States holds title to the land, the non-federal public agency should be granted a license if entry onto the lands by the non-federal public agency is necessary. No lease is required.

(3) At older projects where, pursuant to 16 U.S.C. 460d, additional recreational development will be cost-shared on land owned by the United States and partially developed, a cost-share lease under authority of 16 U.S.C. 460d is appropriate.

(4) Where the separable recreation land was acquired pursuant to Public Law 89-72 and recreation facilities are being developed, a cost-sharing lease under authority of both 16 U.S.C. 460d and 16 U.S.C. 4601-13 is appropriate.

(5) For the purposes of PL 89-72 and 16 U.S.C. 460d projects, a separable element exists when allocable costs and benefits are attributable to additional recreational facilities being built. To illustrate, if lands on a PL 89-72 projects are allocated for flood control and these lands are reallocated to recreation, the lands and recreation facilities are to be treated as a separable element. Similarly, in a 16 U.S.C. 460d situation, separable recreation development is undertaken whenever new cost-shared recreational development is constructed. In both cases, the lease must cite 33 U.S.C. 2213, in addition to 16 U.S.C. 460d and/or 16 U.S.C. 4601-13.

(6) The PCA will state that the property will be made available by lease substantially in the format shown in Appendix 8-C, Figure 8-C-8, which will be attached as an exhibit to the PCA. In this way, the provisions of the lease can be negotiated as part of the overall agreement. Because of the obligations required by the PCA, a lease is the preferred outgrant, even for fish and wildlife purposes.

b. Consideration. The consideration for a cost-share lease under PL 89-72 and 16 U.S.C. 460d is operation and maintenance of the premises and the operation, maintenance, and replacement of the facilities and improvements during the term of the lease. Consideration for a

lease that cites 33 U.S.C. 702a - 702m is operation and maintenance of the premises and operation, maintenance, repair, rehabilitation and replacement of the facilities and improvements during the term of the lease. An administrative fee will not be charged.

c. Term. Leases will usually be not less than 50 years or as agreed in the PCA. The term will be provided for in the PCA.

d. Competition. Not required.

e. Format. The lease will follow the format of Appendix 8-C, Figure 8-C-8 and will be an exhibit to the PCA or the format in the approved model PCA for the use proposed. The lease and the PCA provisions and conditions should conform to each other. The lease will be maintained in the realty records of the district following completion of construction provided for therein. Fish and wildlife provisions will be added if fish and wildlife is a purpose. Under 33 U.S.C. 702a-702m, a hold harmless provision is required in the lease.

f. Execution. District Chiefs of Real Estate are authorized to execute leases submitted as exhibits to approved PCAs. Otherwise, the lease must be submitted through normal channels for execution at the Secretariat level.

g. Administration. Where all or a major portion of a lake project is the subject of a lease and PCA, the administration of such a lease will require intensive coordination between Real Estate and the lessee. The master plan shall be mutually agreed upon between the lessee and the appropriate district elements prior to inception of the lease.

h. Third Party Agreements. District Engineers may authorize third party concession agreements, provided that the proposed third party concessioner meets qualifications necessary to the type of services to be provided and the term thereof does not exceed maximum terms approved for Corps direct concessionaires at the same lake, if any. Likewise, rental rates offered to such a third party and prices for the services to be offered to the public should not be approved if such would give the third party concessioner an undue economic advantage over Corps concessionaires at the same lake. This policy applies only in those cases where the lessee does not manage all the recreational facilities at a lake.

i. Rates and Prices. Rates and prices prevailing in the general area should provide the basis for charges imposed for supplies and goods offered for sale to the general public by the lessee or any third party concessioner.

8-157. Lease for Commercial Concession Purposes.

a. General. The primary objective in leasing lands for commercial concession purposes is to obtain recreational services and facilities to meet the public demand at reasonable charges without federal expenditure to provide such facilities and services. This purpose will be achieved

only when the concessionaire has an opportunity to make a fair profit. The private entity operating a commercial concession situated entirely on project land is referred to as a concessionaire.

b. New Leases.

(1) Site Selection. Any proposal for initial development of new sites should be based on a thorough investigation of all factors (i.e., recent or updated market analysis or feasibility study) that shows the site will generate sufficient business for the proposed concession.

(2) Type of Concession. After determining that public visitation and use of facilities and services at the proposed site has potential for a viable concession, the District Engineer will determine the minimum facilities and services required for the site to supply present and future public demand adequately during given periods of the planned life of the project.

c. Competition.

(1) Notice of Availability. A Notice of Availability for Leasing for a concession sites will be advertised extensively in trade publications and other media. Where additional areas for concession development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites. The notice will present salient facts about concession sites and invite interested parties to contact a designated office for further information on applying. Advertise each site as a separate unit, though all available project sites may be included in one advertisement.

(2) The Notice will set out the minimum and initial development determined by the Government to be necessary to adequately serve the public. The District should not include specific site layouts or development plans in the notice. The intent is to allow the maximum flexibility to the potential lessee to determine the method for meeting the identified minimum requirements and any additional public needs identified by the potential lessee during any independent market analysis. The Notice will request applicants to provide the development stated in the notice, state additional facilities which will be furnished if public demand warrants, and furnish information as to financial arrangements and experience of the applicant.

(3) District Engineers are authorized to advertise available sites if the terms of resulting leases meet the criteria of this section, are not unusual or controversial. The Notice will not substantially deviate from Appendix 8-A, Figure 8-A-5. All others must be approved in advance by HQUSACE (CERE-M).

(4) District Engineers will select the responsive and responsible Applicant who submits the best acceptable application. In determining whether or not applicants are responsible, the District Engineers will consider which applicants are qualified financially, in experience, in character, and otherwise to provide the needed facilities and services. The application of a prospective lessee who is not determined to be fully qualified will be rejected. The applicant

must provide a schedule for furnishing required facilities and services and may propose additional facilities and services. The District Engineer may extend time limits when a delay in furnishing facilities and services is beyond the lessee's control, and may waive requirements for provision of facilities and services after the first year as public demand warrants.

(5) The District Engineer will determine that the applicant's conceptual development plan with its architectural is consistent with the minimum facilities required and verify the data furnished by the applicant. Full documentation on the selection will be retained for a reasonable period of time. It is recommended that a point system be established for evaluating the applications when there are more than one application. For example, list the facilities and services stated as the minimum; assign a range of points for each according to the importance of the facility or service relative to the public's anticipated need for such; add a range of points for additional facilities and services; consider such factors as dollars to be invested, beneficial use by the public, long term needs (permanency of facility), and overall concept and consistency of theme (including compatibility with surrounding area). Then rate each application, facility by facility and service by service.

d. Unsolicited applications. Waivers of competition are the exception for new sites. Unsolicited applications may be submitted to HQUSACE (CERE-M) with justification for a waiver of competition. Entrepreneurs requesting that an additional lease site be made available at an operational project may be required to perform the market analysis, the environmental assessments, surveys, mapping or other justification to support their request. Waivers will be considered favorably for applications that offer unusual or unique recreation opportunities or that support major development on adjoining private property. Waivers will not be granted for routine uses, i.e. marinas, bait shops, restaurants, which are only unsolicited because no sites have been made available recently at that project.

e. Development Plan. For new sites, the prospective lessees will provide a conceptual development plan with its architectural theme and sign plan in the minimum amount of detail necessary to provide the information requested in the Notice. Detailed operation and management plans and site plans will not be required. The Development Plan is a guide for future activities not a detailed construction plan. Corps engineers will not review plans and specifications so as to avoid the assumption of liability for engineering review. The District Engineer has the option of requesting "as built" site plans and construction plans of facilities with certification by a Professional Engineer that the construction meets all applicable codes and standards. The size and cost of the facilities should be factored into the decision to request such plans. Hours of operation, rates and prices and other details of daily management will not be included in the Development Plan, nor required of the concessionaire. For existing concessionaires, see subparagraph n. below.

f. Insurance.

(1) Policy. To protect the using public, the lessee's assets, and the government, it is the policy of the Corps to require commercial concession lessees to maintain the maximum available

level of liability insurance coverage consistent with sound business practices and industry norms. In no case shall liability insurance coverage be less than which is prudent and reasonable considering the risk factors present in the operation of the particular concession.

(2) Guidance. Concessionaires will be expected to obtain insurance coverage in an amount not less than the limits dictated by sound business practices, given the risk factors present at the particular concession, or $1,000,000, whichever is greater. However, District Engineers are authorized to approve lesser insurance minimums as set out below if there is no activity identified by the insurance industry to be of a high risk nature, e.g. horseback riding, waterslides, diving, rentals of boats with greater than 25 horsepower or pontoon boats with greater than 50 horsepower:

(a) Concessions with both assets and gross receipts of or less than $150,000 will maintain liability coverage of no less than $250,000.

(b) Concessionaires with both assets and gross receipts of between $150,000 and $500,000 will maintain liability coverage of no less than $500,000.

(3) Where $1,000,000 liability coverage or greater is warranted but not available, the coverage may be reduced on a year to year basis, to the maximum available coverage but no less than $500,000. District Engineers must also determine that coverage is indeed not available and should reaffirm nonavailability annually.

(4) Amounts of insurance coverage required consist of aggregate liability coverage (combined bodily injury and property damage) per occurrence (i.e., $500,000 aggregate coverage per occurrence)

(5) Requests for exceptions to the above should be sent to CERE-M for approval.

g. Consideration.

(1) Concession leases executed prior to 1993, unless amended to use a newer system, will calculate consideration using the rental method as shown in the lease. Districts should retain copies of appropriate guidance in effect at the time the lease was executed to support the old rental method.

(2) Consideration will be calculated using the Revised Graduated Rental System (RGRS). The RGRS is based upon a percentage of gross receipts. No administrative fee is charged for these leases. Gross receipts are defined in the lease format as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sublessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the lessee as the servicing agent and paid to the power company. Sales receipts from boats and

motors may, at the lessee's option, be excluded and assessed a straight one-percent rent, since they are high cost, low profit items.

(3) Calculations. The percentage is selected from the chart, based upon the total gross receipts of the ending rental year. If this is a new concession, then the past receipts would be zero and the minimum rate would be used for the first year. The selected percentage rate is then multiplied each rental payment period by the gross receipts for that period. A year end report is still prepared in accordance with the Condition on Accounts and Records.

h. Mixed Concessions. Where an insignificant portion of the gross receipts are generated on project land and use of the RGRS will not result in a fair return to the government, the rental may be freed at the appraised fair rental value for the leased project land.

i. The District Engineer has the authority to negotiate the frequency of rental payments of commercial concessions so that each payment is a reasonable amount. In no event will the frequency be more often than on a monthly basis, and may be monthly, annually, semi-annually, or quarterly.

j. Renegotiated Rental. Renegotiation of rentals under authority of 16 U.S.C. § 460d-1 will only be for future rent. Renegotiation of rental should only be considered in unusual circumstances, i.e. drought, record floods, earthquake.

k. Notice to Known Secured Parties. If the lessee falls behind in rental payments or is otherwise in substantial noncompliance, the District Engineer must notify all known secured lenders, since their security will be endangered by default. In some instances the District Engineer may have executed a pre-assignment agreement with the lender in case of default by the lessee so that the lender may step in immediately and operate the premises. No standard form is used since local practice varies.

1. Management of existing leases. Compliance inspections will be performed no less than once per year. See Paragraph 8-99, Compliance Inspections.

m. Term.

(1) Leases may be granted for terms of 25 years or less, with an option for renewal, conditioned upon the lessee being in compliance and satisfactorily performing at the time the option is exercised. The term should be given as necessary for the lessee to obtain a return on the investment and make a reasonable profit. The maximum permissible term should not automatically be granted. Options should not routinely be placed in leases, but should be based on the development proposed and rehabilitation and replacement cycles for the facilities and improvements. If an option is desired, add the following to the term:

The Lessee shall have the right to extend the original term of the lease for two (2) successive periods ("extension terms") of fifteen (15) and ten (10) years each, provided

that, as to each option, Lessee shall give notice to the Government of its election to extend such term at lease eighteen (18) months prior to the time when the term then in force would otherwise expire; that, at the time when such notice is given, there shall not be any uncured event of default on the part of Lessee; and that the term of this lease shall have been extended for the prior extension term, if any.

(2) Request for terms over the above must be forwarded to HQUSACE (CERE-M) for approval. Total terms of over 50 years (25 years, 25 year option) will be approved only for the most extensive development. Submissions to HQUSACE (CERE-M) must include supporting justification.

n. Renewal and extension.

(1) District Engineers may waive competition for the extension and renewal of commercial concession leases when it has been determined that the waiver is in the public interest, or competition would be impracticable, and, when a waiver is otherwise appropriate. That the lessee has been providing satisfactory service, in and of itself, does not necessarily permit the lease to be extended or renewed without competition. The lessee must be willing and able to provide facilities and services necessary to service the public, to furnish additional facilities and services needed during the renewal period, and to perform in accordance with lease terms.

(2) If the District Engineers extends the term or negotiates a renewal/new lease when public use requires additional development which cannot be financed or amortized during the remaining term of the lease, the District Engineer and the lessee must agree on development proposed. The existing development plan, if any, may be supplemented, or a new development plan established, using the guidance in e. above for new concessions. No development plan is required where new development is minimal or the concession size does not warrant the creation of such a plan. Limit such new term to the period required to secure adequate financing and amortization of development costs up to 25 years, with an option to renew, using the general guidance set out in m. above.

(4) If the District Engineer determines that a renewal of the lease to continue the current facilities and services is in the public interest, without any additional development, no development plan is required. The renewal term should not generally exceed 5 years, however, longer terms may be appropriate considering the extent and condition of existing improvements and the amount of current investment.

(5) The extension and renewal granted must conform to existing laws, rules and regulations and the approved lease format in effect at the time of the renewal or extension.

(6) Unless an option is provided in the lease, the lessee has no right, as such, to a renewal or extension of the lease and should prepare to amortize its investment over the initial term of the lease. Lessees may be advised of the Army policy to renew leases with existing concessionaires who are satisfactorily meeting public needs, but the District will be careful not to

appear to promise a renewal since satisfactory performance is not, in and of itself, grounds for a waiver of competition.

o. Format.

(1) Use Appendix 8-C, Figure 8-C-4 in preparing leases without deviation, except as shown in the form. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE (CERE-M).

(2) The description of the leased premises will include both land and sufficient water areas around the facilities for the approved use and development as a commercial concession.

(3) The Performance of Contract condition is to be used to ensure that the Government is not damaged by the failure of the lessee to complete promised development as identified in the development plan attached as an exhibit to the lease. It is not intended to be a punitive condition, nor is it intended for these cash, bond or letter of credit to be used by the Government to complete the proposed development. This condition may be used for developments at new concessions or for new development at existing concessions where the development is related to an extension of the lease term and/or remedial repairs to prevent termination or revocation of the lease. In general, the amount of the bond should be based on the following criteria:

- Cost of readvertising the site

- Cost of restoration

- Cost of closing-down a site to prevent public access until restored

- Administrative costs

- Other costs to be incurred by the Government

In any event, the minimum amount of cash, bond, or letter of credit shall be $5,000. Each leasing action should be evaluated for the need of this condition, i.e., delete for a very small concession with low risk of cost to the Government. This condition may be omitted if not required to ensure development or remedy. Renewals without significant additional development will not require this condition.

(4) The requirement to post rates and prices as stated in the Condition on Rates and Prices is considered met when the prices of individual items are labelled on the items, on the shelf or space they occupy, or on a listing of prices. Although we have retained the right to review rates and prices, this review should be limited to egregious departures from reasonable rates and prices in the area, e.g. in response to complaints from the public.

(5) Consideration, Development Plan and insurance amounts will be as set out above.

(6) CERCLA notice. If the EBS shows threshold quantities of hazardous substances are or have been stored, disposed or released, a sub-paragraph (b) needs to be added to the EBS Condition in the form as set out in Paragraph 8-55.e. above.

p. Execution. Leases are executed in accordance with 8-153.

q. Revocation. The District Engineer is authorized to execute revocation notices only when the lessee violates lease terms and conditions and persists in such violations for the period provided in writing as set out in the lease form. Revocation is an extreme action and every effort should be made to secure compliance. If the lessee fails or neglects to remove improvements, then the option selected by the District Engineer to either remove the property or to have it forfeit to the Government must be documented in writing to the lessee. In order to avoid possible taking or contract claims and to promote good community relations, the grantee will be allowed a reasonable time to vacate the premises, remove property, and restore the property. In controversial cases, or when a claim for damages or litigation is anticipated, CERE-M will be advised of the situation before revocation notices are issued.

8-158. Leases to Nonprofit Organizations for Park or Recreation Areas.

a. General. Non-profit organizations may lease lands and improvements at water resource development projects for park and recreational purposes. Groups should be encouraged to reserve existing group use areas for day use, camping and educational purposes. Organizations requesting a lease of project lands should demonstrate that the group requirement cannot be satisfied by use of existing facilities available through reservation. The organization's program requirements should warrant the use of public land or facilities and provide service not otherwise available to a large segment of the using public. The organization should provide evidence of their financial and management capability to develop, operate and maintain the proposed facilities. Leases issued to non-profit organizations under this paragraph do not constitute private exclusive use as defined in Title 36, Code of Federal Regulations, Part 327 and ER 1130-2-406, Lakeshore Management at Civil Works Projects.

b. Competition. Although competition is not required, such lease will be available only to responsible organizations which will serve the public through use of the leased premises. An Application for Leasing will be required using Appendix 8-A, Figure 8-A-6.

c. Consideration. Non-profit organizations may be granted leases for park and recreation purposes at reduced or nominal rental in recognition of the public services provided by the lessee. Services provided only to members of the non-profit organization do not justify a reduced or nominal rental. Such organizations now operating as private clubs will be charged fair market rental. Appropriate rental rates for non-profit organizations will be determined based

on the services to be provided to the public as well as organization members. The following criteria will be applied.

(1) The organization must be non-profit and functioning in the public interest to provide recreational or educational services of a charitable nature.

(2) The facilities and services will be available for group use only. The use of such facilities must rotate freely among members and guests.

(3) The organization shall make the site and facilities available to other non-profit organizations on a first come, first served reservation basis when not scheduled for use by its own members.

d. Term. The term of the lease wiIl be commensurate with the extent of development proposed by the lessee and will not exceed 25 years.

e. Format. Use Appendix 8-C, Figure 8-C-5 without deviation in preparing leases. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE(CERE-M).

f. Execution. Leases will be executed in accordance with Paragraph 8-153.

8-159. Lease for Private Recreation Purposes. Private recreational use includes club sites, yacht club sites, cottage sites, nonprofit organizations operating as private clubs, and other such uses in accordance with the project Master Plan and approved regional plans as set out in ER 1130-2-400 and ER 1130-2-406.

a. Cottage/Cabin Site Leases. A cottage site lease issued under the authority of Title 16, United States Code, Section 460d, as amended by section 1134 of the Water Resources Development Act of 1986, which states that such leases will be issued for the fair market value, will only reserve fair market rental as consideration regardless of the estimated administrative costs. No new lands will be allocated for cottage sites. Existing cottage site leases may only be terminated if the site is needed for a higher public purpose or the lessee is in default.

b. Other private recreation leases. Sites determined available for such purposes will be leased and developed only in accordance with approved regional plans.

c. Competition. See Paragraph 8-104. Any waiver of that policy requires prior approval by CERE-M.

d. Consideration. No less than the fair market rental value of the property leased or the established estimated administrative cost, whichever is greater, will be charged. See Paragraphs 8-81 and 8-111 above.

e. Term. The term should be in accordance with regional plan and/or commensurate with the development planned. A term of up to 10 years is considered adequate in most cases with terms up to 25 years granted only when a high degree of development is anticipated. Terms in excess of 25 years require prior approval by CERE-M and will require substantial justification.

f. Format. Use Appendix 8-C, Figure 8-C-5 without deviation in preparing leases. Site specific environmental, cultural and operational requirements may be added. Other changes must be approved by HQUSACE(CERE-M)

g. Execution. Leases are executed in accordance with Paragraph 8-153.

8-160. Leases to Cooperating Associations.

a. General. The National Park Service has a long history of association usage, including special authorities on funds, personnel and donations. The Forest Service has developed a program within their authorities which has been very successful. These associations aid operations related natural resources management, educational, interpretative and visitor services activities, often through volunteers and sales of books and souvenirs. After extensive coordination between CECW-ON, CERE-MC, and CECC-J, ER 1130-2-441, "Cooperating Associations Program" was published. It sets out the authority, definitions and policy for these associations at Civil Works water resource development projects.

b. Cooperative Agreement. A sample agreement is shown in Appendix 8-A, ER 1130-2-441. This agreement sets out the authority for entering into these agreements. Although 31 U.S.C. § 6305 is referenced in the regulation, it is not the authority to enter into the agreement. Public Law 95-224, the Federal Grant and Cooperative Agreement Act of 1977, which is codified in Title 31, United States Code, 6301 (formerly Title 41, United States Code, 501) sets out criteria for selecting appropriate legal instruments to achieve uniformity in their use, a clear definition of the relationship they reflect, and a better understanding of the responsibilities of the parties. The cooperative agreement will be used when the principle purpose of the relationship is to transfer a thing of value to the recipient to carry out a public purpose of support or stimulation authorized by a law instead of acquiring property or service for the Government and substantial involvement is expected between the recipient and the agency when carrying out the activity. The authority to enter into the relationship must already exists.

c. If the Association will use government facilities, the necessary real estate instruments will be a separate document from the cooperative agreement and will not merge. The sample Agreement states in several places to delete certain sections if covered in the real estate document. The association will be granted a license, easement or lease, as appropriate in accordance with this chapter for the proposed use of government owned property. For example, if the association provides volunteers tour guides without any fixed space, no outgrant is required. A short term "Festival" could be covered by a Special Event Permit. A lease would be required for exclusive use of a fixed area for a gift shop or book store in the visitor center, for a specified area such as a historic interpretative site where entrance or user fees will be

charged, or a museum area housing association artifacts. A license wouId be appropriate where the association will hold seminars every third Monday night or for display cases if the contents belong to the association.

d. Consideration. The consideration is the operation and maintenance of the facilities for the benefit of the United States and the general public in accordance with the conditions set for the in the outgrant and pursuant to the Cooperative Agreement. No administrative fee is collected.

e. Format. If a lease is appropriate, see Appendix 8-C, Figure 8-C-7.

f. Execution. Leases are executed in accordance with Paragraph 8-153.

8-161. Leases or Licenses for Other Public Use. Leases or licenses, if appropriate, may be issued to Federal, state or local governmental agencies for other public use. Use the lease format most appropriate for the proposed use. Since this is not a standard application, these must be submitted to HQUSACE (CERE-M) for approval, at the Secretariat, if necessary.

8-162. Reserved.

8-163. Reserved.

8-164. Reserved.

SECTION XIII. OUTLEASE APPEALS

8-165. Background.

a. The disputes clause in leases issued between 1954 and 1993 was based on the Wunderlich Act (Title 41, United States Code, Section 321, 322). This act was passed in response to the Supreme Court in Wunderlich v. U.S., 342 U.S. 98 (1951) which limited judicial review of agency decisions. The Act provided finality of agency decisions but specified the "substantial evidence" standard for judicial review of findings of fact. SAILE was the designated representative of the Secretary of the Army to hear disputes under the lease disputes clause. In 1989, SAILE decided that it was no longer staffed to perform this function and requested CERE-M to develop a delegation. On June 14, 1990, the Secretary of the Army designated the Chief of Engineers the duly authorized representative of the Secretary of the Army as provided in the lease disputes clause, with the power to redelegate to the Corps of Engineers Board of Contract Appeals (ENG BCA), to hear, consider, and decide all appeals arising under or related to outleases of civil and military real property as fully and finally as the Secretary of the Army might do.

b. Although the Contract Disputes Act is often thought of as being a part of the procurement rules, it is unique in that it was specifically applied by Congress to "disposals of personal property", such as GSA surplus sales, and to any agreement which by its terms is expressly made subject to its provisions. Several recent court and board cases have tried to split the "in persona" and the "in rem" aspects of leases to say that they are a type of disposal of personal property. In order to eliminate the confusion caused by the conflicting decisions, new leases will contain the CDA provision used by GSA in its personal property disputes clause. This differs slightly from the standard procurement clause in that the lessee will usually owe the Government money rather than the other way around.

8-166. Appeals under Existing Leases.

a. Existing leases will not be amended just to change the disputes clause. Any dispute concerning a question of fact or lease provision arising under such leases which is not disposed of by agreement shall be decided by the District Engineer, in writing. Although the district may explain its position in the reply to the lessee, the lessee will be advised that a written objection to the final decision will be considered an appeal and that it will be processed as such.

b. The final decision will contain, at a minimum, a reference to the appropriate lease provision; the reasons for the decision; and notice to the lessee of the right to file an appeal; and that the District Engineer's decision shall be final unless a written appeal is received addressed to the Secretary of the Army within 30 days from the date the lessee receives the District Engineer's decision. The lessee should be advised to identify the errors, state the reasons for the appeal, and include any additional information that the lessee desires to submit in support of the appeal.

c. When the original notice of appeal is received. it and a copy of the related final decision of the District Engineer will be forwarded to the Corps of Engineers Board of Contract Appeals (ENG BCA), through the Division Engineer and Chief Trial Attorney (CECC-F), within ten days of receipt, with copies for each higher level of Counsel and Real Estate, and two copies for HQUSACE (CECC-F), and one copy for CERE-M. Reference Section 71, ER 1180-1-1, part 1, B-201.

8-167. Appeals Under New Leases. The CDA procedures set out in ER 1180-1-1 will be followed. When the original notice of appeal is received, it and a copy of the related final decision of the District Engineer will be forwarded to the Corps of Engineers Board of Contract Appeals (ENG BCA), through the Division Engineer and Chief Trial Attorney (CECC-F). within ten days of receipt, with copies for each higher level of Counsel and Real Estate, and two copies for HQUSACE (CECC-F), and one copy for CERE-M. Reference Section 71, ER 1180-1-1, part 1, B-201.

8-168. Pre-acceptance Protests for Competitive Lease Applicants.

a. Who May Protest. Only a qualified applicant may protest. A qualified applicant for the purpose of this protest are those next in line if the awardee is disqualified because the protest is approved, or qualified because the protested issue will revise the terms of notice.

b. Types of Protests

(1) A qualified lease applicant may file a protest from a decision denying the lease application, or when the qualified lease applicant believes there is an error contrary to fact or not in conformity with the provisions of the notice of availability to lease.

(2) Persons may also file a protest if they believe that the Terms of Notice are improper. Improper Terms of Notice can include creating restrictions that are not necessary.

c. Applicability. This protest process applies to competitive leases.

d. Time Line for Filing Protest.

(1) Errors in the notice to lease must be protested before lease applications are due.

(2) Protest from a decision denying the lease application must be filed after a written decision has been made.

e. Notification to Lease Applicant.

(1) Notification of Decision. Each lease applicant will be notified of the decision made on the lease application and the reasons for such action (i.e., lease issued to applicant making a higher offer). Information need not be provided about the protest process in this initial denial letter.

(2) If a lease applicant requests how to make a protest, the applicant must be notified of the protest procedures. Lease applicants should be informed: that they may protest any decision they feel may be in error because the government's action is not in accord with the facts or the provisions of the notice of availability to lease; that a written protest must be filed with the district Chief of Real Estate within 30 days from the date of the initial denial letter; that a protest shall clearly identify the errors and state the reasons for the protest; that they may submit whatever information they desire in support of the protest and that such additional information, including a professional appraisal paid for by the lease applicant, will be investigated and considered. Lease applicants shall be advised of the name of the district Chief of Real Estate who will consider the protest.

(3) A protester will be informed within 60 days of receiving all materials necessary for review when the protest will be decided.

f. Processing Protests.

(1) A lease applicant may protest an unfavorable determination on the lease application. If all matters protested by the lease applicant are resolved to the lease applicant's satisfaction, no further action on the protest is necessary.

(2) Investigation Procedures. Any errors cited by the lease applicant or additional information furnished by the lease applicant in support of the protest shall be reviewed promptly by the district Chief of Real Estate.

(a) The investigation shall be as extensive as necessary to clearly define the basis for the protest and to produce information required for consideration of the protest.

(b) Upon completion of the investigation, the information submitted with the lease application shall be considered. together with the information obtained as a result of the investigation, and a determination shall be made as to whether favorable action should be taken.

(c) A report of the investigation and consideration shall be prepared and will include the following headings:

(i) Lease Applicant's Disagreement With the Government: A brief outline of the basis of the disagreement.

(ii) Summary of Findings on Protest: The scope of the investigation and consideration of the protest, and pertinent information necessary to determine the merits of the protest.

(iii) Conclusions and Reasons: The decision on the protest and the reasons in support thereof.

(d) Appraisals. If the protest relates to value, the appraisal branch should review the value and submit findings to the Chief of Real Estate.

(3) A protest will be considered closed once action has been taken in conformity with the final decision made on the protest.

(4) Protests should be reviewed and decided within 60 days.

g. Staying of Lease.

(1) The district Chief of Real Estate shall determine whether a lease should be stayed during the protest process. There should be a presumption that a lease should be awarded contingent on the outcome of the protest process.

(2) Factors to be considered are:

(a) Time sensitivity of the lease.

(b) The impact if the protest is granted and the lease is stayed or not stayed until protest is over. Impact should include loss/damage suffered to the government as well as the lease applicants.

(c) The probability that the protestor might win based on the facts as known by the Chief of Real Estate.

h. Paragraphs to be Added to the Lease Application Package. The six paragraphs below should be inserted into lease solicitations.

DISPUTES: Persons may protest the Terms of the Notice to Lease before lease applications are due to (insert name of the district Chief of Real Estate) who shall mail or otherwise furnish a written copy of the decision to the protestor. (insert name of the district Chief of Real Estate) should consider such protest within 60 days of delivery, but may continue the leasing process.

Except as otherwise provided in this proposal, any protest, by a qualified lease applicant, concerning a question of fact or law arising under this application which is not disposed of by agreement may, within 30 days of the date of the government rejection letter to that applicant, be protested to (insert name of the district Chief of Real Estate) who shall mail or otherwise furnish a written copy of the decision to the lease applicant.

In connection with any written protest proceedings under this provision, protestor should clearly

(1) identify the lease in question;
(2) identify contact parties;
(3) state the reasons for the protest;
(4) provide documentation in support of the protest, and;
(5) state what is the desired result.

The decision of the district Chief of Real Estate, or duly authorized representative for the determination of such protests, shall be final and conclusive.

The Chief of Real Estate reserves the right to establish management objectives and requirements designed to achieve these objectives. These objectives are not subject to this disputes process. [Examples of management requirements in agriculture and grazing leases are stocking rates, grazing seasons, lease plot configuration, work in lieu of cash rent, rotation schedules, etc (the last sentence to be changed to fit the type of lease being advertised).]

The district Chief of Real Estate will determine whether a lease should be stayed during the protest process. There is a presumption that a lease should be awarded contingent on the outcome of the protest process. Therefore, pending final decision of a dispute, a lessee awarded the lease shall proceed diligently with the performance of the lease and in accordance with the Chief of Real Estate's decision.

8-169. Reserved.

SECTION XIV. EASEMENTS

8-170. General. This section covers the procedures and responsibilities for granting, managing, amending, and terminating easements involving real property controlled by the Department of the Army (military and civil works). Instructions in Section VI for processing applications and determining availability apply, except as otherwise provided in this section. Easement instruments should not include temporary work areas. These areas should be authorized by a license in accordance with Section XVI. Generally, Army and Air Force real property should not be made available for non-governmental facilities such as powerlines, pipelines or roads if suitable privately owned land is available.

8-171. Service Contracts. Utility facilities which serve only an installation or project do not require easements and such facilities should be provided for by service contract. However, in those instances where utility companies insist on a separate easement, or when installations request an easement be granted for documentation purposes, one may be granted without a Determination of Availability. In those instances, some conditions shown in Appendix 8-D, Figures D-1 or D-2 may require revision to reflect the specific circumstances. Easements granted solely in support of a service contract do not require monetary consideration. Requests for such easements on military installations may be forwarded by the installation directly to the district without further approvaI of Reports of Availability. Similarly, public park and recreation lessees may contract for necessary utilities without granting an easement for that purpose, subject to prior approval of the District Engineer. However, rights-of-way for utilities which also serve other grantees or members of the public require an easement.

8-172. Prior Approval of Assistant Secretary of the Army (I,L&E). Certain easements involving military real estate in the United States, Guam, Puerto Rico, the American Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands require prior approval of the Assistant Secretary of Army (I,L&E) in accordance with AR 405-80 if they will significantly reduce or redirect an installation mission, are controversial, or have an estimated annual fair market value in excess of $200,000. Also, transportation and utility systems in Alaska under the Alaska National Lands Conservation Act, 16 U.S.C. § 3161 et seq., Section l104(b)(2), requires approval of all appropriate Federal agencies for transportation or utility outgrants on land in any conservation system unit, national recreation area, or national conservation area in Alaska. See Paragraph 8-67.

8-173. Competition. Competition is not applicable in granting easements to public entities. Competition on other easements may be considered if applicable.

8-174. Consideration.

a. Except as otherwise specifically provided in succeeding paragraphs of this section, or by express instruction in individual cases, all easements will reserve as consideration the greater of the fair market value or the established administrative charge, as set forth in Paragraph 8-81. b.(2) above.

b. Monetary consideration may be waived for easements issued to Federal, State or local governments, political subdivisions or nonprofit organizations for purposes benefiting the general public. However, if the grantee's principal source of revenue is generated through charges made to its customers (similar to those rendered by a profit-making corporation or business), consideration shall be reserved.

c. When monetary consideration is waived, the consideration condition should be revised to read as follows: "The consideration for this easement shall be the construction, operation and maintenance of the _____ for the benefit of the general public in accordance with the terms and conditions hereinafter set forth".

d. As an exception, in addition to fair market value, charges for surveys, legal descriptions, environmental monitoring, and other identified costs, are mandatory for processing and monitoring construction, operation and maintenance of fuel-carrying pipelines. (See Paragraph 8-181 below.)

8-175. Statutory Findings. In accordance with the statutes cited in this section as authority for various types of easements, the District Engineer should make specific findings in the exact words of the applicable statute before granting an easement under delegated authority. If no authority is delegated, transmittal correspondence must give the specific findings in the exact words of the applicable statute.

8-176. Format. Easements will be prepared using applicable formats attached as figures to this chapter or applicable numbered Engineer Forms. Conditions may only be deleted if so indicated in the format or in this Chapter. Conditions necessary for site specific environmental, cultural and operational requirements may be added, provided that such additions are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified by the District Engineer and forwarded to HQUSACE (CERE-M) for approval before the easement is executed.

8-177. Execution. Except as provided in succeeding parts of this section, Division Engineers and their delegates (Division Directors, Real Estate, District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate) are authorized to execute, amend, and renew easements on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army." Proposed easements of major importance, unusual character, or controversial nature which deviate from instructions in this chapter will be sent with full explanation to HQUSACE (CERE-M).

8-178. Revocation and Termination. Division Engineers and their delegates (Division Directors, Real Estate, District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate) are authorized to revoke and terminate those Army easements which they have authority to execute, in accordance with the terms of the easement and Paragraph 8-84 of this chapter. Upon request by the grantee, the 30 day notice of termination may be extended up to a one year period when the easement involves substantial

improvements or constructions costs. A grantee may terminate an easement by reconveyance or release to the United States. Unrecorded instruments may be released by returning the executed instrument endorsed with a surrender and release to the United States; recorded easements require a separate recordable reconveyance to the United States. Termination of an easement does not relieve the grantee of obligations to restore the premises or to pay monies due the United States.

8-179. Easements for Electric Power and Communication Lines, and Structures and Facilities for Radio, Television, and Other Communication Services.

a. Authority. Title 43, United States Code, Section 961.

b. Applicability. This authority applies to acquired land and withdrawn public domain lands unless the terms of withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn lands. If the term of the proposed easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal.

c. Administrative Finding. A finding by the District Engineer that the grant is not "incompatible with the public interest" must precede the grant.

d. Term. The term cannot exceed 50 years and shorter periods of time should be granted if user requirements allow. All easements must allow termination, in whole or in part, by the Secretary for failure to comply with the terms, for non-use for a two year period, or for abandonment.

e. Width of Rights-of-Way. Rights-of-way should be the minimum width for the particular use: for electric power or communication lines a maximum of 200 feet on each side of the center line; for radio, television, and other transmitting, receiving and relay structures, a maximum of 400 feet by 400 feet.

f. Format. The approved format for a Right-of-Way for Electric Power Transmission or Communication Facilities easement is shown in Appendix 8-D, Figure 8-D-1. This is intended as a generic format for use at Civil Works Projects as well as Army and Air Force installations. Completion of wording in the title block, granting clause, Condition 5 and the witness clause will be necessary to identify the proponent of the easement. The following changes may be made by District Engineers.

(1) Condition 2.a. shall be revised when no monetary consideration will be charged (see Paragraph 8-174.c. above). In that situation Condition 2.b. will be deleted. In the event the consideration is a lump sum payment for the entire term, Condition 2.b. may be deleted.

(2) Condition 12 should be deleted in easements granted to non-federal governmental entities.

(3) Condition 14 requiring services to the Government may be deleted.

(4) In unusual cases or when consideration is substantial, the words "or disposal" may be deleted in Condition 16.

(5) When the easement is granted without monetary consideration, Condition 21 on non-discrimination will be deleted and Condition 18 of the public road easement shown in Appendix 8-D, Figure 8-D-3 will be used instead.

(6) Site specific environmental, cultural and operational requirements may be added.

g. Execution. Easements are executed in accordance with Paragraph 8-177 above.

8-180. Easements for Gas, Water and Sewer Pipelines.

a. Authority. Title 10, United States Code, Section 2669, except for those gas pipelines covered by Paragraph 8-181 of this chapter.

b. Applicability. This authority applies to acquired land and withdrawn public domain lands unless the terms of withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn lands. If the terms of the proposed easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal. Easements granted under this authority may include a pump as an appurtenance to the pipeline when it is a relatively minor appendage. When a pumping facility becomes a major structure, the easement will also cite Title 10 U.S.C. § 2668 as the granting authority.

c. Administrative Finding. A finding by the District Engineer that the grant "will be in the public interest and will not substantially injure the interest of the United States in the property affected" must precede the grant.

d. Term. The statute does not specifically limit the term. Easements should normally not exceed 50 years and shorter periods of time should be granted if user requirements allow. All easements must allow termination, in whole or in part, by the Secretary for failure to comply with terms, for non-use for a two year period, or for abandonment.

e. Width of Rights-of-Way. The statute provides that no easement may include more land than is necessary for the purpose of the grant. If the right-of-way width is inadvertently not specified in the easement, the width will be limited to the area actuaIly occupied by the pipeline with rights of ingress and egress for installation, operation, and maintenance.

f. Format. The approved format for a pipeline right-of-way easement is shown in Appendix 8-D, Figure 8-D-2. This is intended as a generic format for use at Civil Works projects as well as Army and Air Force installations. Completion of wording in the title block, granting clause, Condition 5 and the witness clause will be necessary to identify the proponent of the easement. The following changes may be made by the District Engineer.

(1) Condition 2.a. shall be revised when no monetary consideration will be charged (see Paragraph 8-174.c. above). In that situation Condition 2.b. will be deleted. In the event the consideration is a lump sum payment for the entire term, Condition 2.b. may be deleted.

(2) Condition 14 requiring services to the government may be deleted.

(3) In unusual cases or where substantial consideration is paid, the words "or disposal" may be deleted in Condition 16.

(4) When the easement is granted without monetary consideration, Condition 21 on non-discrimination will be deleted and Condition 18 of the public road easement shown in Appendix 8-D, Figure 8-D-3 will be used instead.

(5) Easements for irrigation pipelines to holders of established water rights from states will contain the following added conditions:

(a) This easement is granted for the exercise of water rights granted by the State of _____ and does not create any right to use water from the _____ Project. Granting of this easement does not preclude the Secretary of the Army from requiring the grantee to enter into an appropriate water service contract in consideration of such irrigation benefits as may, in the opinion of the Secretary of the Army, be derived from the withdrawal of irrigation water from the _____ Project.

(b) All electrical equipment will be installed, operated and maintained in compliance with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

(c) Electrical service to submerged motors or those located above water shall be by means of a sealed, water-proof, multiple conductor cable with controls and switches located on land. The location of such motors and the electrical feeders shall be clearly marked to be visible to boaters and swimmers. Additionally, signs warning "DANGER-HIGH VOLTAGE -Unauthorized Access Prohibited" shall be erected to be visible from the land and water approaches to the equipment.

(6) Site specific environmental, cultural and operational requirements may be added.

g. Execution. Easements are executed in accordance with Paragraph 8-177 above.

8-181. Easements for Various Rights-of-Way.

a. Authority. Title 10, United States Code, Section 2668 provides authority for the following types of easements: roads and streets; railroad tracks; oil pipelines; substations for electric power transmission lines, telephone lines and telegraph lines; and pumping stations for gas, water, sewer, and oil pipelines; canals; ditches; flumes; tunnels; dams and reservoirs in connection with fish and wildlife programs, fish hatcheries and other improvements relating to fish culture; and for certain other purposes.

b. Applicability. This authority applies to acquired land and withdrawn public domain land unless the terms of withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn land. If the term of the proposed easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal. The words “and for certain other purposes” authorize granting an easement normally considered a right-of-way for any purpose not enumerated above and which is not included in other parts of this section, including, but not limited to, 10 U.S.C. § 2669 and 40 U.S.C. § 319.

c. Administrative Finding. A finding by the District Engineer that the grant “will not be against the public interest” must precede the grant.

d. Term. The statute does not specifically limit the term. Rights-of-way for public roads, streets, and main line railroad tracks are for permanent use and should be granted in perpetuity. Normally, terms of other easements under this statute should not exceed 50 years, and shorter periods of time should be granted if user requirements allow. All easements must allow termination, in whole or in part, by the Secretary for failure to comply with terms, for nonuse for a 2-year period, or for abandonment.

e. Width of Rights-of-Way. The statute provides that no easement may include more land than is necessary: rights-of-way should be limited to the minimum width that the use requires.

f. Format.

(1) Roads and Streets. The approved format for an easement for a public road or street is shown in Appendix 8-D, Figure 8-D-3, with the exception in subparagraph (2) below. Where a road easement granted is not a public road, delete the word “public” in the title block, delete Condition 2 --Consideration and Condition 18 --Non-Discrimination and substitute therefor, Condition 2--Consideration and Condition 21 --Non-Discrimination as shown in the easement for electric powerline, Appendix 8-D, Figure 8-D-1.

(2) Limited Access Roads.

(a) The Army, Air Force, and Federal Highway Administration, Department of Transportation, have accepted Appendix 8-D, Figure 8-D-4: Easement and Relinquishment of Access Rights to a Section of... Interstate and Defense Highways as the format for easements for limited access roads. Such easements must, above all, explicitly and carefully delineate the proposed access roads (Army, military or civil works, and Air Force). The easements and attached exhibits must carefully and adequately define the grantee's obligations in limited access easements. The granting clause of the easement releases all the Government's rights of abutment between the highway and the installation or project lands, including lands abutting on the parts of the highway not specifically covered by the easement.

(b) Present Army and Air Force policies permit the grant of such easements to states without monetary consideration; however, grantees should be required to restore the installations or projects to as efficient an operating condition as that which existed prior to road construction, at the grantee's own expense. Agreement should be reached with the state on such restoration, to the satisfaction of the using service, before the easement is processed.

(3) Easements for Other Purposes. Although there is no prescribed form, the approved easement formats shown in Appendix 8-D, Figures D-1, D-2 and D-3 may be used as guides. Additional guidance is as follows:

(a) Insure that the authority shown in the granting clause reads 10 U.S.C. § 2668.

(b) Paragraphs 8-179.f and 8-180.f also apply to this category of easements.

(4) Site specific environmental, cultural and operational requirements may be added.

g. Execution. Easements are executed in accordance with Paragraph 8-177 above.

8-182. Easements for Fuel Pipelines and Related Facilities.

a. Authority. Section 28, Mineral Leasing Act of 1920, as amended (30 U.S.C. § 185) provides authority to grant easements for pipelines and related facilities for the transportation of oil, natural gas, synthetic liquid or gaseous fuels, or any refined product produced therefrom.

b. Applicability.

(1) The Secretaries of the Army and Air Force are authorized to grant easements for rights-of-way for above purposes over, in, and upon lands they control.

(2) The Secretary of the Interior is authorized to grant an easement which traverses lands administered by two or more Federal agencies after consulting with them, in accordance with Bureau of Land Management regulations published in 43 C.F.R. 2880.

(3) Pipelines for the above purposes are not subject to requirements and limitations of this statute if they have
been relocated on Government owned lands at Government initiative and for Government benefit, as authorized by a relocation contract.

(4) In this section and the applicable statute, "pipeline" means a line traversing Federal lands for transport of oil or gas. The term includes feeder lines, trunk lines and related facilities, but does not include a lessee's or lease operator's production facilities located on his lease. It also does not include distribution lines supplying gas or oil fuel to residential or commercial customers. Easements for those service lines are granted under authority of 10 U.S.C. § 2668 and 10 U.S.C. § 2669 and as provided for in Paragraphs 8-172 and 8-173. Production facilities will be approved by a consent consistent with the interest the Government acquired from the mineral owner or his lessee and applicable State and Federal laws and regulation. Usually the Government acquired the right to approve the type and location of mineral development structures where the oil and gas minerals were not acquired in fee.

c. Statutory Requirements. The District Engineer will make initial findings, determinations, and recommendations and will include information in the transmittal correspondence so that the Secretaries of the Army or Air Force, or their representatives, may make findings and determinations required by law. The following statutory requirements are keyed to relevant sections of the statute in parentheses after the subheadings:

(1) Administrative Finding, (b)(l). It must be determined that the proposed easement will not be inconsistent with the authorized purposes of the Federal installation or project.

(2) Width Limitations, (d). The width of a right-of-way shall not exceed 50 feet plus the ground occupied by the pipeline and related facilities, unless it is determined that a wider right-of-way is necessary for operation and maintenance after construction, for protection of the environment, or for public safety. Related facilities include but are not limited to the following: valves, pump stations, supporting structures, bridges, monitoring and communication devices, surge and storage tanks, terminals, roads, airstrips, and campsites. They need not necessarily be connected to or contiguous to the pipe and may be subjects of separate rights-of-way. The District Engineer must fully justify a right-of-way wider than 50 feet.

(3) Temporary Licenses, (e). Temporary licenses may be issued to supplement easements for fuel-carrying pipelines, for purposes of construction, operation, maintenance, protection of the natural environment or public safety. District Engineers are authorized to issue such licenses in connection with easements for pipelines of less than 24 inches in diameter. Temporary licenses for pipelines 24 inches in diameter or larger will be forwarded to HQUSACE (CERE-M) for execution simultaneously with the easement itself. Refer to Section IV of this chapter for instructions on preparation of licenses.

(4) Pipeline Safety, (g). Any special requirements for safe operation of the pipeline or related facilities should be imposed.

(5) Costs of Environmental Documentation, (h). The applicant will pay all costs for environmental assessment and monitoring. The agency head shall impose necessary stipulations to prevent or control damage to the environment, including fish and wildlife habitat, damage to public or private property, and hazards to public health and safety; and require restoration, revegetation, and curtailment of erosion of the surface of the land when deemed appropriate.

(6) Disclosure of Ownership, (i). If a partnership, corporation, association, or other business entity applies for an easement, the application shall disclose, where applicable:

(a) Name and address of each partner.

(b) Name and address of each shareholder owning 3 percent or more of the shares; the number and percentage of any class of voting shares of the entity.

(c) Name and address of each affiliate of the entity. If the entity controls an affiliate, include the number of shares and percentage of any class of voting stock of that affiliate; if, however, the affiliate controls the entity, include the number of shares and percentage of any class of voting stock of the entity.

(d) If this information is already on file, and current, in the District Engineer's office, or in load BLM or Federal Energy Regulatory Commission offices, references may be made to it; the applicant need not file repetitious disclosure documents with successive applications.

(7) Technical and Financial Capability, (j). The District Engineer will make a determination and finding of the applicant's technical and financial capability to construct, operate, maintain, and terminate the project for which the permit or right-of-way is requested, in accordance with this law.

(8) Public Notice and Hearing, (k). The District Engineer shall give notice, including a public hearing when appropriate, to Federal, state, and local governmental agencies and the general public, and provide them an opportunity to comment on right-of-way applications. Notice may be given by publication of notice of application in the Federal Register and local newspapers; copies of the notice should be sent to the state governor, local government heads, and Federal agency heads in the locale of the proposed easement. Publication of the notice may be waived if the pipeline will have a minor impact. In considering whether to provide a hearing, certain factors should be considered: the magnitude of the undertaking, probable environmental and public impact, risks and dangers involved. No further hearings are necessary; however, if the pipeline proposal and related aspects have previously been scrutinized through NEPA procedures or other hearings held by Federal or state agencies. The law does not intend that public hearings be duplicated.

(9) Reimbursement of Costs and Payment of Consideration, (1). An applicant for a license or right-of-way shall pay the United States for administrative and other costs incurred in processing an application, including cost of environmental studies. Likewise, the holder of a

license or right-of-way shall reimburse the United States for costs of monitoring construction, operation, maintenance, and termination of any pipeline and related facilities on such right-of-way or license area; the holder shall pay in advance the fair market value of the interest granted as determined by the District Engineer. Amounts will be separately identified in the correspondence and in the easement instrument; a condition requiring the grantee to pay consideration in advance and to pay monitoring costs will be included.

(10) Bonding, (m). The District Engineer may require the holder of a license or right-of-way to furnish a satisfactory bond or other security for all or any of the obligations imposed by terms and conditions of the license, right-of-way, or regulations.

(11) Term, (n). Each grant or renewal of a right-of-way shall be limited to a reasonable term, but in no event more than 30 years, in view of all circumstances concerning the project. Duration of the grant shall consider the cost of the facility, its useful life, and public purpose it serves. Renewals must be authorized if the project is operating commercially and is operated and maintained according to existing law.

(12) Suspension or Termination of Right-of-Way, (o). The easement instrument shall provide that:

(a) Abandonment of a right-of-way or failure to comply with provisions of this instrument or with applicable provisions of the law may be grounds for suspension or termination of the right-of-way. After due notice to the holder of the right-of-way, reasonable opportunity to comply, and appropriate administrative proceeding according to 5 U.S.C. § 554, the Secretary of the Army or Air Force may determine that such grounds exist and that suspension or termination is justified. Administrative proceeding is not required if the terms of the right-of-way provide that it terminates on occurrence of a certain condition, event, or time.

(b) The Secretary may temporarily suspend activities within a right-of-way or license area without administrative proceeding if immediate suspension is necessary to protect public health, safety, or the environment.

(c) If the holder deliberately fails to use the right-of-way for the purpose for which it was granted or renewed for any continuous 2-year period, this shall constitute a rebuttable presumption of abandonment of the right-of-way; however, if the failure to use the right-of-way is caused by circumstances not subject to the holder's control, the Secretary is not required to begin proceedings to suspend or terminate. Division Engineers or their representatives may suspend or terminate an easement for a pipeline up to 24 inches in diameter.

(13) Joint Use of Rights-of-Way, (p). The easement instrument will contain a condition reserving to the Secretary of the Army or Air Force the right to grant additional rights-of-way or licenses for compatible uses in outgranted areas.

(14) Common Carrier Requirements, (r). The easement instrument will require:

(a) Pipelines and related facilities to be constructed, operated, and maintained as common carriers.

(b) Owners or operators of pipelines to accept, convey, transport, or purchase all oil or gas delivered to the pipeline whether such oil or gas was purchased on Federal or on nonfederal lands.

(c) Common carrier provisions of this statute shall not apply to any natural gas pipeline operated by any person subject to regulation under the Natural Gas Act, 15 U.S.C. § 717 et seq., or by any public utility subject to a state or municipal agency having jurisdiction to regulate rates and charges for natural gas sold to consumers. If applicable, an added condition will require that such carriers shall purchase without discrimination any natural gas produced in the vicinity which is not subject to state regulatory or conservation laws.

(d) If the holder of an easement pursuant to this statute is not a purchaser of oil or gas, references to "purchase" of oil and gas in (a)(1) and (a)(2) and the condition in (b) may be deleted; however, the holder must agree to reinstatement of those references in case the grantee later becomes a purchaser within the meaning of the statute.

(15) State Standards, (v). The District Engineer will carefully consider state standards for pipeline construction where the right-of-way crosses Federal and nonfederal lands and where the state standards for pipeline construction are more stringent than Federal standards, they will be required.

(16) Liability, (x). Conditions 5, 6, 7, and 8 of Appendix 8-D, Figure 8-D-5; Easement for Right-of-Way for Fuel Carrying Pipeline are required.

(17) Report to Congress of Application for Large Pipeline, (w)(2). All applications for an easement for a fuel carrying pipeline 24 inches or larger in diameter will be forwarded to HQUSACE (CERE-M) for notification to the Congress and for execution at the Secretariat level. Along with a draft of the proposed instrument, furnish complete details and supporting information, including maps in quadruplicate. The Secretary of the Army will notify the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate of the proposed easement.

d. Format. The approved format for fuel carrying pipeline easements is shown in Appendix 8-D, Figure 8-D-5 and will include all conditions and provisions previously listed and required by the statute. Site specific environmental, cultural and operational requirements may be added. Other deviations from the format must be approved by HQUSACE (CERE-M).

e. Execution. See Paragraph 8-177 for execution of easements for pipelines less than 24 inches in diameter. All easements for pipelines 24 inches in diameter or larger will be executed in the office of the Assistant Secretary of the Army (IL&E).

f. Consents. Consents for fuel-carrying pipelines will be authorized pursuant to the administrative power of the Secretary of the Army or Air Force and will be prepared according to Paragraph 8-188

8-183. Easements for Ferry Landings, Bridges, and Livestock Crossings.

a. Authority. Title 10, United States Code, Section 4777 (Army) and Title 10, United States code, Section 9777 (Air Force).

b. Applicability. These authorities authorize the granting of easements for the (1) landing of ferries at a military reservation, (2) erection of bridges on a military reservation and (3) driving of livestock across a military reservation. It applies to acquired land and withdrawn public domain lands, unless the terms of the withdrawal provide that the Department of the Interior will issue rights-of-way over withdrawn lands. If the term of the easement over withdrawn public domain land exceeds the remaining term of the withdrawal, the easement shall be coordinated with BLM for concurrence before execution or the term will be limited to the remaining term of the withdrawal.

c. Administrative Finding. The Secretary must find that the grant will not injure the installation or inconvenience the military forces stationed there. The District Engineer will provide this information in the transmittal correspondence.

d. Term. The statute does not specifically limit the term, however it is usually appropriate to grant perpetual easements for bridges. Rights-of-way for ferry landings or for driving livestock should be limited to a maximum term of five years, or less, as appropriate, using a revocable license. If longer terms are justified, the right-of-way should be granted by an easement of the appropriate term.

e. Width of Rights-of-Way. Although the statute does not limit the width of rights-of-way, no more land than is necessary should be included.

f. Format. There is no prescribed instrument format, however those shown in Appendix 8-D, Figures D-1, D-2, and D-3 may be used as a guide. When a license is used, the format shown in Appendix 8-E, Figure 8-E-3 should be used. Advice and assistance may also be requested from HQUSACE (CERE-M) on instrument preparation.

g. Execution. Execution authority of the Secretaries has not been delegated. Instruments will be prepared for execution in the office of the Secretary and sent to HQUSACE (CERE-M) for processing.

8-184. Easements Granted Pursuant to Statutory Exchange Authorities.

a. Authority.

(1) Civil Works Lands. Privately owned lands required for river and harbor or for flood control purposes may be acquired by exchange for lands excess to project purposes, under provisions of the Act of Congress approved 20 June 1938 (33 U.S.C. § 558b), as amended by the Act of Congress approved 11 August 1939 (33 U.S.C. § 558b-1).

(2) Military Lands. The exchange of an easement over military kinds for a similar easement is a very infrequent action, since there is no general exchange authority for military lands as there is for civil. The annual Military Construction Authorization Act (MCA) usually authorizes acquisition by donation, purchase, or exchange of Government-owned lands at specific installations or for specified purposes. If exchange of easements is contemplated, the current MCA Act or previous Acts should be examined for specific authority.

(a) The Minor Land Acquisition Act, as amended (10 U.S.C. § 2672) authorizes acquisition of any land rights needed for national defense that do not cost more than $200,000. The Judge Advocate General has held that this law is authority for exchanges.

(b) Title 10, U.S.C., Section 2672a, authorizes acquisition by exchange of any land rights that are (1) needed for national defense, (2) essential for the operational integrity of an installation, and (3) urgently needed and there is insufficient time for inclusion in an MCA Act. Since the Armed Services Committees must be advised at least 30 days in advance of such actions wherein the value of the property rights to be acquired exceeds $200,000, HQUSACE (CERE-M) should be notified 60 days in advance.

(3) Since an exchange involves both acquisition and disposal, pertinent provision of Chapters 5 and 11 should be consulted.

b. Applicability. Outgrants under the authority shown in paragraph a.(l) above are often in fulfillment of a Government relocation contract. Relocations contracts may provide for both an outgrant of an easement over Government land and a conveyance of an easement interest outside project or installation boundaries. Conveyances will be prepared in accordance with Chapter 11. The exchange provisions of the relocation contract must provide that the Government will grant an easement over project land, in the agreed upon form, subject to the Secretary's approval. Parcels proposed for exchange should be of approximately equal value.

c. Term. Statutes authorizing exchanges at civil works projects do not limit terms of the grants and normally these are issued in perpetuity, however at military reservations there may be limitations. Generally, the term granted should be the same as the term of the easement to be acquired.

d. Width of Rights-of-Way. Although the statutes do not impose limitations, the width of rights-of-way will be determined by the need to provide a reasonable exchange facility.

e. Format. There is no approved instrument format, but those referenced in other parts of this section will be used as guides in negotiation and in instrument preparation as far as

practicable, recognizing that some standard provisions may not be acceptable to grantees. The general rule is to convey no greater interest than the grantee currently holds, but the circumstances of a particular case will determine whether specific provisions in the instrument should be modified or deleted.

f. Consideration. The total interest acquired, in cash or in kind, in the exchange represents the consideration to the Government.

g. Execution. The authority of the Secretaries has not been delegated and all easements will be forwarded to HQUSACE (CERE-M) for processing and execution in the office of the appropriate Secretary.

8-185. Easements for Rights-of-Way or Other Purposes: Relinquishment of Legislative Jurisdiction.

a. Authority. Title 40, United States Code, Section 319 authorizes grants of easements for rights-of-way or other purposes and authorizes relinquishment of legislative jurisdiction as necessary or desirable in connection with such easements.

b. Applicability. The purposes for which these easements may be granted are not limited, but, under existing policy, this statute will not be cited as authority for any easement specifically covered by other statutes in this section or where a lease should properly be used instead of an easement. Exceptions to that policy are:

(1) Where it is desirable to relinquish all or any legislative jurisdiction in the area covered by the proposed easement; and

(2) Where no other authority exists for an exchange of easements.

c. Procedure. Before an easement is processed in connection with a relinquishment of jurisdiction under authority of this statute, the District Engineer should consider and apply provisions of AR 405-20, Federal Legislative Jurisdiction and chapter 9, Federal Legislative Jurisdiction and Annexation, of this regulation. Since the Secretary of the Army must approve all easements under this statute, as well as all relinquishment of any degree of legislative jurisdiction, it is desirable to submit both matters as one action. The easement assembly will therefore contain the necessary proposed letters and documents which together make up a retrocession assembly in accordance with state law. The Secretary of the Army may then approve both actions on the same submission. This same procedure of one submission would also apply in the case of an exchange of easements using this authority.

d. Administrative Finding. The District Engineer must find that an easement granted under this authority “will not be adverse to the interests of the United States”.

e. Term. The statute does not specifically limit the easement term, but rights-of-way contemplated for permanent public use will be granted in perpetuity. Other kinds of easements granted under this statute should be limited to 50 years or less, as the particular use requires.

f. Width of Rights-of-way. While the statute does not limit the width of an easement, it should be no wider than necessary for the purposes of the easement.

g. Format. There is no prescribed instrument format, however the format shown in Appendix 8-D, Figures D-1, D-2 or D-3 may be used as a guide. Advice and assistance may also be requested from HQUSACE (CERE-M) on instrument preparation. The following provisions may be included, if applicable:

(1) Where a termination provision is required, the following wording should be added, "Termination shall be by written notice given the grantee, its successors or assigns. Termination shall be effective as of the date of such notice."

(2) Air Force easements will provide in the granting clause that the Secretary of Air Force has "determined that the granting of this easement will not be adverse to the interests of the United States."

(3) If any legislative jurisdiction is relinquished to the state, the following wording should be added; "In connection with this grant of easement, the Secretary of the Army (or Air Force), by separate instrument, is relinquishing such jurisdiction as he considers desirable over the easement area, to take effect upon acceptance thereof by the State of _____, in such manner as its laws may provide."

h. Execution. Authority for execution of these easements, as well as retrocession assemblies, has not been delegated and all such instruments should be forwarded to HQUSACE (CERE-M) for approval and execution.

8-186. Easements on Excess and Surplus Lands.

a. Authority. Pursuant to the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C 471), the General Services Administration (GSA) has authorized the disposal agency, or the holding agency with approval of the disposal agency, to permit the temporary use of excess and surplus real property for productive use; provided that "the use and occupancy will not interfere with, delay or retard disposal." (41 C.F.R. 101-47.203-9 and 101-47.312) This authority does not apply to base realignments or closings under 10 U.S.C. § 2667f.

b. Applicability. When the Department of Army or Air Force is the disposal agency, easements may be granted subsequent to a finding that the easement will not interfere with, delay or retard disposal. When the Department of Army or Air Force is the holding agency, prior approval of the appropriate regional office of GSA is required.

c. Term. The easement term will not exceed one year unless otherwise authorized by GSA.

d. Format. There is no prescribed instrument format, however the format shown in Appendix 8-D, Figures D-1, D-2 or D-3 may be used as a guide. Advice and assistance may also be requested from HQUSACE (CERE-M) on instrument preparation. All such easement instruments shall be revised as follows:

(1) The words "conferred upon the Secretary by law" should be substituted for the authority cited in the granting clause.

(2) The words "but revocable at will by the Secretary of the _____, or the officer of the Government having jurisdiction over the property" should be added to the end of Condition 1, TERM.

(3) Other changes may be made as necessary to conform to the particular requirements of the easement.

e. Execution. See Paragraph 8-177.

8-187. Reserved.

SECTION XV. CONSENTS

8-188. Consent To Easement Agreements.

a. General. The serviant estate holder may grant additional easements or other lesser interest over land where the United States owns an easement interest or other lesser interest. The United States may consent to use of a subsequent easement, subject to any conditions required to protect the Government's interest.

b. Authority. Authority to grant an easement includes authority to consent to a subsequent easement. A consent agreement may be executed under administrative power of the Secretary of the Army.

c. Determination of Availability. No determination of availability is required for a consent. However, the proposed action will be thoroughly coordinated with the primary using element and the documentation thus obtained will be made a part of the official file. As a general rule, activities or construction and use of structures or facilities which would injure or defeat the purposes for which the property interest was acquired will not be approved.

d. Consideration. Since no right or interest in real property is granted by consents, consideration or charges for administrative expenses are not applicable.

e. Format. The format for Consents to Cross Government Easement is shown in Appendix 8-D, Figures D-6.

f. Section 10/404 Permits. During the Section 10 or 404 permits process, if a consent is determined to be appropriate by the Chief of Real Estate, consent conditions, using the approved formats as a guide, may be incorporated under "special conditions" of the permit in lieu of executing a separate consent instrument. A copy of the completed permit will be provided for the realty files.

g. Execution. District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate are authorized to execute consents on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army."

8-189. Consent to Structures within an Easement.

a. General. Certain easements owned by the United States contain restrictions on construction of structures within the easement. This right to approve construction was acquired with the easement and should be exercised with caution. The restrictions in the easements can vary significantly from instrument to instrument, even at the same project, so it is important to review each document individually and enforce the restrictions in a manner that is consistent with the rights acquired for each tract.

b. Civil Works Flowage Easements. Careful management of flowage easement areas is necessary because experience has demonstrated that these areas are difficult to control and are subject to constant encroachment pressures. Construction in flowage easement areas almost always interferes, at least to some extent, with the purpose for which the easement were acquired. Construction should only be approved in cases where there is no reasonable alternative location for the proposed structures and the construction will not adversely impact the project. Consents are most appropriate in situations where the construction will benefit a significant segment of the public. Requests for the construction of private structures such as barns and sheds in flowage easement areas should generally be denied. Improvements that will not be damaged by temporary flooding and that will not signifcantly interfere with the project, such as driveways and oil and gas well heads (but not oil storage tanks) generally acceptable.

c. Consideration. Since no right or interest in real property is granted by consents, consideration or charges for administrative expenses are not applicable.

d. Format. The format for Consents to Easement Structures is shown in Appendix 8-D, Figures D-7.

e. Section 10/404 Permits. During the Section 10 or 404 permits process, if a consent is determined to be appropriate by the Chief of Real Estate, consent conditions, using the approved formats as a guide, may be incorporated under "special conditions" of the permit in lieu of executing a separate consent instrument. A copy of the completed permit will be provided for the realty files.

f. Execution. District Engineers and District Chiefs, Real Estate, without authority to redelegate below the District Chief, Real Estate are authorized to execute consents on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army."

8-190. Consent to Oil and Gas Exploration and Development. In some instances the mineral estate was not acquired but was subordinated to the Government's prior right to use the land for operation of the civil works project or military installation. Subordination agreements differ in the restrictions imposed on the mineral estate. Each agreement must be reviewed carefully to determine the extent to which the Government may regulate the development of the minerals. A consent instrument will be used to grant the permission of the Government for mineral development that does not interfere with the operation of the project or installation. The instrument should include any restrictions on the development activities that are reasonably necessary to protect the property rights of the Government and are within the scope of the restrictions permitted by the subordination agreement. Subordinations are not to be confused with oil and gas leases issued by the Bureau of Land Management. See Paragraph 8-119. In cases where the mineral estate has been severed but where no subordination agreement was obtained by the Government, the District Engineer must issue a license to the owner of the mineral estate before the minerals can be developed. See Paragraph 8-208.

8-191. Reserved.

SECTION XVI - LICENSES

8-192. General. This section prescribes procedures and responsibilities for granting, amending, and terminating licenses for the use of real property controlled by the Departments of the Army.

8-193. Definition. A license is a bare authority to an individual, an organization, a corporation, a state or local governmental entity, or another federal agency, to do a specified act or series of acts on the licenser's property without acquiring any estate therein, and authorizes an act which would otherwise constitute a trespass. Use is not exclusive and there is no alienation of title, ownership, or control of Government property. The license instrument provides evidence of the permission granted and of the obligations, responsibilities, and liabilities imposed on the licensee. A license authorizes only the specified use of the property by the licensee. The standard approved format for a license is shown in Appendix 8-E, Figure 8-El.

8-194. Competition. Unless otherwise stated, competition is not required.

8-195. Consideration. Except as specifically provided in succeeding paragraphs of this section, or by express instruction in individual cases, licenses will reserve as consideration the greater of the fair market value or the established administrative charge, as set forth in Paragraph 8-81. When monetary consideration is waived, the consideration condition should be revised to read as follows: "The consideration for this license shall be the construction, operation and maintenance of the premises for the benefit of the general public in accordance with the terms and conditions hereinafter set forth".

8-196. Prelicensing Clearances. Licenses are subject to the clearances shown in Section VI of this chapter. Licenses granted for the use of military property are also subject to the requirements of Title 10, United States Code, Section 2662. See Paragraph 8-110, Report to Committees on Armed Services. The requirements and criteria in that paragraph are also applicable to licenses.

8-197. Non-assignability. A license grants permission personally to the licensee, is not assignable, and is voided by attempted transfer. However, where a licensee has transferred its interest or allowed third parties to use the property, such successors or third parties may be granted a new license, if the situation warrants. Such successor license should include a provision expressly stating that it is not transferable or assignable and that any use by others than the licensee is not permitted.

8-198. Execution. Except as provided in succeeding parts of this section, Division Engineers, Division Directors of Real Estate, District Engineers and District Chiefs of Real Estate, without authority to redelegate, are authorized to execute, amend, and renew licenses on Army-controlled real property. Such instruments will be executed "by authority of the Secretary of the Army." Proposed licenses of major importance, unusual character, or controversial nature which deviate from instructions in this chapter will be sent with full explanation to HQUSACE

(CERE-M). If the property is leased to the United States, note in the transmittal to HQUSACE (CERE-M) whether the Government's lessor consents to the license.

8-199. Revocation and Termination. A license may be revoked at any time, unless the instrument states otherwise. Division Engineers, Division Directors of Real Estate, District Engineers and District Chiefs of Real Estate, without authority to redelegate, are authorized to revoke licenses. The licensee may also terminate the license by relinquishment, by giving the proper notice provided in the license, or by abandonment. Termination of a license by any of these methods does not relieve the licensee of obligation to restore the premises or to pay charges due under the terms of the license.

8-200. Licenses Under the General Administrative Power of the Secretary of the Army.

a. Authority. Pursuant to general administrative powers, the Secretary of the Army may authorize use of real property by a license, revocable at will, provided that the property is not, for the time, required for public use and that the proposed use will directly benefit the United States.

b. Competition. Competition is not required in granting licenses, but it may be sought when considered beneficial.

c. Consideration. Granting a license must directly benefit the project, installation, or the United States in some respect. Except as shown below, consideration will be reserved as shown in Paragraph 8-195 above. No charge will be made for a license granted to a nonprofit corporation or association, a state, county, city, or other government agency if the property will be used for a public purpose.

d. Term. The term for each license will not exceed the period necessary for accomplishing the purposes of the license. Except as permitted in succeeding paragraphs, the term will in no event exceed five years.

e. Format. The approved format for a 1icense is shown in Appendix 8-E, Figure 8-E-1. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following changes may be made by the District Engineer:

(1) Condition 2 on Consideration shall be revised under the following circumstances: when no monetary consideration will be charged Condition 2.a. and 2.b. will be replaced with the statement shown in Paragraph 8-195 above. In the event the consideration is a lump sum payment for the entire term, Condition 2.b. shall be deleted.

(2) The Condition on Indemnity shall be deleted in licenses granted to non-federal governmental entities.

(3) When the license is granted without monetary consideration, the Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (Appendix 8-D, Figure 8-D-3).

f. SpeciaI Licenses Granted Under General Administrative Powers of the Secretary.

(1) Blanket License to Western Union. Western Union has a blanket license to use Government-owned equipment and facilities at Army installations and civil works projects. Supplementary equipment and facilities owned by the licensee may be installed, operated and maintained as necessary to satisfy all reasonable requirements for transmitting official Government messages. The licensee may use the equipment and facilities for private, unofficial messages, only to the extent that this use does not interfere with transmission of official Government messages.

(2) Licenses to Use Materials from Borrow Pits. States or political subdivisions may be granted licenses to take materials from borrow pits on Government lands, without charge, for construction or maintenance of roads on Government property. Although use of materials off Government property cannot normally be permitted, as such use would be an act of waste, The Judge Advocate General has held that a license for the use of materials on roads or highways off Government property may be granted without charge if the use is primarily for the benefit of the Government and only incidentally for the benefit of the general public. Such licenses will be for a term up to 5 years, commensurate with the amount of work to be done and the schedule for the planned construction or maintenance.

(3) Use of Army property by the Civil Air Patrol. Whenever the Civil Air Patrol is authorized to use Army real property, a Department of the Army permit to the Air Force will first be processed in accordance with this chapter; then the Department of the Air Force must issue a license to allow use of the property under permit by the Civil Air Patrol. The commencement dates of each related permit and license being the same. A condition of the license will make it expressly subject to the terms and conditions of the underlying permit. Since the use of such facilities by the Civil Air Patrol shall be at no cost to the Air Force, the license shall provide that the grantee will pay the Department of the Army directly for aIl expenses incurred by the Army for utilities and services. The license form may be written to meet particular administrative requirements consistent with policies and procedures in this chapter.

(4) Licenses for Mineral Exploration on Army-Controlled Lands.

(a) State laws on the rights of the mineral estate owners vary significantly from state to state. Prior to granting any mineral exploration licenses state law should be consulted to determine the rights of both the surface and mineral owners.
If the exploration or development activity proposed involves subordinated mineral interests, see Section XV on Consents.

(b) If parties propose to explore for minerals or to perform geophysical tests, an Army license is required following the availability procedures set out in AR 405-30 and TM 405-80. District Engineers or their designees may delegate license authority to installations when time does not permit normal processing. If a Federal mineral lease has been executed for the property, availability of lands for exploration will not be denied, although it may be conditioned.

(c) The written request for a mineral exploration license should include the following: a map identifying the lands to be surveyed, date and method of survey, and the contact person. The method should give the location of the survey line, the energy source to be used (e.g. explosive charge, vibrator truck), the arrangement of energy source points, and access routes. To accommodate mission requirements and protect resources, the survey line may be realigned and energy source points may be skipped or offset. Consideration should be given to licensing at times when survey will result in minimal damage because of ground conditions (e.g. wet, frozen).

(d) Under the Secretary's general administrative powers, the license grants non-exclusive right to explore and conduct geophysical tests. Consideration may be waived, if the applicant already has a mineral lease, otherwise fair market value should be required. All licenses should contain a restoration provision which may be supported by a bonding requirement. Restoration provisions should be of long duration because subsidence may not appear until several months after underground explosions carried out by the licensee.

g. Execution. See Paragraph 8-198.

h. Revocation. See Paragraph 8-199.

8-201. Licenses Granted Under Easement Statutes.

a. Statutory Authority. The same statutes which authorize the granting of easements for rights-of-way for various purposes (Section XIV) may also be used for granting temporary use of Army property by means of a revocable license.

b. Administrative Finding. The same findings relative to the authorizing easement statutes in Section XIV are required for granting a license.

c. Widths of Rights-of-Way. The right-of-way should occupy only the land reasonably necessary for the particular purpose and will not, in any case, exceed any maximum width contained in the authorizing statute.

d. Competition. Competition is not required because of the nature of the use. Should competition be determined to be beneficial, availability of the property for the proposed use will be advertised.

e. Consideration. Except as provided below, consideration will be reserved for licenses in accordance with Paragraph 8-195 above. A license without monetary consideration may be granted to a state, local governmental agency, a nonprofit corporation or association, or when exercise of the privileges provides sufficient consideration to the United States.

f. Term. Each license or renewal thereof shall be for a term not exceeding 5 years and revocable at will by the Secretary of the Army. An easement should be issued if a longer term is required.

g. Format. There is no prescribed form for licenses issued under easement statutes, however, the format shown in Appendix 8-E, Figure 8-E-1 should be used as a guide. Conditions from the appropriate easement format may be added to meet requirements specific to the type of easement right-of-way granted and those formats should be reviewed to insure that all such conditions are identified and included in the license. Conditions may also be added for site specific environmental, cultural, historical, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. Proposed easements of major importance, unusual character, or controversial nature which deviate from instructions in this chapter will be sent with full explanation to HQUSACE (CERE-M). The following changes may be made by the District Engineer:

(1) Condition 2 on Consideration shall be revised under the following circumstance when no monetary consideration will be charged Condition 2 A and 2 B will be replaced with the statement shown in Paragraph 8-195 above. In the event the consideration is a lump sum payment for the entire term, Condition 2 B shall be deleted.

(2) The Condition on Indemnity shall be deleted in easements granted to non-federal governmental entities.

(3) When the license is granted without monetary consideration, the Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (appendix D, Figure 8-D-3).

h. Execution. See Paragraph 8-198.

i. Revocation. See Paragraph 8-199.

8-202. <u>License for Fish and Wildlife Management Purposes.</u>

a. Purpose. This section prescribes procedures and responsibilities for authorizing states or local governmental agencies to use lands at water resource development projects for certain purposes; i.e., fish and wildlife management not subject to cost-sharing arrangements and for public purposes other than parks and recreation. A license is appropriate where the grantee needs only non-exclusive use to perform specific management activities or when some management activities will be jointly performed by project personnel. However, in many

instances the grantee's use of the land requires more than non-exclusive use, especially where mitigation and improvements are present, and therefore a lease will be appropriate. See Paragraph 8-155. of this chapter.

b. Reference. ER 1105-2-100, Environmental Resources.

c. Authority.

(1) Section 4, Act of Congress, 22 December 1944, as amended 16 U.S.C. § 460d).

(2) Section 3, Fish and Wildlife Coordination Act of 1934, as amended (16 U.S.C. § 663).

d. Application of Authority.

(1) Based on an approved plan, licenses are granted to a state for fish and wildlife management under authority of the Fish and Wildlife Coordination Act. The procedure for developing such plans is found in ER 1105-2-100.

(2) Since it is occasionally in the public interest to do so, Section 4, 16 U.S.C. § 460d authorizes granting of a license to a state to manage fish and wildlife at a project before a general plan is approved.

(3) Both Section 3, 16 U.S.C. § 663 and Section 4 of 16 U.S.C. § 460d, as amended, apply to licenses which authorize use of a reservoir area for public purposes other than fish and wildlife management, for example, forest management. Use Or a portion of the same area for public parks and recreation requires a separate lease as prescribed in Section XII, this chapter.

(4) Section 3, 16 U.S.C. § 663 does not authorize cultivation of crops for food or habitat for wildlife. A license for fish and wildlife management under 16 U.S.C. § 460d may authorize state or other governmental agencies to cultivate food or habitat for wildlife on project lands directly, by service contract, or by sharecrop agreements. A license which authorizes use of project lands to produce food or habitat for wildlife and forest management should cite both 16 U.S.C. § 460d and 16 U.S.C. § 663. All standard fish and wildlife licenses will contain Condition 9 as shown in Appendix 8-E, Figure 8-E-2: License For Fish and Wildlife Management, without deviation, except that existing licenses containing the same provision in Condition 5 will continue to be administered under that condition.

e. Consideration. Not required.

f. Term. Neither of the above statutes limits the-term of a license; it is considered desirable that the term not exceed 25 years, except that cost-sharing contracts usually have 50-year terms. These licenses are not revocable at will.

g. Licenses for Development and Conservation of Fish and Wildlife, Forests and Other Natural Resources.

(1) Annual Management Plan. The licensed property will be used according to an annual management plan mutually agreed on by the licensee and District Engineer. This plan may be an annual increment of a management plan of 5 years or longer. The District Engineer must determine that the plan is sufficiently explicit and that it authorizes activities which further the objectives of the master plan. The District Engineer will review the plan for: activities planned; areas for propagation of fish and wildlife; areas for outgrant by agricultural agreement or sharecrop; crops and rotation of crops; areas for wildlife cover and types of cultivated cover; all structures and improvements. The plan should estimate annual revenues and detail expenditure of these funds. Activities of third parties which will generate income for the licensee and expenditures by the licensee should be carefully scrutinized for conformance with the license conditions and with the approved plan. A proposed management plan will be considered in light of the licensee's operations of the preceding year, conformance with approved plans, and assurance that the previous year's expenditures were authorized in the plan. Expenditures should be authorized in advance, not after the fact.

(2) Authorized Expenditures. The licensee may pay reasonable expenses directly related to the particular license out of income generated by the operation. The expenses must be for such purposes as: planning and developing wildlife habitats, including wildlife food plots; incidental timber cutting; erosion control, fire breaks and fencing; farming and construction equipment; patrol or work boats; road and parking lot construction equipment; enforcement check stations; shelters for habitat improvement; restocking of fish or wildlife; and protection of endangered species. The licensee may pay salaries of employees immediately involved in carrying out the activities of the management plan at the project. Other general administrative costs, including planning activities away from the license location, may not be paid. Licenses which preclude payments for the above purposes must be administered individually. If a licensee requests modification of old Condition No. 5, the amendment is subject to condition: funds which the licensee accumulates will be paid to the District Engineer or escrowed for uses authorized in the license; the licensee must account separately for such funds annually. Funds remaining after the 5-year accounting period or after the term of the license, whichever occurs first, will be administered according to paragraph (3) below.

(3) Payment of Proceeds to the Government. Licensee's monetary proceeds which are not required to further activities as in paragraph (2) above will be paid directly to the Government at the end of each 5-year period; monies committed for authorized, approved expenditures in the 5th year may be withheld for up to 1 year. State laws may require that monies from operations on licensed land be deposited in miscellaneous receipts or similar state funds; in such cases, an amount from the state equal to the monies generated must have been expended on or committed to the project which generated the funds. If the amount paid into state funds exceeds the amount expended or committed by the state over the 5 years, the District Engineer should reduce the authority of the state to generate funds to insure that the state expends such excess

funds within 12 months. While it is desirable that the terms of the license and the 5-year accounting periods coincide, it is recognized that transition accounting periods may be shorter.

(4) Grazing. The District Engineer will lease lands available for grazing under conditions which he deems compatible with the licensee's use of the property. The licensee is not authorized to enter into grazing leases or agreements.

(5) Sharecrop Agreements. Sharecrop agreements with farmers are expected to provide crops as food or habitat and for compensation to the farmer. Certain services may also be required of the farmer toward development and conservation of fish and wildlife, land, water, forests, and other natural resources. The District Engineer should have copies of each sharecrop agreement to monitor the licensee's compliance with the approved management plan.

(6) Agricultural Agreements. Agricultural agreements may provide for planting and harvesting crops, including hay. Rental paid to licensee may be in cash and/or services to further license purposes. Where possible, these agreements will be granted by competitive bid. The District Engineer should have copies of each agricultural agreement to monitor the licensee's compliance with the approved management plan.

(7) Administration. The District Engineer will obtain current management plans from licensees and coordinate them with the Operations Division and other interested district elements. Real estate personnel will perform outgrant administration including the required annual compliance inspection.

h. Timber and Crops. If lands intended for development and conservation of forest or other natural resources are licensed, as in 16 U.S.C. § 460d, the licensee "may be authorized to cut timber and harvest crops as may be necessary to further such beneficial uses and to collect and utilize the proceeds of any sales of timber and crops in the development, conservation, maintenance, and utilization of such lands. Any balance of proceeds not so utilized shall be paid to the United States" no later than the end of each 5 years of the license term. If the license authorizes forest management, timber sales shall follow an approved forest management plan, and the proceeds expended to further the timber management program.

i. Format. Format for preparation of a license is shown at Appendix 8-E, Figure 8-E-2. Conditions 7 and 8 will be omitted if the purpose of the license is not fish and wildlife management. Recommendations for deviations will be sent to HQUSACE (CERE-M) WASH DC 20314-1000 and explained in the transmittal correspondence.

j. Execution. See Paragraph 8-198.

8-203. Licenses to States for National Guard Purposes.

a. Authority. Title 32, U.S.C., Section 503, authorizes the Secretary of the Army to provide for the National Guard to participate in encampments, maneuvers, or outdoor target practice. The Secretary is also authorized to grant revocable licenses to the states for temporary use and occupancy of Army property by the National Guard. States may not assign or sublet the property or use it for other purposes. Specific congressional authority is required to erect a permanent National Guard armory on a military reservation and to donate property of the Federal Government to states, counties, or municipalities.

b. Quartering of Employees. Licenses for use and occupancy of military reservations for the National Guard prohibit quartering of personnel for National Guard activities, except for personnel in the Federal service. National Guard caretaker maintenance personnel paid by Army or Air Force disbursing officers from National Guard Bureau funds are considered employees and may be furnished quarters for fair rental according to AR 210-12. Paragraph 8-128 of this chapter gives instructions for leasing quarters to state-paid employees of the National Guard.

c. Determination of Availability. The state Adjutant General will submit requests for licenses or modification of existing licenses for use of facilities for National Guard purposes, along with the report of availability, through the appropriate MACOM to the National Guard Bureau.

d. Consideration. No monetary consideration required.

e. Term. Unless otherwise provided in the availability report, licenses to states for National Guard purposes will granted for an indefinite term, revocable at will by the Government. Where the Government has acquired a lease of real property, specifically to license it to a state for National Guard purposes, the term of the license shouId be concurrent with the term of the inlease.

f. Format. The approved format for a license for National Guard purposes is shown in Appendix 8-E, Figure 8-E-3. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval.

g. Execution. See Paragraph 8-198.

h. Revocation. See Paragraph 8-199.

8-204. Licenses to the American Red Cross.

a. Authority. Licenses may be granted to the American Red Cross for use of Government real property in accordance with the following:

(1) Storage Buildings. Title 10 U.S.C., Section 2670 authorizes the Secretary of Army to grant revocable licenses to the American Red Cross for the construction and maintenance of buildings or the use of Government owned buildings for the storage of supplies to aid the civilian population in time of a national disaster.

(2) Licenses for administration and office space and other purposes are issued under the general administrative authority of the Secretary.

b. Consideration. No monetary consideration will be charged.

c. Term. Licenses under either of the above statutes will be limited to a maximum term of five years.

d. Format. The approved format for a license is shown in Appendix 8-E, Figure 8-E-1. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following changes may be made by the District Engineer:

(1) Condition 2.a. and 2.b. will be replaced with the statement shown in see Paragraph 8-195 above.

(2) The Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (Appendix 8-D, Figure 8-D-3).

e. Execution. See Paragraph 8-198.

f. Revocation. See Paragraph 8-199.

8-205. Licenses to the Young Mens Christian Association (YMCA).

a. Authority. Title 10, U.S.C., Sections 4778 and 9778, respectively, authorize the Secretaries of the Army and Air Force to grant revocable licenses to the Young Men's Christian Association to erect and maintain buildings on military reservations for the promotion of social, physical, intellectual, and moral welfare of the members of such reservations.

b. Consideration. No monetary consideration is required, but the installation must be reimbursed for utilities.

c. Term. Licenses to the YMCA will be granted for a maximum term of five years.

d. Format. The approved format for a license is shown in Appendix 8-E, Figure 8-E-1. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following changes may be made by the District Engineer:

(1) Condition 2.a. and 2.b. will be replaced with the statement shown in see Paragraph 8-195 above.

(2) The Condition on Non-Discrimination will be replaced with the wording shown in the Condition on Non-Discrimination in the Public Road Easement (Appendix 8-D, Figure 8-D-3).

e. Execution. See Paragraph 8-198.

f. Revocation. See Paragraph 8-199.

8-206. Rental Boat Licenses to Adjacent Private Resort Owners.

a. Authority. Title 10 U.S.C., Section 460d

b. Policy. Rental boat licenses may be granted to owners of resorts contiguous to water resource development projects to rent boats and motors, except houseboats or other floating facilities with overnight accommodations, to bona fide overnight resort guests. Such licenses may be issued to resort owners without regard to the location of commercial concessions, provided that:

(1) All interested parties are informed prior to issuance of any such license.

(2) Only one boat is allowed for each unit of the resort which accommodates bona fide overnight guests, and the boats are rented only for the use of such guests.

(3) No other commercial activity e.g. as gas sales, bait sales or repair service is permitted on Government property, except for guide service for persons renting boats and motors while guests at such private resort. Such guide service will only be permitted where needed because of distance or accessibility and when the income of commercial concessions will not be diminished.

c. Consideration. Consideration will be reserved in accordance with Paragraph 8-195 above.

d. Term. The term of each license will not exceed 5 years.

e. Format. The approved format for a license as shown in Appendix 8-E, Figure 8-E-1 will be used. A condition may be added to the license to authorize guide service, if appropriate. The Condition on Cost of Utilities may be deleted, if not applicable. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. The following modifications will be made:

1. The authority of 16 U.S.C. § 460d will be cited.

2. The purpose for the license will be stated as "to place _____ boats upon the waters of the _____ Project near the grantee's place of business for the purpose of renting said boats to persons who are bona fide overnight guests at the grantee's place of business."

3. A conditions will be added "That the boats placed and rented under this license shall not exceed _____ feet in length each."

f. Execution. See Paragraph 8-198

g. Revocation. See Paragraph 8-199

8-207. Licenses to Use Army Reserve Facilities.

a. Authority. Title 10, U.S.C., Section 2235.

b. General. The local USAR Commander may grant short-term licenses in accordance with Chapter 9, AR 140-483. A short term license is one which authorizes use of facilities for a maximum of four days. Short term licenses are normally executed by the USAR Commander and will be issued by Districts only upon specific request. All other licenses require the same availability considerations and determinations as other military outgrants and are prepared and executed at the support District.

c. Consideration. No charge is required for a short term license issued by the USARC Commander. All other licenses require consideration as shown in Paragraph 8-195 except that licenses granted to nonprofit corporations or associations, states, counties, cities or other government agencies will be without monetary consideration if the facilities will be used for a public purpose.

d. Term. Licenses will not exceed five (5) years.

e. Format. DA Form 833-R will be used for short term licenses issued by the USAR Commander. Licenses granted by Districts will be prepared using the Format shown in Appendix 8-E, Figure 8-E-1 as a guide. Conditions may be added for site specific environmental, cultural, historic, and operational requirements, provided that such changes are

consistent with policies and procedures in this chapter. All other proposed deviations will be fully justified and forwarded to HQUSACE (CERE-M) for approval. If the request is for a right-of-way which should more properly be covered by a license under an easement statute or an easement refer to the appropriate section of this chapter for guidance.

f. Execution. See Paragraph 8-198.

g. Revocation. See Paragraph 8-199.

8-208. Licenses for Mineral Exploration on Army Controlled Lands.

a. If parties propose to explore for minerals without a mineral lease (Paragraph 8-119) or to perform geophysical tests under a mineral lease, an Army license is required. See AR 405-30. District Engineers or their designees may delegate license authority to installations when time does not permit normal processing. If a mineral lease has been executed for the property, availability of lands for exploration should not be denied, although it may be conditioned.

b. The written request for a mineral exploration license should include the following: a map identifying the lands to be surveyed, date and method of survey, and the contact person. The method should give the location of the survey line, the energy source to be used (e.g. explosive charge, vibroseis truck), the arrangement of energy source points, and access routes. To accommodate mission requirements and protect resources, the survey line may be realigned and energy source points may be skipped or offset. Consideration shouId be given to licensing at times when survey will result in minimal damage because of ground conditions (e.g. wet, frozen).

c. Under the Secretary's general administrative powers, the license grants non-exclusive right to explore and conduct geophysical tests. Consideration may be waived, if the applicant already has a mineral lease, otherwise fair market value should be required. All licenses should contain a restoration provision which may be supported by a bonding requirement. Restoration provisions should be of long duration because subsidence may not appear until several months after underground explosions carried out by the licensee.

d. In unusual circumstances, including exploration by means of complex technology which requires BLM expertise, and which could result in litigation, the District Engineer may elect to ask BLM to issue permits for mineral exploration. See AR 405-30.

SECTION XVII - PERMITS TO OTHER GOVERNMENT AGENCIES

8-209. General.

a. This section explains the procedures and responsibilities for granting, amending, and terminating permits over lands controlled by the Department of the Army.

b. A permit is a bare authority to an individual, an organization, a corporation, a state or local governmental entity, or another federal agency, to do a specified act or series of acts on the permitor's property without acquiring any estate therein, and authorizes an act which would otherwise constitute a trespass. Use is not exclusive and there is no alienation of title, ownership, or control of Government property. The permit instrument provides evidence of the permission granted and of the obligations, responsibilities, and liabilities imposed on the permittee. A permit authorizes only the specified use of the property by the permittee. For real estate purposes, the terms permit and license are considered identical and interchangeable. Wherever a permit is used, a license could properly be used.

c. A real estate permit is generally used to authorize use of DA real property by another Federal agency. A license usually would be used for other types of grantees. See also the cooperative agreements between the Army and the U.S. Fish and Wildlife Service, as discussed in Paragraph 8-222 below. ARPA Permits are addressed in Section XVIII below.

d. General procedures and guidance on processing instruments as shown in Section VII of this chapter, are applicable to processing permits, except as otherwise provided.

e. Space or facilities on an Army installation which are assigned for use by other Army users do not require a permit unless required by the using command. Permits are not subject to the requirements and provisions of Title 10 U.S.C. § 2662.

8-210. Authority. Although no general statute authorizes permits, Federal agencies and Secretaries of military departments have long issued permits granting use of real property under their control to other Federal agencies, with the tacit approval of Congress, where such use would not interfere with the purpose for which the property was originally acquired or is being retained.

8-211. Consideration. Fair market value will be charged for land and building space permitted to non-DOD agencies, in their official capacity; except as follows:

a. Permits for the use of real property and related services provided to an organization that solely supports or substantially benefits a project or installation mission (e.g., to FAA for air control operations on an air base, to the Department of Agriculture for timber or research and development programs, to Department of Commerce, National Weather Service, for the NEXRAD network or Nationa Oceanic and Atmospheric Administration for seismograph

stations, or to the Federal Communications Commission (FCC) for a communication tower). The Coast Guard is an Armed Service (see Title 10 U.S.C. § 101) and will be treated like a DOD agency.

b. Existing permits. Agencies should only be charged entering into new permits or renewal of existing permits.

c. Permits for land or facilities if the activity being conducted on the property benefits or enhances the national defense.

d. Permits for which the income produced by a charge is less than the expense of administering the charge.

e. Permits in the nature of easements granting a right-of-way for roads, pipelines, cables, or similar purposes.

8-212. Reimbursement and Other Charges.

a. Collection of costs for utilities and services furnished to the grantee is the responsibility of the officer having immediate jurisdiction over the real property. DOD 4000.19-R governs interservice support agreements which cover utilities, maintenance, and other services furnished by the host department to a tenant activity of another military department.

b. When real property is leased to or used by the Army and rent or a charge is paid, any use of the real property for non-Army use will provide for reimbursement of a proportionate part of the rental or charge in lieu of consideration. HQUSACE (CERE-M) must approve otherwise.

8-213. Prior Approval. Prior approval of SAILE is required for the following permitting actions:

a. Where there are significant deviations from established policy; or the proposed permit is of major importance, unusual character, or controversial issue.

b. Cases not covered by this regulation and such other specific cases as directed by HQUSACE (CERE-M).

c. Permits for which no charge is proposed solely on the basis that the activity being conducted on the property benefits or enhances the national defense,

d. When the use of military or civil works real property, regardless of value, may significantly reduce, redirect, add to or affect missions at a military installation or civil works project.

8-214. Term. There are no limitations on the length of term, however it should be limited to the actual time required by the grantee. A termination date should always be specified on the permit. If an extension of the term is required, a new permit should be processed in the same manner as an original application. Permits which are not limited to a specified term and/or which cannot be revoked at will are tantamount to a transfer and normally should not be granted. As an exception, permits may be granted for indefinite terms to Federal agencies which use Army property at water resources development projects and market power generated at such projects.

8-215. Format. The approved format for permits to Federal agencies is shown in Appendix 8-F, Figure 8-F-1. This is intended as a generic format for use at Civil Works projects as well as Army Installations.

a. Condition 10 of the approved format contains a requirement for restoration of the permitted property by the grantee. Some agencies have specific or continuing authority which allows for a restoration obligation. It is the Army policy that a restoration requirement will be included in those permits for which a monetary charge will be made. Those permits which do not impose a monetary charge will be revised to delete the restoration requirement. The approved format for permits includes specific guidance on the wording change to be made in Condition 10 when no restoration provision is required.

b. Some Federal agencies cannot comply with the requirement of Condition 10 because of a lack of statutory authority to obligate the agency to a restoration obligation. If an agency paying fair market value objects to the restoration condition after reviewing the standard language in Condition 10 of the approved format, the following Condition 10 may be substituted:

> 10. On or before the date of the expiration of this permit or its relinquishment by the grantee, the grantee shall vacate the premises, remove its property therefrom and SHALL MAKE A GOOD FAITH EFFORT TO OBTAIN THE NECESSARY FUNDS in order to restore the premises to a condition satisfactory to said ofiicer, ordinary wear and tear and damage beyond the control of the grantee excepted. If, however, this permit is revoked, the grantee shall vacate the premises, remove its property therefrom, and shall MAKE A GOOD FAITH EFFORT TO OBTAIN THE NECESSARY FUNDS in order to restore the premises as aforesaid.

c. Site specific environmental, cultural, historic, or operational requirements may be added.

8-216. Execution. Except as provided in succeeding parts of this section, Division Engineers, Division Directors of Real Estate, District Engineers and District Chiefs of Real Estate, without authority to redelegate, are authorized to execute, amend, and renew permits on Army-controlled real property. Such instruments will be executed “by authority of the Secretary of the Army.” Proposed permits of major importance, unusual character, or controversial nature

which deviate from instructions in this chapter will be sent with full explanation to HQUSACE (CERE-M).

8-217. Revocation and Termination. Permits are revocable at will by the grantor. The grantee may terminate a permit at any time by a written notice of relinquishment. When permitted property is needed, the District Engineer should immediately advise local representatives of the grantee and request them to release the property within a specified time. If the grantee does not agree to relinquish the permit within the time limit, HQUSACE (CERE-M) will be notified. Authority to revoke permits has not been delegated and all proposals for revocation will be forwarded to HQUSACE (CERE-M) with a complete explanation.

8-218. Excess and Surplus Property.

Requests for use of excess property reported to GSA or surplus property should be referred to that agency.

8-219. Stream Gaging Stations. The U.S. Geological Survey, Department of the Interior, maintains a primary network of stream gaging stations and must sometimes install and operate such stations on rivers, harbors, and flood control projects; these stations provide streamflow records for planning, design, and operation of Army Civil Works projects. To avoid the need for numerous permits for each station on such lands, the Secretary of the Army granted general permission to the Secretary of the Interior, U.S. Geological Survey, in a letter of 6 April 1951: USGS may enter lands as the District Engineer designates, and must abide by regulations that the District Engineer may prescribe, to construct, operate and maintain stream gaging stations. In each specific instance, the District Engineer or Chief of Real Estate may grant permission in a letter to the local representative of the U.S. Geological Survey.

8-220. Construction and Operation of Schools. Permits may be granted to the U.S. Department of Education for construction and use of education facilities on military installations. The approved format for such permits is shown in Appendix 8-f, Figure 8-F-2. Authority for execution of such permits has not been delegated and will be forwarded to CERE-M for execution in SAILE.

8-221. Department of Defense Agencies (Non-Military Department). Title 10, U.S.C., Section 2682, provides that certain real property activities for an activity or agency of the Department of Defense (other than a military department) will be accomplished by or through a military department designated by the Secretary of Defense. A real property facility under the jurisdiction of the Department of Defense which is used by an activity or agency of the Department of Defense (other than a military department) shall be under the jurisdiction of a military department designated by the Secretary of Defense. Pursuant to this law, all or part of an installation may be permitted to DOD agencies for activities which are not part of a military department, e.g. Defense Mapping Agency, Defense Logistics Agency, etc. The approved permit format shown in Appendix 8-F, Figure 8-F-1 will be used. This authority shall be cited in the

permit. The military department will retain accountability for the entire installation. The grantee will reimburse the military department for services furnished and other incurred costs.

8-222. Cooperative Agreements with the U.S. Fish and WildIife Service.

a. The Fish and Wildlife Coordination Act, amended (16 U.S.C. § 663, et seq.) generally governs the management of wildlife resources at water resource development projects; a General Plan Agreement is entered into and executed by the Secretaries of the Army and Interior and by the head of the state agency responsible for wildlife conservation. According to the agreement, either the state, under a fish and wildlife outgrant as outlined in Section IV, or the U.S. Fish and Wildlife Service (USF&WS) will manage wildiife resources.

b. If the USF&WS manages project resources, the District or Division Engineer and the regional officer of the USF&WS will determine terms and conditions of a Cooperative Agreement. The agreement will be forwarded to HQUSACE (CERE-M) for execution by the Secretary of Army and Interior or their designees.

8-223. Reserved.

SECTION XVIII. OUTGRANTS FOR TREASURE TROVE, ANTIQUITY, OR ARCHAEOLOGICAL PURPOSES

8-224. Requests to Search for Treasure Trove.

a. Any request to search for treasure will be sent to HQUSACE (CERE-M) with the names and addresses of all parties to the proposed contract or license and with a local map showing the general search area. The military command or HQUSACE for civil works determines whether the search may be authorized and any terms, limitations, and conditions as necessary.

b. GSA issues contracts to protect the interest of the Government in searches for and sales of treasure trove, which has been wrecked, abandoned, or become derelict, and which should be returned to the Government, under Section 3755 of the Revised Statutes (40 U.S.C. § 310). These contracts allow for just and reasonable compensation to be paid to the persons who salvage the property. This statute has been determined to cover salvage of shipwrecks. GSA should not issue the contract until the Army consent is obtained. The GSA contract will state the terms, limitations and conditions of the land availability. By law, the requested search may not cause any costs or claims to the Government.

c. Request to search for treasure trove may also be authorized under a license, especially if the Government's asserts no right to the treasure. The format for a general license will be used with the terms, limitations and conditions of the availability added.

8-225. The Antiquity Act. The Antiquity Act, Title 16, U.S.C., Section 432, et seq, applies to certain historic and prehistoric ruins and objects of antiquity on Federal lands, and authorizes scientific investigation of these antiquities, subject to permits and other regulatory requirements. This act may apply in situations not covered by ARPA, below, such as paeoleontological remains. 43 CFR 3 implements the Antiquity Act. If in doubt as to which act applies, refer request to HQUSACE (CERE-M).

8-226. Archaeological Resources Protection Act Uniform Regulations.

a. Authority. Section 10(b) of the Archaeological Resources Protection Act of 1979 (ARPA) (16 U.S.C. § 470) requires issuance of appropriate rules and regulation for carrying out Public Law 96-95. ARPA was enacted to protect archaeological resources on public and Indian lands, and to increase communication among governmental authorities, professionals, and private individuals. On 6 January 1984, Final Uniform Regulations were issued by the Departments of Interior, Agriculture, Defense (32 CFR Part 229), and the Tennessee Valley Authority. These regulations establish basic government-wide standards for the issuance of ARPA permits, responsibilities of ARPA permittees, procedures for filing appeals and implementation of civil penalty provisions should ARPA violations occur. The Corps of

Engineers assumed responsibility for the issuance of permits for ARPA related work on Army-controlled military and civil lands on 1 October 1985. Division and District Engineers having real estate responsibilities are responsible for these permit requirements.

b. ARPA Permit Application. Applicants proposing to excavate and/or remove archaeological resources from Army military and civil lands must apply for an ARPA permit from the appropriate District office. Applicants must submit an application form, including a written proposal that clearly documents the information required in 32 CFR Parts 229.6 and 229.8. An incomplete application will be promptly returned to applicant for any additional information required. An ARPA permit is not required for purposes other than the excavation and/or removal of archaeological resources even though those activities might incidentally result in the disturbance of archaeological resources as stated by Section 229.5 (b) (I) of the Uniform Regulation. Federal land managers are not relieved of responsibility to comply with other authorities which protect archaeological resources prior to approving permits, leases, licenses and entitlements for use.

c. Application Processing Procedures. Processing should be completed within 90 days to include the following unless otherwise noted:

(1) Coordination. The District Real Estate office will coordinate with other elements of the District office as to the availability of civil lands for the permit activity. Coordination should be concurrent with technical review except as follows. Determination of availability for military land will be made in accordance with AR 405-80, Granting Use of Real Estate, and applicable provisions of AR 405-70, Utilization of Real Estate, and will be made prior to the District's technical review. Military land permits require approval by the Installation Commander and the MACOM which may result in additional processing time beyond 90 days.

(2) Notification of Indian Tribes. It is incumbent on the District to identify and notify Indian tribes which may be affected by the proposed permit activity in accordance with 32 CFR 229.7. This notification is to be performed as part of the Technical Review.

(3) Technical Review. Technical review requires a specialist in the field of archaeological resources qualified to determine that the application meets all the requirements of the provisions of 32 CFR 229.6 and 229.8. Such specialist will be designated by the District and Division Engineers for each office. In the event the District or Division office lacks the services of a qualified archaeologist, coordination with another Division or District may be sought. When reviewing applications, particular attention should be paid to professional and institutional qualifications, research design, the applicant's technical and financial ability to complete the work and produce a final report in a timely manner, certification of adequate curation of material remains, original field notes, photographs, special collections, and other research materials. In addition, the review of the proposal should be consistent with state cultural resource preservation plans and relevant Corps plans for the project or installation.

(4) Division Technical Review Approval. Applications meeting technical approval of the District will be sent to the appropriate Division office for technical review approval by the Division cultural resource specialist. After review the application will state the reasons denied and returned to the District. Any denial will state the reasons therefor. In the event the Division office lacks the services of a qualified archaeologist, a qualified person at the District level or coordination with another Division or District may be sought.

(c) Denial of Permit. A permit may be denied for reasons of technical inadequacy, inability to demonstrate research relevance, or for incompatibility with District, military or State programs. the applicant should be notified in writing by the District Engineer of the reason(s) reusability if denied is for technical reasons.

(d) Issuance of Permit. On receipt of applications approved by the Division office, the permit, containing the terms and conditions set forth in 32 CFR Part 229.9 and such other special conditions and stipulations as appropriate requested by the using agency, will be issued by the District Real Estate Office. In instances where the District has been requested to provide technical review of applications for civil lands not managed by the Corps, the permit must be cosigned by the appropriate land manager.

(e) Monitoring of Permit Activity.

(1) District personnel will monitor work conducted on civil lands to assure compliance with the terms of the permit.

(2) On military lands, the Installation Commander's staff will monitor work conducted to assure compliance with the terms of the permit.

(3) Civil Penalties. Civil penalties will be enforced in accordance with 32 CFR Part 229.15 and implementing instructions.

(4) Revocation. A permit may be revoked if it is determined that the applicant has not complied with conditions of the permit, has misrepresented the work to be accomplished, or if continuance of the activity will impair any District or military function or public health and safety.

(5) Appeals. Any appeal of a permit denied or revoked for technical insufficiency will be forwarded to the appropriate Division Engineer for review by the Division cultural resource specialist. The Determination on Appeal will be signed by the Division Engineer.

(6) Surface Collection. In accordance with the ARPA, the intent of Congress, and implementing regulations, no permit shall be required for any persons collecting coins, minerals, arrowheads or bullets located on the surface of the ground (except in known archaeological sites or as required by 42 U.S.C. § 1996, American Indian Religious Freedom Act). The use of metal

or density detectors, for the purpose of undersurface discovery, or the use of any means of ground or underwater disturbance without proper permit is prohibited.

c. Format. The approved format for an Archaeological Resources Protection Act Permit is shown in ENG Form 4923-R. The application is ENG Form 4922-R. Master forms are available from the local Forms office.

8-227. Reserved.

SECTION XIX. MISCELLANEOUS

8-228. Reserved.

8-229. Reserved.

8-230. Reserved.

APPENDIX 8-A

MISCELLANEOUS FORMATS

FIGURE A-1 REGULATORY REFERENCES

Regulation	Chapter 8 References
Executive Order 11988	8-27a, 8-54p, 8-59
Executive Order 11990	8-54o, 8-58a
Executive Order 12088	8-61
Executive Order 12411	8-19
Executive Order 12512	8-4i, 8-6, 8-7, 8-8e, 8-18
32 CFR 229	8-226a
32 CFR 229.5	8-226b (1)
32 CFR 229.6	8-226b (1)
32 CFR 229.7	8-226b (2) (b)
32 CFR 229.8	8-226b (1)
32 CFR 229.9	8-226b (2) (b) (4)
32 CFR 229.15	8-226b (2) (b) (5) (c)
32 CFR 664.4	8-9
33 CFR 230	8-51e
33 CFR Subparts 1-6	8-66a
36 CFR 327	8-158
40 CFR 302.4	8-55e
40 CFR 373	8-51
40 CFR 1500	8-51e
41 CFR 101-42	8-51d
41 CFR 101-47.2	8-7
41 CFR 101-47.8	8-7, 8-18b, 8-18c
41 CFR 101-47.103-12	8-7
41 CFR 101-47.201-1	8-7
41 CFR 101-47.202-2	8-55b
41 CFR 101-47-203.9	8-103b, 8-186a
41 CFR 101-47.801(a)	8-18i
41 CFR 101-47.801(b)	8-13b
41 CFR 101-47.802(b)	8-18j
43 CFR 8	8-9
43 CFR 2880	8-182b (2)
DOD Directive 1000.11	8-130a
DOD Directive 4000.19R	8-212a
DOD Directive 4170.10	8-50
DOD Instructions 1000.10	8-130a
DOD Instructions 1000.12	8-130a
DOD Instructions 7230.1	8-81a (3)
AR 75-15	8-62
AR 140-483	8-207b

Figure 8-A-1

AR 200-1 . . . . . .8-51a, 8-55, 8-71b
AR 200-2 . . . . . .8-51b, 8-53b
AR 210-10 8-116
AR 210-12 . . . . . .8-203b
AR 210-24 . . . . . .8-130a
AR 210-135 . . . . . .8-130a
AR 340-17 8-118
AR 385-64 8-63
AR 405-15 8-40
AR 405-20 . . . . . .8-185c
AR 405-30 . . . . . .8-35e, 8-200f (4) (b)
AR 405-70 . . . . . .8-19, 8-20, 8-226b (2) (a)
AR 405-80 . . . . . .8-5, 8-57, 8-68, 8-109
AR 405-80 (cont.) 8-130, 8-131, 8-172
AR 405-80 (cont.) . . . . . .8-226b (2) (a)
AR 420-74 8-126
AR 735-5 8-12

ER 200-2-2 . . . . . .8-51e, 8-53b
ER 405-1-12 Chapter 10 . . . . . .8-40a
ER 405-1-12 Chapter 11 . . . . . .8-28c, 8-29d
ER 420-1-3 8-19
ER 1105-2-100 . . . . . .8-155c (1)
ER 1105-2-100 (cont.) 8-202b, 8-202d (1)
ER 1110-2-1454 . . . . . .8-41a
ER 1130-2-400 . . . . . .8-4e, 8-15e, 8-18f, 8-159
ER 1130-2-406 . . . . . .8-158, 8-159
ER 1130-2-441 . . . . . .8-160a, 8-160b
ER 1165-2-26 8-59
ER 1165-2-131 . . . . . .8-156a (2)

Figure 8-A-1 (Continued)

Utilization Evaluation Questions
Part B

B-1. The standards and definition set out in 41 CFR 101-47.801 should be used in the evaluation and are not repeated here. The following are also suggested for consideration in developing the narrative portion of the report. This is not intended to be a complete list of all possible questions and should not be used as a checklist. Some items may not be applicable while others not on the list may be essential. It is intended only as a guide to aid in the preparation of the report:

(a) Are all lands and facilities thereon being used for Congressionally authorized purposes and programs?

(b) Based on (a) above, is utilization consistent with the master plan, operational master plans, appendices, supplement or other approved documents? Are there significant deviations?

(c) What are the public use trends and how do they affect project visitation?

(d) Do services and facilities meet public use adequately? Do private facilities interfere with public use?

(e) Have land or facilities been significantly developed since the previous survey? How?

(f) Are there natural resources inventories available for this project? Is there an OMP containing resource use objectives and site specific prescriptions for the management of the resources? Is there multiple use forest and woodland management?

(g) Are adequate boundary monuments maintained? Have funding constraints prevented boundary survey or maintenance?

(h) If the land is not utilized, would any interim use be appropriate, such as Agricultural & Grazing leasing?

(i) Is there evidence of unauthorized use? Is there evidence of trends of unauthorized use or certain areas where the problem is more prevalent? Is there a lack of public awareness that could be overcome with a public affairs effort? Is legal action needed?

(j) Is there evidence of unauthorized Government use of adjoining property? Is this of a recurring nature that would necessitate acquisition of the private party or that has already resulted in a taking? Is a legal opinion of the possible taking needed?

(k) Are Government quarters furnished to employees with the proper rental arrangement and documentation? What is the status of the phase-out actions required by the Housing Management Plan?

Figure 8-A-2 (Continued)

(l) What is the status of previously reported utilization problems? Did the necessary follow-up action take place?

(m) What percent of project buildings is occupied? Has a space management survey been performed?

(n) Has all property identified as underutilized, not utilized or not put to optimum use been reported to HUD for determination of suitability for use by the homeless under the McKinney Act?

(o) Is the property over-utilized? Is the visitation excessive in relation to the current design carrying capacity? Should acquisition of additional property be considered? Is the property inadequate for reasonable near-term future development? Is plant growth deterioration beyond natural capability to regenerate? Are facilities overcrowded on dys of normal (not peak) use? Are maintenance requirements above those required for routine wear?

(p) Is maintenance being deferred due to funding constraints?

(q) You should be sensitive to instances where District and Division rankings of O&M money may have caused deficiencies beyond the control of the project personnel. However, the management evaluation report is not the place for crusades. Where funding is a factor, it should be noted in a neautral manner.

Figure 8-A-2 (Continued)

REPORT OF AVAILABILITY

A. GENERAL:

1. Project: (Use official name from Chief of Engineer report)

2. Tract No(s) and Name, if any: (Segment maps, Master Plan designations)

3. Type of Outgrant: [ ] lease [ ] license [ ] easement [ ] permit

4. Proposed use: [ ] Commercial Concession [ ] Park and Recreation [ ] Fish and Wildlife [ ] Agricultural and Grazing [ ] Road [ ] Pipeline [ ] Other _____ (list may be varied to name outgrants commonly issued)

5. Recommended Term of outgrant: Proposed for _____ years. Start date, if applicable: _____

6. Use requested by: [ ] Army element [ ] private party [ ] adjoining grantee [ ] State, local government [ ] other Federal agency [ ] Other _____

7. General property description/characteristics of the property: Acreage _____; Land character _____.

8. Are Government buildings and improvements included in the area: [ ] No [ ] Yes. If yes, give details on buildings and improvements and attach copy of floor plan, if applicable:

Building Identification No. _____; Square footage outgranted/percentage of building _____; Condition of the facilities _____.

9. If building space only and land is not included in grant, explain why the improvement is not excess: _____

10. United States property interest: [ ] fee simple title [ ] easement [ ] in-lease; or [ ] other.

11. Army jurisdiction: [ ] primary jurisdiction, [ ] permit from a Federal Agency, [ ] withdrawn from the public domain.

12. If land is being made available for a public road, show type of access, governmental entity, any restrictions: _____ Is jurisdiction to be relinquished? [ ] Yes [ ] No

13. Are Utilities available? [ ] Yes [ ] No. Will utilities or other support services be provided by Army on reimbursable basis? [ ] Yes [ ] No

14. Destruction, relocation, and replacement of Government facilities:

[ ] I Certify the proposed use will not require the destruction, relocation, or replacement of any Government facilities.

[ ] The following information is provided with regard to the destruction, relocation, or replacement of any Government facilities:

_____ _____

_____

15. I certify that the grant of the proposed use will not interfere with operation of the project, or with contemplated development and other

16. The following site specific recommendations are made as to limitations, restrictions, or conditions to be included in the grant to make the proposed use compatible with the operation of the project: _____

17. Safety issues and concerns, if any: _____

18. REMARKS - include any legal, policy, or mission factors you are aware of that may affect the proposed use of the property: _____

19. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ] APPROVED [ ] DENIED.

_____
Date

_____
SIGNATURE
Title

REPORT OF AVAILABILITY

B. ENVIRONMENTAL and CULTURAL CONSIDERATION:

1. COASTAL ZONE MANAGEMENT (CZM) (if applicable):

[ ] CZM is not applicable.

[ ] CZM is applicable and the proposed use is/will be consistent with the approved state CZM Plan.

2. CLEAN WATER ACT (FEDERAL WATER POLLUTION CONTROL ACT):

[ ] This action will not involve the discharge of any pollutants into the waters of the United States or less than one million gallons of discharge per day will be made.

[ ] This action will entail the discharge of more than one million gallons of pollutants into the waters of the United States per day.

[ ] The applicant has applied for and received a NPDES Permit from the EPA/appropriate state agency. If not received, state circumstances:

_____

[ ] The Grantee is complying with the requirements of a NPDES Permit and the Grantee has a monitoring and reporting procedure.

[ ] Subsequent requests for expansion or additional construction should be reviewed to assure the Grantee is in compliance with the five acre rule.

3. FLOODPLAIN:

[ ] This property is not located within the 100 year floodplain and does not fall under the purview of Executive Order 11988.

[ ] This property is located within the 100 year floodplain and does fall under the purview of Executive Order 11988 and (circle the appropriate):

a. The proposed occupancy or modification will not adversely impact the floodplain.

b. There is no other practicable alternative available for this intended use.

c. The proposed occupancy or modification may be allowed subject to the following restrictions being incorporated in the outgrant document:

_____

4. WETLANDS:

[ ] This property is not located within a wetlands area and, therefore, does not fall under the purview of Executive Order 11990.

[ ] This property is located within a wetlands area and does fall under the purview of Executive Order 11990, accordingly, the following restrictions must be incorporated in the outgrant document:

_____ (Status of 404 Permit process

_____

5. ENDANGERED SPECIES:

[ ] This action will not jeopardize the habitat of any endangered species of fish, wildlife, or plants pursuant to the Endangered Species Act.

[ ] This action jeopardizes the habitat of endangered species of fish, wildlife, and/or plants identified on an attached map. Accordingly, the following restrictions must be incorporated in the outgrant document to protect the habitat: _____

6. FISH AND WILDLIFE COORDINATION ACT:

[ ] This action will not jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA.

[ ] This action will jeopardize fish and wildlife species or habitat integral to Congressionally authorized mitigation or General Plans, or Army agreed to recommendations in Fish and Wildlife reports prepared under the provisions of the FWCA. Impact description: _____
RECOMMENDED ACTIONS PRIOR TO AVAILABILITY:
_____

7. HISTORICAL AND CULTURAL RESOURCES:

[ ] The area has been surveyed for historical and cultural resources and there have been none identified on this property, and this action is in compliance with the National Historic Preservation Act and other relevant laws; Executive order 11593, Protection and Enhancement of the Cultural Environment; or any MOA's related thereto.

[ ] A survey has identified historical and/or cultural resources on this property. This action has been coordinated with the State Historic Preservation Officer and the Advisory Council on Historic Preservation in accordance with 36 CFR 800. The following restrictions must be incorporated into the outgrant document to protect the resource:
_____

[ ] Native American graves or artifacts have been identified on this property. Refer to requirements of the American Indian Religious Freedom Act and Native American’s Graves Protection and Repatriation Act.

[ ] Archaeological sites or resources have been identified on this property. Refer to the Antiquities Act; Archaeological and Historical Preservation Act; and Archaeological Resources Protection Act.

8. MISCELLANEOUS PROVISIONS.

[ ] The proposed outgrant activity will involve the use of pesticides, e.g. Agricultural, golf courses, restaurants. Refer to the Federal Insecticide, Fungicide, and Rodenticide Act and state pesticide regulations, as necessary.

[ ] The proposed outgrant activity will impact an area designated under the Wild and Scenic Rivers Act. Attach any site specific restrictions necessary to protect the area.

[ ] The proposed outgrant activity will include fuel burners, incinerators, gas pumps, solvent or other volatile compounds. Refer to the

Clean Air Act and state and local regulations. Give status of state and local permits.

[ ] The proposed outgrant activity will include substances covered by the Toxic Substances Control Act.

[ ] Other special purpose environmental laws, as follows: _____

9. NEPA REQUIREMENTS:

[ ] This action falls under one of the Categorical Exclusions (CX) contained in AR 200-2 or ER 200-2-2 (Procedures for Implementing NEPA). The environmental affect of the action has been considered. A Record of Environmental Consideration (REC) is attached.

[ ] The impact of this action is considered to be minimal or insignificant. An Environmental Assessment (EA) with a Finding of No Significant Impact (FONSI) is attached/is being prepared.

[ ] The impact of this action is considered to be significant. An Environmental Impact Statement (EIS), or supplement thereto, is attached/is being prepared.

10. The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Environmental Baseline Study (EBS) or Preliminary Assessment Screening (PAS):

[ ] An EBS/PAS has been conducted and no HTRW substances were identified as released, stored, or disposed on the property in the threshold quantities. Copy is attached.

released, stored, or disposed on the property in the threshold quantities. The CERCLA notice should be included in the outgrant document. Copy is attached containing the details. Choose one:

a. Remedial actions have been taken so that the property is considered safe for the proposed use.

b. Remedial actions have not been taken. Provide details and justification for outgranting in the current condition.

11. Real Property Contaminated with Ammunition, Explosives or Chemicals.

[ ] The property has been decontaminated using the most appropriate technology consistent with the proposed use of the property.

[ ] Transfers is to another Federal agencies for compatible use of surface de-contaminated real property, subject to the following limitations, restrictions and prohibitions concerning the use of the property, to ensure personnel and environmental protection: _____

[ ] Access rights are reserved to implement any monitoring plan.

[ ] Coordination with HQDA, DACS-SF and DAMO-SWS attached with the Land Disposal Site Plan (LDSP). Reference AR 385-64, “U.S. Army Explosives Safety Program.”

12. WASTE DISPOSAL (The Solid Waste Recovery Act, as amended; Resource Conservation and Recovery Act (RCRA).

[ ] The applicant will not generate hazardous waste or will not treat, dispose or store waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity.

[ ] The applicant will generate hazardous waste or will produce waste defined by EPA as having the following characteristics - corrosivity, ignitability, reactivity, or toxicity. Choose the appropriate:

The applicant has obtained a hazardous waste identification number from EPA and, if applicable, the state.

b. The applicant has established records, waste management requirements, and a Spill Prevention Plan.

13. Underground/Other Storage Tanks.

[ ] There are no UST on the property and the applicant will not be installing tanks.

[ ] There are no above ground storage tanks for fuel or other regulated substances and the applicant will not be installing tanks.

[ ] There are UST on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: _____ Yes _____ No. Construction of proposed tanks have been certified for such compliance: _____ Yes _____ No.

[ ] There are above ground storage tanks for fuel or other regulated substances on the property and/or the applicant will be installing tanks. Existing tanks are in compliance with current laws and regulations: _____ Yes _____ No. Construction of proposed tanks have been certified for such compliance: _____ Yes _____ No.

14. ADDITIONAL COMMENTS: _____

_____
Date

_____
SIGNATURE
Title

REPORT OF AVAILABILITY

c. PRELIMINARY PROCEDURES:

1. STEWART B. MCKINNEY HOMELESS REQUIREMENTS:

[ ] McKinney Act requirements do not apply to this action.

[ ] McKinney Act requirements apply, necessary screening has been completed, and no interest was expressed.

2. INVENTORY AND CONDITION REPORTS:

[ ] No Government improvements are included in the proposed outgrant, so an inventory and condition report is not required.

[ ] Government improvements are included and an inventory and condition report is required/attached.

3. CONSIDERATION:

[ ] There is no monetary consideration required for this action.

[ ] Consideration is the greater of the administrative costs of $ _____ or the FAIR MARKET RENTAL value for the property of $ _____. Give source of value (i.e. appraisal, estimate).

[ ] offsets (In kind amounts) for the improvement, maintenance, protection, repair or restoration of the property leased will be provided in lieu of rent in the amount of $ _____. Offsets to be provided are attached.

[ ] Consideration is less than fair market value and the outgrant document must contain assurances for Civil Rights Act non-discrimination and the Rehabilitation Act.

4. WAIVER OF COMPETITION:

[ ] A waiver of competition is not required.

[ ] A waiver of competition is recommended/not recommended. Provide full justification and proposed grantee, if waiver is recommended.

5. Other applicable laws, regulations, MOA'S, etc. requiring consideration for processing this action:

_____

6. TECHNICAL SPECIFICATIONS: (Attach a copy here or indicate where a copy is available.) (Conservation plan for A&G leasing; Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.); Safety requirements; Master plan data, if necessary to potential outgrantee. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government's tentative plans for these sites.)

7. Additional information that will assist in processing this application/action: _____

_____

8. BASED ON THE INFORMATION PROVIDED ABOVE, I RECOMMEND THE OUTGRANT BE [ ] APPROVED [ ] DENIED. If the outgrant is recommended for denial, state the reasons: _____

_____
Date

_____
SIGNATURE
Title

Encl 1. Maps showing the nearest project boundary; acreage, character of land, and the number and type of improvements, if both land and improvements are included. If only building space is involved, give total square feet and describe the type of construction. Use existing maps whenever feasible.

Encl 2. Attach environmental reports and data (REC, CX, EA, EIS, PAS) and any other documentation of compliance with environmental and cultural considerations.

Encls: any other attachments listed.

INSTRUCTIONS

The Determination of Availability would be signed by the official with the delegated authority to approve the outgrant, whether the District, the Division, or SAILE.

Section A. of the ROA would usually be the starting of the outgrant process. If the outgrant is the culmination of the Master Plan process, then this section would pull information from the Master Plan and project data. If a private party has requested the outgrant or outgrant expansion, then the office which takes the request would fill in as much information as is available and submit it for further processing. This section would usually be done by the operation element.

Section B. would be completed by the appropriate environmental office or offices with expertise in the various areas. This section could be divided into more than one subpart if the district/project organization involves several offices which each need to sign a portion.

Section C. contains general preliminary information. This section would usually be done by the Real Estate element.

DETERMINATION OF AVAILABILITY
CIVIL WORKS PROJECTS

---

1. The attached Report of Availability and its findings has been reviewed.

2. I have determined that the intended use of this property as set out in the attached Report of Availability is in the public interest or will further project purposes is consistent with delegated authorities and Government regulations.

3. I have determined that the proposed use is not a potential embarrassment to the Army.

4. I have determined that the property is not excess to the overall project purpose and has not been identified as not utilized in a Real Property Management Report. (PROVIDE JUSTIFICATION WHERE NECESSARY).

5. I have determined (for 10 USC 2667 leases) that the rental consideration is not less than the fair market value of the lease interest, taking into account the benefit to the United States, to the public and to the Department of Army and that the amount stated in the Report of Availability is appropriate and includes cash or in kind amounts for the improvement, maintenance, protection, repair or restoration of the property leased.

(For other outgrants) I have determined that the rental consideration is appropriate for the use proposed.

6. The proposed use as _____ is approved subject to (state any modifications to the restrictions stated in the Report of Availability which must be placed in the outgrant document).

7. Coordination:
(list)

8. It has been determined that the property is available for the proposed use with the restrictions as stated in the Report of Availability (and as added above) and may be outgranted in accordance with applicable laws, rules and regulations.

_____ _____
Date (Approving Official)

US ARMY CORPS OF ENGINEERS

NOTICE OF AVAILABILITY FOR LEASING
(RECREATIONAL)/(INDUSTRIAL) SITES
(DISTRICT/ADDRESS)

SITE SELECTED: (Site name, project/installation, city, county, state)

CONSISTING OF (Acreage, type of real property; nature of Government improvements, if any; zoning, if applicable)

FOR (Park and Recreation/ Commercial Concession/ Industrial Leasing purpose)

The site will be leased on a competitive basis to the individual or corporation presenting the best plan for development.

Applications will be evaluated by: (1) quality of proposed development, (2) compatibility with overall project/installation mission; (3) expertise of potential Lessee, (4) return to the United States, and (5) return to the potential Lessee.

Potential Lessees may request Applications for Leasing describing the sites and giving details of the lease requirements through (Date). To obtain a copy, send a check for $ _____ to:
(District/address)

Checks should be made payable to the F&A Officer, ( ) District, Corps of Engineers.

Applications will be submitted in sealed envelopes which will be opened and evaluated on:

_____
DATE

_____
TIME (Local time at place of Opening)

_____
LOCATION

_____
U.S. Army Corps
of Engineers

Figure 8-A-5

APPLICATION INFORMATION PACKAGE

FOR

(RECREATION DEVELOPMENT) / (INDUSTRIAL DEVELOPMENT)

AT

(SITE/SITES)

The information below must appear in the lower left corner of Lease Application envelope.

Sealed Application for Lease of Real Property

To be opened:

Time: _____
Date: _____
Notice No. _____

The application package should include:

1. A description of the site/sites. Use project brochures and other available information, if possible. Include technical specifications.

2. Purpose of leasing (Marina, resort, industrial, etc.)

3. The minimum development required; types of development not allowed, i.e. residential, timeshare, condominiums

4. The maximum development allowed, if applicable.

5. Note restrictions on storage of solid waste and storage of toxic or hazardous materials.

6. Description of the government's ownership.

7. Copy of the lease with known information completed

8. Rent provisions.

9. If the considerations is less than fair market value, then state that this is considered a type of federal financial assistance and a Civil Rights assurance is required. Otherwise, point out the non-discrimination condition in the lease.

10. Arrangements for inspection of the site, POC, etc.

11. Schedule, if any, between Notice and execution of lease

12. Selection criteria

13. Submission Instructions

I. SUBMISSION INSTRUCTIONS

A. Sealed, written Applications should be submitted: (District/address) Give number of copies and any special requirements, i.e. 3-ring binders, drawing no larger than 11x14.

B. Applications will not be accepted after (time) and (date). Modifications of applications may be made in sealed envelopes, as for original application, up to that time.

C. REJECTION of Application. The right is reserved, as the interests of the Government may require, to reject at any time any and all applications, to waive any informality in applications received, and to accept or reject any items of any applications unless such application is qualified by specific limitation.

D. DEFAULT. In the event that the successful applicant fails to enter into a lease within ten (10) days after receipt of Government notification that his application has been accepted and receipt of a draft lease for execution, or in the event that the successful applicant fails to otherwise comply with the terms of this Notice, the Government may declare the applicant in default in writing giving the applicant 10 days to respond or correct the default. The Government may then select the next highest rated applicant.

E. ADDITIONAL INFORMATION. Any additional information may be obtained from _____ (fill in District POC).

F. AWARD OF LEASE. Leases will be granted to the applicant with the best application, who is responsive to this Notice, provided that the applicant is responsible, the application is reasonable, and it is in the interest of the Government to issue the lease.

G. DEPOSIT. Applicant will submit a (non)refundable application fee/deposit of $ _____. Amount will apply to initial rental for successful bidder.

II. APPLICATION INFORMATION: The following information must be provided to assist the Government in selecting the successful lease applicant:

A. General Information: Provide name, address, and telephone number of the applicant and, if applicable, the name, address, and telephone number of a representative authorized to act on behalf of the applicant during the course of the project.

B. Experience and Background: (Not required for federal, state or local governmental entities)

1. List any/all previous business endeavors with a description of the business operations and status.

2. Provide a description of any management qualifications and experience.

3. Provide third party personal and business references.

4. If applicant is a corporation it must provide:

a. Articles of Incorporation and by-laws.

b. Names, addresses, dates of birth, and Social Security numbers

of officers and participating principals and all addresses they have used for the last ten (10) years.

c. Corporate resolution authorizing the proposed transaction.

d. Summary of Corporate Activity.

5. If applicant is a partnership it must provide:

a. The partnership agreement.

b. Names, addresses, dates of birth, and Social Security numbers of the partners and all addresses they have used for the last ten (10) years.

6. If applicant is a sole proprietor he/she must provide Social Security number, date of birth, current address, and all addresses used for the last ten (10) years.

c. Financial Capability (Note: All financial data will be held in confidence).

1. If applicant is a corporation or limited partnership it must provide a current financial statement prepared by an independent Certified Public Accountant or by an independent licensed public accountant. It must also include a personal financial statement of the key owners/principals.

2. If applicant is an individual or partnership he/she/they must provide a complete and current personal financial statement.

3. Except for governmental agencies, provide the names, addresses, and telephone numbers of at least two commercial or institutional credit references from which the applicant has previously obtained financing. Attach a letter authorizing each credit reference to respond to inquiries from the Government.

4. Provide a preliminary budget, projected cash flow, estimated operating costs, and detailed plans of financing including identity of proposed lenders. Identify all interim and permanent sources of funds and include copies of loan documents used to implement the assignment.

D. Plan of Operation and Development.

1. Provide a five-year plan for operation and development of the leased premises. The plan must show goals and objectives for each year showing the estimated cost of any development.

2. Identify key positions and their duties and responsibilities as they relate to the business.

3. Depending on the scope of development and individual circumstances of the applicants, a performance bond, letter of credit, or performance deposit may be required to defray Government expenses of going through the lease selection process should applicant default.

4. If the property is subject to Coastal Zone Management, provide a consistency certification.

5. Other information may be requested as required by the District Engineer or his authorized representative.

III. APPLICATION CONDITIONS.

A. It is the responsibility of the applicant to make sure that all lease provisions are understood and the condition of the premises proposed for lease are known. Prior to selection of the successful applicant, the Corps will conduct a pre-lease conference with the applicants. At this conference the lease will be reviewed, Corps policies will be discussed, and, at the conclusion, the applicants will be required to sign an acknowledgement attesting to the conference and the information provided therein.

B. By submittal of an application, the applicant agrees to provide non-discrimination and Civil Rights assurances, if applicable.

C. The information provided by the applicant may be used by the Corps to conduct a comprehensive background and credit check.

D. All questions may be directed to the Corps' _____ District Real Estate Division at _____, telephone number _____.

IV. GENERAL SUBMITTAL INFORMATION

A. SELECTION CRITERIA: The following will be considered to assist the Government in selecting the successful lease applicant:

1. Diversity of Recreation Opportunities/Operation Proposed

a. Proposed operation and development

b. Design

c. Quality and nature of development

d. Consistency with the lake setting/mobilization or installation mission

e. Proposed construction sequencing/phasing

1. Experience and background

a. Business experience and training

b. Comparable experience

c. Current or previous work with Federal Government

d. Business and personal references

2. Financial capability

a. Bank references

b. Financial Statement

c. Financial Plan for first three years

3. Credit and Criminal Background Check

V. TECHNICAL SPECIFICATIONS

Attach a copy here or indicate where a copy is available for inspection.

- Conservation plan for A&G leasing

- Project technical information (e.g. flood control, hydroelectric, navigation; any water level fluctuations; environmental data, etc.)

- Note wetland or floodplain areas, if any, and any restrictions.

- List any environmental, cultural or historical restrictions, if any. If environmental reports are too bulky to provide with the application package, state where they may be inspected. The cost of providing copies to applicant may be calculated as part of the cost to receive application package or as an extra costs.

- Industrial lease technical guidance (e.g., environmental data, safety requirements, etc.)

- If there is residual contamination from ammunition, explosives, or chemicals, detail extent and include any restrictions and prohibitions concerning use.

- Master plan data, if necessary to applicant. Where additional areas for similar development are shown in the Master Plan, all interested parties should be advised of the Government’s tentative plans for these sites.

- Topographic site maps

- Etc.

DEPARTMENT OF THE ARMY
SUBMITTED BY OFFICE, CHIEF OF ENGINEERS
REAL ESTATE
DISPOSAL REPORT NO. _____

Submitted pursuant to Title 10, United State Code, Section 2662.

Name of Installation/Agency:	(Use the official Blue Book inventory name, not common variations, with location of the proposed space by city and state);
Using Service:	(MACOM, e.g. U.S. Forces Command; DOD agency, e.g. Defense Contract Audit Agency);
Present Use:	(e.g. administrative, storage, housing, office, special purpose);
Interest:	(fee, easement, etc.)
Area:	(Space in acres, square feet, etc.);
Original Cost:	(give land:, improvements: , total:);
Acquisition Date:	(give land and improvements separate, round to nearest decade if more than one year);
Proposed Action:	(outgrant, disposal, outgrant renewal);
Authority:	cite the authority for the action, e.g. Title 10, United States Code, Section 2667; Federal Property and Administrative Services Act of 1949, as amended;

(a) three or four numbered paragraphs: [It has been reasonably said that a T-10 report should be clear and convincing to the man-on-the-street. Remember, the report is reviewed by several people, who will have only your submittal to review the action(s) by.]

1. The Department of the Army proposes to lease/dispose (# of acres/square feet) of Government owned real property/(type) space at (installation) in (city, state).

2. Brief narrative of the installation/unit, giving MACOM/Agency, its mission, and the number of personnel (actual and authorized).

3. Describe the present situation (e.g. brief description by categories of improvements and current total costs of construction, if applicable, interest owned, with separate breakdown of troop and family housing data; summary of any related outleaping history and current total annual rental received;) Explain why the action is necessary.

4. Describe: (a) property which is available for leasing with brief reason therefor; (b) specific property, of only a portion of an installation is involved, including acreages or square feet, cost of land and date of acquisition, description and cost of improvements, and description of other outgrants; (c) any property to be retained in 4.(b) detailed and including

family and troop housing data; (d) other information or circumstances peculiar or essential to the proposed action such as production capacity of Army Ammunition Plants; and (e) estimated savings for operations and maintenance or care and maintenance that would result from leasing.

5. (Brief concluding statement of proposal including information on advertising, period of lease, termination privileges, consideration, and other significant provisions.)

Note: See recent guidance from HQUSACE (CERE-L) on acquisition reports for further comments.

APPENDIX 8-B

LEASE FORMATS UNDER 10 U.S.C. § 2667

AGRICULTURAL AND GRAZING LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. TRANSFERS AND ASSIGNMENTS
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. RENTAL ADJUSTMENT
12. RIGHT TO ENTER
13. INDEMNITY
14. RESTORATION
15. NON-DISCRIMINATION
16. SUBJECT TO EASEMENTS
17. SUBJECT TO MINERAL INTERESTS
18. TERMINATION
19. PROHIBITED USES
20. PROTECTION OF NATURAL RESOURCES
21. DISPUTES CLAUSE
22. ENVIRONMENTAL PROTECTION
23. HISTORIC PRESERVATION
24. SOIL AND WATER CONSERVATION
25. TAXES
26. COVENANT AGAINST CONTINGENT FEES
27. OFFICIALS NOT TO BENEFIT
28. SEVERAL LESSEES
29. MODIFICATIONS
30. DISCLAIMER

NO._____

DEPARTMENT OF THE _____ **LEASE**

FOR AGRICULTURAL OR GRAZING PURPOSES

LOCATED ON

_____
(PROJECT, INSTALLATION)

_____
(COUNTY, STATE)

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE** _____,hereinafter referred to as the Secretary, and _____, _____ ; hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 10, United States Code, Section 2667, and for the consideration set forth herein, hereby leases to the Lessee the property hereinafter identified in Exhibit(s)_____, attached hereto and made a part hereof, hereinafter referred to as the premises, for _____ _____ _____ purposes, and in accordance with the land use regulations identified in Exhibit(s) _____, which is attached hereto and made a part hereof.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ (months) (years), beginning _____, _____, and ending _____, _____, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. (Use if there will be no rental offsets) The Lessee shall pay rental in advance to the United States in the amount of _____ _____ ($_____), payable _____to the order of the Finance and Accounting Officer, _____ District, and delivered to _____ _____ _____ _____.

a. (Alternate Condition) (Use if there will be rental offsets) As consideration for this lease, the Lessee shall pay cash rental in advance to the United States in the amount of _____ _____ _____ _____ _____($_____), payable _____to the order of the Finance and Accounting Officer, _____ District, and delivered to _____ _____. Such cash rental shall be offset by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement

of the leased premises as described in the Land Use Regulations attached as Exhibit _____.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717) . This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the lessee, to _____ _____

_____ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division _____

_____, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer", include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

5. **SUPERVISION BY THE (DISTRICT ENGINEER (INSTALLATION COMMANDER)**

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), _____ (District) (Installation) hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. **APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representation or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit _____ and made a part hereof. Upon expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The reports will constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY.**

8. **TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

9. **COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. **PROTECTION OF PROPERTY**

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. **RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Where the said premises are being used for farming purposes, the Lessee shall have the right to harvest, gather and remove such crops as may have been planted or grown on said premises, or the District Engineer may require the Lessee to vacate immediately and, if funds are available, compensation will be made to the Lessee for the value of the remaining crops. Any adjustment of rent or the right to harvest, gather and remove crops shall be evidenced by a written supplemental agreement, executed by the District Engineer; PROVIDED, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease and in that event any remaining crops shall become property of the United States upon such revocation.

12. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purposes necessary or convenient in connection with government purposes; to make inspections; to remove timber or other materials, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever, and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claims for damages on account thereof against the United States or any officer, agent or employee thereof.

13. **INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

14. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT.** In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages

against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

15. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin.

16. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee.

17. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development of Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessees operations or would be contrary to local law.

18. **TERMINATION**

This lease may be terminated by the Lessee at any time by giving at least sixty (60) days notice thereof, in writing, to the District Engineer. In the case of such termination, no refund by the United States of any rental previously paid shall be made and payment in full of all rent becoming due during the period of
notice will be required. In the event the effective date of termination occurs after the start of the grazing, planting or harvesting season as specified in the Land Use Regulations, any rent due for the balance of the annual term, or the rental due for the remaining term if the lease is for less than one year, shall be due and payable on or before the date of such termination.

19. **PROHIBITED USES**

a. Certain soil conservation practices may be required by the land use regulations which are identified as rental offsets. By acceptance of such offsets, the Lessee agrees that he will not accept any Federal or State cost-sharing payments or subsidies for the same soil conservation practices.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

20. **PROTECTION OF NATURAL RESOURCES**

The Lessee shall use the premises in accordance with the attached Land Use Regulations and shall at all times: (a) maintain the premises in good condition and free from weeds, brush, washes, gullies and other erosion which is detrimental to the value of the premises for agricultural purposes; (b) cut no timber, conduct no mining operations, remove no sand, gravel or kindred substances from the premises; (c) commit no waste of any kind nor in any manner substantially change the contour or condition of the premises except changes required to accomplish soil and water conservation measures as may be authorized by said officer.

21. **DISPUTES**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the District Engineer

must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interset on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

22. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground and water. The Lessee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from activities of the Lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

23. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said

officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

24. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to saidofficer, all soil and water conservation structures that may be in existence upon the premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed in writing by the District Engineer.

25. **TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be promptly paid by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

26. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage or contingent fees, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

27. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

28. **SEVERAL LESSEES**

If more than one Lessee is named in this lease, the obligation of said Lessees herein named shall be joint and several obligations.

29. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modifications of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

30. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned. The Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with

the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF I have hereunto set my hand by direction of he Secretary of the _____ this _____ day of_____, _____.

_____

THIS LEASE is also executed by the Lessee this _____

day of _____, _____

_____

GENERAL PURPOSE LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. TRANSFERS AND ASSIGNMENTS
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. INSURANCE
12. RIGHT TO ENTER
13. INDEMNITY
14. RESTORATION
15. NON-DISCRIMINATION
16. SUBJECT TO EASEMENTS
17. SUBJECT TO MINERAL INTERESTS
18. TERMINATION
19. RENTAL ADJUSTMENT
20. PROHIBITED USES
21. NATURAL RESOURCES
22. DISPUTES CLAUSE
23. ENVIRONMENTAL PROTECTION
24. PRELIMINARY ASSESSMENT SCREENING
25. HISTORIC PRESERVATION
26. SOIL AND WATER CONSERVATION
27. TAXES
28. COVENANT AGAINST CONTINGENT FEES
29. OFFICIALS NOT TO BENEFIT
30. SEVERAL LESSEES
31. MODIFICATIONS
32. DISCLAIMER

Figure 8-B-2

NO _____

DEPARTMENT OF THE _____ **LEASE**

_____
(PROJECT/ INSTALLATION)

_____
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE** _____, hereinafter referred to as the Secretary, and _____ _____ _____ _____, hereinafter referred to as the Lessee.

WITNESSETH:

That the Secretary, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for _____ purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ years, beginning _____, _____ and ending_____,_____, but revocable at will by the Secretary.

2. **CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of _____ _____($ _____), payable _____ to the order of the Finance and Accounting officer, _____District, and delivered to _____

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee) . An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or

portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to _____ _____ _____ _____and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division _____ _____ _____,or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include any sublessees, assignees, transferees, successors and their duly authorized representatives.

5. **SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)**

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander) _____ (District) (Installation) hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. **APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit _____ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property

must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY.**

8. **TRANSFERS AND ASSIGNMENTS**

Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the District Engineer.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

9. **COST OF UTILITIES**

The Lessee shall pay the cost, as determined by the officer having jurisdiction over the premises, of producing and/or supplying any utilities and other services furnished by the government or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. The government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. **PROTECTION OF PROPERTY**

The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. **INSURANCE (DELETE CONDITIONS A&B IF LIABILITY INSURANCE IS NOT APPLICABLE)**

a. At the commencement of this lease, the Lessee shall obtain, from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit of $ _____, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every three years or upon renewal or modification of this lease.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types

of facilities, services and activities involved. The lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

12. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

13. **INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

14. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the proprty of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate or as otherwise specified by the provisions of the condition on **RENTAL ADJUSTMENT.** In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the said officer, the proprty shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

15. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessees operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

16. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the premises by the Lessee,

17. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the lessee’s operations or would be contrary to local law.

18. **TERMINATION**

This lease may be terminated by the Lessee at any time by giving the District Engineer at least thirty (30) days notice in writing provided that no refund by the United States of any rental previously paid shall be made, and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION.**

19. **RENTAL ADJUSTMENT**

In the event the United States revokes this lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee

prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; PROVIDED however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this lease.

20. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance. The Lessee shall not sell, store or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the premises.

b. The Lessee shall not construct or place any structure, improvement or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

21. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises except as authorized in writing by the District Engineer.

22. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief;

(iii) and the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the lessee having overall responsibility of the conduct of the Lessee’s affairs.

d. For Lessee claims of $50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over $50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer’s decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the District Engineer.

23. **ENVRIONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the premises against pollution of its air, ground, and water. The Lessee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, State, interstate or local governmental agency are hereby made a condition of this lease. The Lessee shall not discharge waste or effluent from the premises

in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the lessee, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

24. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION.**

25. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

26. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

27. **TAXES**

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the Government is later made taxable by State or local governments under an Act of Congress, the lease shall be renegotiated.

28. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to

the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

29. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

30. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

31. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as all other conditions of this lease.

32. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

NOTE: The following condition should be deleted only on leases of military property when the annual rental value exceeds $200,000.

THIS LEASE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____ day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

_____

BRAC LEASE - INDEX OF CONDITIONS

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Exhibits to BRAC Lease

A	Leased Premises (Map and/or description)
B	Reuse Plan
C	Development/Use of Premises (Description, if any)
D	Condition Survey Report (with Environmental Baseline Survey)
E	Personal Property
F	UXO Parcels

DEPARTMENT OF THE ARMY
LEASE

UNDER

BASE REALIGNMENT AND CLOSURE (BRAC)

_____
(Name of Installation)

_____
(County, State)

Lease Number _____

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY (“Lessor”)**, and _____ _____(**“Lessee”**).

WITNESSETH:

That the Secretary of the Army, by the authority of Title 10, United States Code, Section 2667, and for the consideration hereinafter set forth, hereby leases to the Lessee the property identified in Exhibit A, attached hereto and made a part hereof, hereinafter referred to as the “Leased Premises”.

THIS LEASE is granted subject to the following conditions:

1. AUTHORIZED REPRESENTATIVES

The Secretary of the Army, the “Lessor”, may act by and through the [the same DA official designated in Condition 7] or the District Engineer, _____ District, or through other duly authorized representatives. The (designated DA official) or the District Engineer may also act by and through their duly authorized representatives. Except as otherwise specifically provided, any reference herein to "Lessor", "[Installation Commander or DA official]", “District Engineer”, or "said officer" shall include their duly authorized representatives. The Lessee also may act by and through duly authorized representatives. Any reference to "Lessee" shall include any assignees, or successors and their duly authorized representatives.

[Note: If there is no reuse plan, delete reference to it.]

2. USE OF THE LEASED PREMISES AND PERSONAL PROPERTY.

a. The sole purpose(s) for which the Leased Premises and any improvements thereon may be used, in the absence of prior written approval of the Lessor for any other use, is for the use designated in or consistent with the approved Reuse Plan covering the Leased Premises, attached hereto as Exhibit B, [In the absence of a Reuse Plan or if the Reuse Plan fails to adequately identify uses that will be permitted under the Lease, permissible use of the Leased Premises must be specifically described by building or area, showing any building modification, demolition, new construction, and improvements.] which use of the Leased Premises has been properly evaluated by the Lessor under the National Environmental Policy Act of 1969, 42 U.S.C. 4321 to 4370d (NEPA).

b. The Lessor, in the Lessor's sole discretion, must approve any change in the use of the Leased Premises as set forth in subcondition a. above. Prior to approval of any changes in use requested by the Lessee, the Lessee shall furnish, at the Lessee's expense, any additional environmental analyses and documentation deemed necessary by the Lessor to comply with the National Environmental Policy Act of 1969, as amended, and implementing regulations, and other applicable environmental laws and regulations. In granting approval for the change in use, the Lessor reserves the right to impose such additional environmental protection provisions and restrictions as the Lessor deems appropriate.

c. During the term of this Lease, the Lessee shall have the use of the personal property described in Exhibit E hereto in accordance with the terms of this Lease, which personal property shall be deemed to be a part of the Leased Premises.

3. TERM

a. The Leased Premises are leased for a term of _____ [The term of the Lease should be the shortest term that will meet the needs of the parties, generally five (5) years] years, beginning _____, _____ and ending _____, ____, or until terminated under the condition on **TERMINATION, REVOCATION, DEFAULT AND, RELINQUISHMENT**, whichever is sooner.

[Alternate Language for use in Master Leases]

a. The Leased Premises are leased for a term of _____ [The term of the Lease should be the shortest term that will meet the needs of the parties, generally five (5) years] years, commencing as provided for herein and ending _____ years thereafter or until terminated under the condition on **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**, whichever is sooner. The term of this Lease

shall commence, and the provisions of this Lease shall become effective, in accordance with the schedules and procedures set forth below:

(1) The Original Lease Term for the Leased Premises, as described in Exhibit A-1, shall commence on _____.

(2) With regard to expansion of the Leased Premises, the Lessee may request additional land and/or buildings ("Additional Leased Premises") be added to the Leased Premises hereunder by written notice to the Lessor, acting by and through the District Engineer and the Installation Commander ("Expansion Request"), which Expansion Request shall include a plan of the Additional Leased Premises requested, any recommended site or use specific lease terms related thereto, a brief description of the intended use for the Additional Leased Premises, the commencement date of the Original Lease Term for said Additional Leased Premises, and copies of any subleases or licenses that will commence on the date of the Original Lease Term.

(3) Upon receipt of an Expansion Request by the Lessee, the Lessor shall promptly prepare an amendment to this Lease ("Amendment"), which Amendment shall incorporate a plan of the Additional Leased Premises into Exhibit A, as Exhibit A-2; establish the commencement date of the Original Lease Term for the Additional Leased Premises; incorporate site or use specific terms into the Lease as may be agreed by the parties; and amend the Environmental Protection Provisions below by incorporating site specific restrictions regarding the Additional Leased Premises contained in the Finding of Suitability to Lease (FOSL) for the Additional Leased Premises. As of the date the Lessor and the Lessee sign the Amendment, the Lease shall be deemed modified and amended thereby, without the need for additional action by either party.

b. [Include the following only if an option to extend the term has been approved and may be needed to coincide with the estimated dates for environmental completion:] The Lessee shall have the right to extend the original term of the Lease for one (1) successive period of _____[Not to exceed five (5)] years ("Option Term"), provided that, as to this option, Lessee shall give written notice to the Lessor of its election to extend the Lease term at least eighteen (18) months prior to the time when the term expires; provided that, at the time when such notice is given, there shall not be any uncured event of default on the part of Lessee and the lease term has not been terminated or revoked by the Lessor under the Condition on **TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT**. If the Lessee exercises the option under this subcondition b., the terms and conditions of this Lease shall remain in effect, except that the annual base rental shall increase to _____[Set out increased consideration] during the Option Term.

4. TERMINATION, REVOCATION, DEFAULT, AND RELINQUISHMENT

a. Termination.

(1) In the event of the Lessor's decision to convey the Leased Premises or a portion thereof to the Lessee, the Lease shall terminate upon conveyance of the Leased Premises or a portion thereof to the Lessee with respect to that portion so conveyed.

(2) In the event the Lessor decides to convey the Leased Premises or a portion thereof to a third party and the Lessor executes a Finding of Suitability to Transfer (FOST), the Lessor may terminate this Lease with respect to any portion of the Leased Premises to be so conveyed, upon giving the Lessee sixty (60) days written notice of termination.

(3) The Lessor may terminate this Lease and remove the Lessee, and any sublessees, in the event of a national emergency as declared by the President or the Congress of the United States.

b. Default. The following events shall be deemed to be events of default by the Lessee under this Lease:

(1) Lessee shall fail to pay any rental payment hereunder within thirty (30) days after written notice thereof from Lessor. (Delete this default event if this is a public benefit discounted rental.)

(2) Lessee shall fail to comply with any condition, provision, covenant, or warranty made under this Lease by Lessee (other than the payment of rent) and shall not cure such failure within ninety (90) days after written notice thereof to Lessee, unless said non-compliance is the subject of a shorter notice given by a federal, state, or local governmental agency, in which case the shorter notice shall apply.

(3) Lessee shall become insolvent, or shall make a transfer in fraud of creditors, or shall make an assignment for the benefit or creditors.

(4) Lessee shall file a petition under any Section or Chapter of the Untied States Bankruptcy Code, as amended, or under any similar law or statute of the United States or any State thereof, or there shall be filed against the Lessee a petition for reorganization for an insolvency or a similar proceeding filed against Lessee.

(5) A receiver or trustee shall be appointed for the Leased Premises or for all or substantially all of the assets of the Lessee.

(6) Lessee shall do or permit to be done anything which creates a lien upon the Leased Premises.

c. Revocation. The Lessee is charged at all times with full knowledge of all the conditions and requirements of this Lease, and the necessity for correction of defaults and

non-compliance. Upon the occurrence of any of the aforesaid events of default, Lessor shall have the option to revoke this Lease, in which event Lessee shall immediately surrender the Leased Premises to Lessor, and if Lessee fails to do so, Lessor may, without prejudice to any other remedy which it may have for possession or arrearages in rent, enter upon and take possession of the Leased Premises and expel or remove Lessee and any other person who may be occupying said Leased Premises or any part thereof, without being liable for any claim of damages therefor; Lessee hereby agreeing to pay to Lessor on demand the amount of all loss and damage which Lessor may suffer by reason of such termination. Pursuit of any of the foregoing remedies shall not preclude pursuit of any other remedy herein provided, including closure of the Leased Premises or temporary suspension of activities under the Lease, or any other remedy provided by law or at equity, nor shall pursuit of any remedy herein provided constitute an election of remedies, thereby excluding the later election of an alternate remedy. Forbearance by Lessor to enforce one or more of the remedies herein provided upon an event of default shall not be deemed or construed to constitute a waiver of such default. Lessee agrees to pay to Lessor all costs and expenses incurred by Lessor in the enforcement of this Lease, including, without limitation, the reasonable fees of Lessor's attorneys when such attorneys are employed by Lessor to effect collection of any sums due hereunder or to enforce any right or remedy of Lessor.

d. Sublessees. In accordance with the Condition on **TRANSFERS, ASSIGNMENTS, AND SUBLEASING**, any sublease is to be subject to the conditions and terms of this Lease. Nevertheless, should default and non-compliance described in subcondition b. above stem from the activities of a sublessee, the Lessee is responsible for ensuring compliance, either by corrective action itself or through the sublessee. If the Lessee is making diligent, good faith efforts to obtain corrective action and compliance by the sublessee, to the satisfaction of the Lessor, then the Lessor's exercise of rights under subcondition c. will only be for that part of the Leased Premises under the control of the sublessee.

e. Relinquishment. This Lease may be terminated or relinquished by the Lessee by giving thirty (30) days prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES** [Delete the following proviso if the lease is for a public benefit discounted rental], and provided further, that in the event that said notice is not given at least thirty (30) days prior to the rental due date, the Lessee shall be required to pay the rental for the period shown in the condition on **CONSIDERATION**.

[Select the appropriate condition on Consideration – either fair market rental or public benefit discounted rental, as applicable]

5. CONSIDERATION [Cash payment/fair market rental]

a. [Use if there will be no rental offsets] The Lessee shall pay rental in advance to the United States in the amount of _____ _____ ($ _____), payable _____ to the order of the Finance and Accounting Officer, _____ District, and delivered to
_____

a. [Alternate Condition a. Use if there will be rental offsets] As consideration for this Lease, the Lessee shall pay fair market rental in the amount of _____, ($_____) payable in cash in advance to the United States in the amount of _____, ($_____), payable _____to the order of the Finance and Accounting Officer, _____ District, and delivered to _____ _____ _____ . In addition, such cash rental may be offset by the value of work items which shall be accomplished by the Lessee for the maintenance, protection, repair, restoration, and improvement of the Leased Premises as described in the Re-Use Plan attached as Exhibit ___.

b. All rent and other payments due under the terms of this Lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative, and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

5. CONSIDERATION [Public Benefit Discounted Rental - less than Fair Market Value - Generally only allowed if the lessee is the LRA]

a. The consideration for this Lease is the operation and maintenance of the Leased Premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

b. All monies received by the Lessee from operations conducted on the Leased Premises, including, but not limited to, use fees and rental or other consideration received from its sublessees or licensees, shall be utilized by the Lessee for the protection, operation, maintenance, repair, improvement, and costs related to the Leased Premises and the installation, to include marketing and management activities of the Lessee. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The Lessor shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, sublessees or licensees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the Lessor with the results of such an audit.

6. NOTICES

All correspondence and notices to be given pursuant to this Lease shall be addressed, if to the Lessee, to _____ _____ _____ _____ and, if to the United States, to [insert mailing location for legal notice] the District Engineer, Attention: Chief, Real Estate Division, _____ District, _____ _____ _____ _____, or as may from time to time otherwise be directed by the parties. [Copies of correspondence and notices will also be furnished to __(Installation Commander or DA official), _____.] Notices must be given in a properly sealed envelope, addressed as aforesaid, and deposited postage prepaid by either registered mail, return receipt requested, or by certified mail, return receipt requested, in a post office regularly maintained by the United States Postal Service. The service of the notice shall be deemed complete upon the receipt of said notice, or the refusal thereof, by the applicable party.

7. SUPERVISION OF THE LEASED PREMISES

The use and occupation of the Leased Premises shall be subject to the general supervision and approval of the Installation Commander [If not the IC, then designate the DA officer who will have day-to-day supervision] for _(insert name)_____ Installation, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal, state, and local laws, ordinances, regulations, and standards that are or may become applicable to their activities

on the Leased Premises, including, but not limited to, those regarding the environment, construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. Additional compliance conditions are included in the condition on **ENVIRONMENTAL PROTECTION**.

9. CONDITION OF THE LEASED PREMISES

a. The Lessee acknowledges that it has inspected the Leased Premises, knows its condition, and understands that the same is leased in an "as is," and "where is" condition, without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto, except as may be specifically provided herein.

b. The Lessor and the Lessee have jointly conducted an inventory and condition survey of the Leased Premises, to include the environmental condition, prior to lease execution by either party. The inventory and condition survey is documented in a Condition Survey report prepared by the Lessor, signed by the duly authorized representatives of both parties, and attached as Exhibit D to this Lease. The Condition Survey will refer to and incorporate by reference the Environmental Baseline Survey (EBS) prepared by the Lessor, as well as any other environmental conditions that may not be specifically identified in the EBS. Preceding expiration, revocation, or termination of this Lease, the Lessor and the Lessee will jointly conduct a close-out survey. The Lessor will prepare a close-out report. The Lessee shall fully fund the Lessor's preparation of an updated EBS that will document the environmental condition of the property at that time as part of the close-out survey. The close-out survey and report will refer to, and incorporate by reference, the updated EBS. All significant variances from the initial Condition Survey shall be clearly documented in the close-out report. This close-out report will constitute the basis for settlement by the parties for any leased property shown to be lost, damaged, contaminated, or destroyed during the lease term, in determining any environmental restoration requirements to be completed by the Lessee, and restoration of the property as required in the condition on **RESTORATION**.

10. TRANSFERS, ASSIGNMENTS, AND SUBLEASING

a. Successors. This Lease and the covenants and conditions herein contained shall be binding upon Lessee, its successors and assignees; and shall inure to the benefit of Lessee and only such successors or assignees of the Lessee to whom the transfer or assignment by Lessee has been consented to by Lessor in writing. No transfers or assignments shall be valid unless the successor or assignees shall, by an instrument in a form sufficient for recording and acceptable to the Lessor, enter into an assumption

agreement and assume all of the Lessee's obligations under this Lease. A duplicate original of that assumption agreement will be delivered to the Lessor, and the assignment shall not take effect until delivery is made.

b. Sublease. The Lessee may sublease the Leased Premises, so long as the Lessee remains primarily liable for performance of all the obligations of Lessee hereunder. The Lessee shall neither sublease, license, nor grant any interest in the Leased Premises or any part thereof or any property thereon, nor grant any other interest, privilege, or license whatsoever in connection with this Lease, without prior written notice to the Lessor, as set out in the condition on **NOTICES.** The Lessee shall provide the Lessor a copy of every executed sublease hereunder. No sublease shall be valid unless and until the Lessee shall have delivered to the Lessor a copy of the executed sublease**.** Every sublease shall contain the Environmental Protection provisions set out in this Lease and shall state that it is subject to the conditions and terms of this Lease and that, in case of any conflict between the instruments, this Lease will control. The Lessee shall provide each approved sublessee or licensee with a copy of this Lease.

c. Notice to EPA and State. The Lessee further agrees that in the event of an assignment or sublease of the Leased Premises, it shall provide to the EPA and [state agency] by certified mail a copy of the agreement or sublease of the Leased Premises within 14 days after the effective date of such transaction. The Lessee may delete the financial terms and any other proprietary information from the copy of any agreement or assignment or sublease furnished pursuant to this condition.

[If DA is to provide utilities, do not execute lease until a utility contract is signed. Delete the following condition if not applicable, or modify it to state the situation.]

11. COST OF UTILITIES

a. As set out in the Utility Contract, executed by the Lessee and said officer having jurisdiction over the Leased Premises, dated _____, the Lessee shall pay the cost of producing and/or supplying any utilities and other services furnished by the Lessor or through government-owned facilities for the use of the Lessee, including the Lessee's proportionate share of the cost of operation and maintenance of the government-owned facilities by which such utilities or services are produced or supplied. Payment shall be made in the manner prescribed in said Utility Contract.

b. The United States shall be under no obligation to furnish utilities or services. The supplying of utilities or other services by the Lessor is not a commitment to provide utilities after Lessor’s activities at the installation cease. The Lessee should develop plans for assumption of the utilities by a local utility provider or other qualified entity.

12. PROTECTION OF PROPERTY

The Lessee shall keep the Leased Premises in good order and in a clean, safe condition by and at the expense of the Lessee. The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee and/or its sublessees or licensees under this Lease, and shall exercise due diligence in the protection of all property located on the Leased Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property, except personal property, to a condition satisfactory to said officer.

13. INSURANCE

a. At the commencement of this Lease, the Lessee shall obtain, from a reputable insurance company, or companies, comprehensive liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable, and consistent with sound business practices or an amount not less than a combined single limit of $___[insert amount based upon risk of activities, but no less than $1,500,000] ___ DOLLARS ($_____), whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons upon the Leased Premises or arising from activities conducted under this Lease.

b. The liability insurance policy shall insure the hazards of the Leased Premises and operations conducted in and on the Leased Premises, independent contractors, contractual liability (covering the indemnity included in this Lease agreement), and shall name the United States as an insured party. Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the United States or any other person; provide that the insurer will have no right of subrogation against the United States; and be reasonably satisfactory to the Lessor in all respects. Under no circumstances will the Lessee be entitled to assign to any third party rights of action that it may have against the United States arising out of this Lease.

c. The Lessee shall require that the insurance company give said officer and the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. Said officer or the District Engineer may require closure of any or all of the Leased Premises during any period for which the Lessee does not have the required insurance coverage. The Lessee shall require its insurance company to furnish to said officer and to the District Engineer a copy of the policy or policies, or if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The minimum amount of liability insurance coverage is subject to revision by the District Engineer every two (2) years or upon renewal or modification of this Lease.

[Delete the following condition if no government structures or improvements are within the leased premises, or if structures and improvements are included but the determination of availability waives the requirement for fire insurance.]

d. As to those structures and improvements on the Leased Premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the Leased Premises pursuant to the terms and conditions of this Lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the Leased Premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used for the repair, restoration, or replacement of the property damaged or destroyed or of the Leased Premises, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the District Engineer does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the Leased Premises or any part thereof should it be diminished in value, damaged, or destroyed.

e. The Lessee may require any sublessees, assignees, transferees, or successors, as joint and several responsible parties with the Lessee for those portions of the Leased Premises under their control, to maintain and carry at their expense portions of the insurance requirement.

f. [Include if there is an insurance policy.] Notwithstanding anything herein to the contrary, each party hereto hereby releases the other party, its agents, sublessees and employees, to the full extent recoverable under the insurance policies of the releasing party, from any and all liability for any loss or damage which may be inflicted upon the property of such party, notwithstanding that such loss or damage shall have arisen out of the negligent or the tortious act or omission of the other party, its agents, sublessees or employees; provided, however, that this release shall be effective only with respect to loss or damage occurring during such time as the appropriate policy of insurance of the party so releasing shall contain a clause to the effect that such release shall not affect the said policy or the right of the insured to recover thereunder, and each party at the request of the other shall use reasonable efforts to have such a clause included in its said policies. Each party hereto shall notify the other in the event such a clause is not included in its said policies, or is withdrawn therefrom, in which event the release herein of the other party shall be null and void.

f. [Use for self-insured municipal governments only] Notwithstanding anything contained herein to the contrary, Lessee may self-insure against the risks provided for in this Condition under a plan of self-insurance maintained in accordance with sound accounting practices and the state laws, which Lessee may from time to time have in force and effect. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees to have insurance from a reputable insurance carrier as set out above or to also be self-insured, if applicable.

14. RIGHT TO ENTER

a. The right is reserved to the United States, its officers, agents, and employees to enter upon the Leased Premises at any time and for any purpose necessary or convenient in connection with government purposes; to make inspections, to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. Additional rights to enter are reserved in the condition on **ENVIRONMENTAL PROTECTION.**

15. INDEMNITY AND HOLD HARMLESS

a. The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident attributable or incident to the condition or state of repair of the Leased Premises or to its possession and/or use of the Leased Premises or the activities conducted under this Lease. The Lessee expressly waives all claims against the United States of America for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such condition, possession and/or use of the Leased Premises by the Lessee, or the conduct of activities or the performance of responsibilities under this lease by the Lessee. The Lessee further agrees to indemnify and hold harmless the United States of America, the Lessor, its officers, agents, and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Leased Premises by the Lessee. The Lessor will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable.

b. The Lessee shall indemnify and hold harmless the United States of America from any costs, expenses, liabilities, fines, or penalties resulting from discharges, releases, emissions, spills, storage, disposal, or any other action by the Lessee giving rise to United States of America liability, civil or criminal, or responsibility under Federal, state, or local environmental laws.

c. Subconditions a. and b. of this Condition and the obligations of the Lessee hereunder shall survive the expiration or termination of the Lease and the conveyance of the Leased Premises. The Lessee's obligation hereunder shall apply whenever the United States incurs costs or liabilities for the Lessee's actions giving rise to liability under this condition.

d. In leasing the Leased Premises, the United States recognizes its obligation to hold harmless, defend, and indemnify the Lessee and any successor, assignee, transferee, lender, or sublessee of the Lessee as provided for in Section 330 of the Department of Defense Authorization Act of 1993, as amended, and to otherwise meet its obligations under the law.

e. Any sublessees, assignees, transferees, or successors shall be jointly and severally responsibility with the Buyer/Lessee for those portions of the Leased Premises under their control.

16. RESTORATION

On or before the expiration of this Lease or its termination by the Lessee, the Lessee shall vacate the Leased Premises, remove the property of the Lessee, and restore the Leased Premises to a condition satisfactory to said officer. If, however, this Lease is revoked, the Lessee shall vacate the Leased Premises, remove said property and restore the Leased Premises to the aforesaid condition within such time as the said officer may designate**.** In either event, if the Lessee shall fail or neglect to remove said property and restore the Leased Premises, then, at the option of the said officer, the property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this Lease in restoring the Leased Premises.

[Select one of the following conditions on non-discrimination, as appropriate, based upon the consideration.]

17. NON-DISCRIMINATION [Use if lease is for fair market value]

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee’s operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

17. NON-DISCRIMINATION [Alternate if lease is for public benefit discounted rental]

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs, or activities conducted on the Leased Premises because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this Lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees, and assignees.

18. SUBJECT TO EASEMENTS

This Lease is subject to all existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the Leased Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with the use of the Leased Premises by the Lessee.

19. SUBJECT TO MINERAL INTERESTS

This Lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Lessor will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the Leased Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

[Delete the following condition if there is no rental]
20. RENTAL ADJUSTMENT

In the event the United States revokes this Lease or in any other manner materially reduces the leased area or materially affects its use by the Lessee prior to the expiration date, an equitable adjustment will be made in the rental paid or to be paid under this Lease. Such adjustment of rental shall be evidenced by a supplemental agreement in writing; provided, however, that none of the provisions of this paragraph shall apply in the event of revocation because of noncompliance by the Lessee with any of the terms and conditions of this Lease.

21. PROHIBITED USES

a. The Lessee shall not permit gambling, except for state lottery tickets in accordance with applicable state and local laws and regulations, on the Leased Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the Leased Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the Leased Premises any activity which would constitute a nuisance.

b. The Lessee shall not construct or place any structure, improvement, or advertising sign or allow or permit such construction or placement without prior written approval of the District Engineer.

c. The Lessee shall not sell, store, or dispense, or permit the sale, storage, or dispensing of beer or other intoxicating liquors on the Leased Premises.

[If the proposed use by the lessee will allow hotel, restaurant, or other similar facilities the following paragraph may be used instead of the above c.]

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines, or other intoxicating beverages on the Leased Premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

22. WASTE OF NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Leased Premises except as authorized in writing by the District Engineer.

23. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this Lease. A claim arising under this Lease, unlike a claim relating to this Lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee.

However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $100,000 is not a claim under the Act until certified as required by subparagraph c(2) below. [Delete the following sentence if there is no rent.] The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the _(designate Lessee's official or named individual)__.

(2) For Lessee claims exceeding $100,000, the Lessee shall submit with the claim a certification that—

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief and;

(iii) the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Lessor is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $100,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lessee-certified claims over $100,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in subparagraph c(2) of this condition, and be executed in accordance with subparagraph c(3) of this condition.

g. The Government shall pay interest or the amount found due and unpaid by the Lessor from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each six-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the District Engineer.

24. ENVIRONMENTAL PROTECTION

a. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from activities of the Lessee, the Lessee shall be liable to restore the damaged resources. [Add, if applicable: The Lessee shall not discharge waste or effluent from the Leased Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.] The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the Leased Premises.

[The following provisions are based on the model EPA language. The district should closely compare the actual language in the FOSL for deviations. Use the language in the FOSL.]

b. The Lessee shall be responsible for obtaining and paying for any environmental or other permits required for its operations under the Lease, independent of any existing permits.

c. The Government's rights under this Lease specifically include the right for Government officials to inspect, upon reasonable notice, the Leased Premises for compliance with environmental, safety, and occupational health laws and regulations, whether or not the Government is responsible for enforcing them. Such inspections are without prejudice to the right of duly constituted enforcement officials to make such inspections. The Government normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Premises unless it determines the entry is required for safety, environmental, operations, or security purposes. The Lessee shall have no claim on account of any entries against the United States or any officer, agent, employee, or contractor thereof.

[Note: Use the following provision, if the leased premises is part of a NPL site; Adapt to cleanup agreements under state regulatory authorities; e.g., non-NPL sites.]

d. The Government acknowledges that (insert the name of the military installation) has been identified as a National Priorities List Site under CERCLA. The Lessee acknowledges that the Government has provided it with a copy of the (military installation) Federal Facility Agreement (FFA) entered into by the United States EPA Region ( ), the State of ( ), and the Lessor and effective on _____ date, and will provide the Lessee with a copy of any amendments thereto. The Lessee agrees that should any conflict arise between the terms of the FFA, as it presently exists or may be amended, and the provisions of this Lease, the terms of the FFA will take precedence. The Lessee further agrees that notwithstanding any other provision of the Lease, the Government assumes no liability to the Lessee should implementation of the FFA interfere with the Lessee's use of the Leased Premises. The Lessee shall have no claim on account of any such interference against the United States or any officer, agent, employee, or contractor thereof, other than for abatement of rent.

[Note: Use the following provision if a Federal Facilities Agreement (FFA) or Interagency Agreement (IAG) applies to the leased premises; e.g., an NPL site.]

e. The Lessor, EPA, and the (insert State agency), their officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, and to parties in possession, to enter upon the Leased Premises for purposes consistent with the applicable provisions of the FFA, and for the following purposes:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the (Installation name) Installation Restoration Program, FFA, or IAG;

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing that IRP, FFA, or IAG;

(3) to conduct any test or survey required by EPA or (state agency) relating to the implementation of the FFA or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA or (state agency) by the Lessor relating to such conditions; and

(4) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, FFA, or IAG, including, but not limited to, monitoring wells, soil removal, pumping wells, and treatment facilities.

[Note: Use the following alternative provision if the Installation Restoration Program (IRP) or other environmental investigation applies to the leased premises; e.g., a non-NPL site.]

e. The Lessor and its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to the Lessee, and to parties in possession, to enter upon the Leased Premises for purposes enumerated in this subparagraph:

(1) to conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, soil boring tests, and other activities related to the (Installation name) Installation Restoration Program (IRP);

(2) to inspect field activities of the Lessor and its employees, agents, contractors, and subcontractors in implementing the IRP;

(3) to conduct any test or survey related to the implementation of the IRP or environmental conditions at the Leased Premises, or to verify any data submitted to the EPA or (state agency) by the Lessor relating to such conditions; and

(4) to construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the (insert name of installation) IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

f. The Lessee agrees to comply with the provisions of any health or safety plan in effect under the IRP or the FFA during the course of the above-described response or remedial actions. Any inspection, survey, investigation, or other response or remedial action will, to the extent practicable, be coordinated with representatives designated by the Lessee. The Lessee shall have no claim on account of such entries against the United States or any officer, agent, employee, contractor, or subcontractor thereof. In addition, the Lessee shall comply with all applicable Federal, state, and local occupational safety and health regulations.

g. The Lessee shall comply with the requirements of 10 U.S.C. 2692(b)(9) to obtain the Lessor's approval for the storage, treatment, or disposal of toxic or hazardous materials not owned by the Department of Defense on the Leased Premises.

h. The Lessee shall comply with the hazardous waste permit requirements under the Resource Conservation and Recovery Act (RCRA), or its (state) equivalent, and any other applicable laws, rules, or regulations. Except as specifically authorized by the Lessor in writing, the Lessee must provide, at its own expense, such hazardous waste management facilities, including storage, treatment, or disposal facilities, complying with all applicable laws and regulations. Hazardous waste management facilities of the Lessor will not be available to the Lessee. Any violation of the requirements of this provision shall be deemed a material breach of this Lease.

i. Any of Lessor's accumulation points for hazardous and other wastes will not be used by the Lessee. The Lessee will not permit its hazardous waste to be commingled with hazardous waste of the Lessor.

j. The Lessee shall have a plan approved by the Lessor for responding to hazardous waste, fuel, and other chemical spills prior to commencement of operations on the Leased Premises, which approval shall not be unreasonably withheld or delayed. Such plan shall be independent of (installation name) and, except for initial fire response and/or spill containment, shall not rely on use of installation personnel or equipment. Should the Lessor provide any personnel or equipment, whether for initial fire response and/or spill containment, or otherwise on the request of the Lessee, or because the Lessee was not, in the opinion of the Lessor, conducting timely cleanup actions, the Lessee agrees to reimburse the Lessor for its costs. The plan may be developed in phases as sublease activities are identified. Sublessees shall provide to the Lessee a plan to cover their activities and portion of the Leased Premises prior to commencement of operations on the subleased portion, which will be incorporated by the Lessee into the overall plan.

k. The Lessee shall not construct or make or permit its sublessees or assigns to construct or make any substantial alterations, additions, or improvements to or installations upon or otherwise modify or alter the Leased Premises in any way which may adversely affect the cleanup, human health, or the environment without the prior written consent of the Lessor. Such consent may include a requirement to provide the Lessor with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the United States. For construction or alterations, additions, modifications, improvements, or installations in the proximity of operable units that are part of a National Priorities List (NPL) site, such consent may include a requirement for written approval by the Lessor's Remedial Project Manager.

l. The Lessee shall not conduct or permit its sublessees to conduct any subsurface excavation, digging, drilling, or other disturbance of the surface without the prior written approval of the Lessor.

25. HAZARDOUS SUBSTANCES NOTICE

To the extent such information is available on the basis of a complete search of Lessor’s files, notice regarding hazardous substances stored for one year or more, known to have been released or disposed of on the Leased Premises, is provided in Exhibit G. The Lessee should consult the Condition Survey and the EBS for more detailed information.

[Include the following conditions if required by the FOSL. The FOSL is not attached as an exhibit to the lease. It is an internal decision document. Modifications of these conditions may be made to comply with the FOSL.]

[Select the appropriate condition below on lead-based paint, as applicable.]

[Alternate Condition 26 where the leased premises do not include residential housing]
26. LEAD-BASED PAINT WARNING AND COVENANT

a. The Leased Premises do not contain residential housing and are not being leased for residential purposes. The Lessee is notified that the Leased Premises contain buildings built prior to 1978 that contain lead-based paint. Exposure to lead from lead-based paint may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, referenced in the Condition Survey attached as Exhibit D, which has been provided to the Lessee. [If applicable: Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: _____.] Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention. The Lessee hereby acknowledges receipt of all the information described in this subcondition.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit use of any buildings or structures on the Leased Premises for residential habitation without first obtaining the written consent of the Lessor. As a condition of its consent, the Lessor may require the Lessee to:

(1) inspect for the presence of lead-based paint and/or lead-based paint hazards;

(2) abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations; and

(3) comply with the notice and disclosure requirements under applicable Federal and state law. The Lessee agrees to be responsible for any future remediation of lead-based paint found to be necessary on the Leased Premises.

[Alternative Condition 26 where the leased premises contains residential housing]
26. NOTICE OF THE PRESENCE OF LEAD-BASED PAINT AND COVENANT

a. The Lessee is hereby informed and does acknowledge that all buildings on the Leased Premises, which were constructed or rehabilitated prior to 1978, are presumed to

contain lead-based paint. Lead from paint, paint chips, and dust can pose health hazards if not managed properly. Lead exposure is especially harmful to young children and pregnant women. Before renting pre-1978 residential housing, lessors must disclose to lessees and sublessees the presence of lead-based paint and/or lead-based paint hazards therein. "Residential housing" means any housing constructed prior to 1978, except housing for the elderly (households reserved for and composed of one or more persons 62 years of age or more at the time of initial occupancy) or persons with disabilities (unless any child who is less than 6 years of age resides or is expected to reside in such housing) or any 0-bedroom dwelling. A risk assessment or inspection for possible lead-based paint hazards by the Lessee is recommended prior to lease.

b. Available information concerning known lead-based paint and/or lead-based paint hazards, the location of lead-based paint and/or lead-based paint hazards, and the condition of painted surfaces is contained in the EBS, referenced in the Condition Survey attached as Exhibit D, which have been provided to the Lessee. [If applicable: Additionally, the following reports pertaining to lead-based paint and/or lead-based paint hazards have been provided to the Lessee: _____.] Additionally, the Lessee has been provided with a copy of the federally-approved pamphlet on lead poisoning prevention, and acknowledges that all sublessees must also receive this pamphlet. The Lessee hereby acknowledges receipt of all of the information described in this subparagraph.

c. The Lessee acknowledges that it has received the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards prior to execution of this Lease.

d. The Lessee shall not permit the occupancy or use of any buildings or structures as residential housing without complying with this section and all applicable federal, state, and local laws and regulations pertaining to lead-based paint and/or lead-based paint hazards. Prior to permitting the occupancy of residential housing, if required by law or regulation, the Lessee, at its sole expense, will abate and eliminate lead-based paint hazards by treating any defective lead-based paint surface in accordance with all applicable laws and regulations.

e. The United States assumes no liability for remediation or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from or incident to possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. The Lessee further agrees to indemnify and hold harmless the United States, its officers, agents, and employees, from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of any portion of the Leased Premises containing lead-based paint as residential housing. This Condition and

the obligations of the Lessee hereunder shall survive the expiration or termination of this Lease and any conveyance of the Leased Premises to the Lessee. The Lessee's obligation hereunder shall apply whenever the United States of America incurs costs or liabilities for actions giving rise to liability under this section.

(Include the following if required by the FOSL. Modification may be made to comply with the terms of the FOSL. In particular, an alternate provision, as set forth in the FOSL, will be needed where the leased premises contain asbestos that poses an unacceptable risk to human health and the lessee is required to remediate prior to use or occupancy.]

27. NOTICE OF THE PRESENCE OF ASBESTOS AND COVENANT

a. The Lessee is hereby informed and does acknowledge that (friable and) non-friable asbestos or asbestos-containing materials (ACM) has been found on the Leased Premises, as described in the Condition Survey attached as Exhibit D. To the best of the Lessor's knowledge, the ACM on the Leased Premises does not currently pose a threat to human health or the environment.

b. In addition to the Lessee's general indemnity contained in the condition on **INDEMNITY AND HOLD HARMLESS**, with regard specifically to ACM, the Lessee covenants and agrees that its use and occupancy of the Leased Premises will be in compliance with all applicable laws relating to asbestos; and that the Lessor assumes no liability for future remediation of asbestos or damages for personal injury, illness, disability, or death to the Lessee, its successors or assigns, sublessees, or to any other person, including members of the general public, arising from, or incident to, the purchase, transportation, removal, handling, use, disposition, or other activity causing or leading to contact of any kind whatsoever with asbestos on the Leased Premises described in this Lease, whether the Lessee, its successors or assigns have properly warned or failed to properly to warn the individual(s) injured. The Lessee agrees to be responsible for any future remediation of asbestos found to be necessary on the Leased Premises.

28. OTHER ENVIRONMENTAL RESTRICTION

[Insert from the FOSL any site specific environmental restrictions or provisions, such as endangered species, underground storage tanks. The FOSL is not attached to the lease as an exhibit. It is an internal decision document.]

29. SITE SPECIFIC RESTRICTIONS

[Insert from the FOSL/Report of Availability any site specific restrictions or provisions, such as UXOs, restrict use of wetlands, support coastal zone management plans, limit flood plain activities.]

[Note: Additional numbered conditions may be inserted for clarity or due to length.]

30. HISTORIC PRESERVATION

a. The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the Leased Premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

b. [Include any provision required by a Memorandum of Agreement or Programmatic Agreement with the State Historic Preservation Officer and Advisory Council on Historic Preservation.]

31. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said Leased Premises at the beginning of or that may be constructed by the Lessee during the term of this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Leased Premises. Any soil erosion occurring outside the Leased Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

32. TAXES

Any and all taxes imposed by the state or its political subdivisions upon the property or interest of the Lessee in the Leased Premises shall be paid promptly by the Lessee. If and to the extent that the property owned by the United States is later made taxable by state or local governments under an Act of Congress, the Lease shall be renegotiated.

33. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

34. OFFICIALS NOT TO BENEFIT

No member of or delegate to Congress or resident commissioner shall be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

35. SEVERAL LESSEES

If more than one Lessee is named in this Lease the obligations of said Lessees herein contained shall be joint and several obligations.

36. MODIFICATIONS

This Lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative, and this provision shall apply to this condition as well as all other conditions of this Lease.

37. NO COMMITMENTS FOR FUTURE USE

This Lease does not commit the United States to any renewals of the use authorized herein [delete if no option to extend: beyond the extension of the term provided for in the Condition on **TERM**] or to any future reuse or disposal and does not create any right or expectation for the Lessee or its sublessees or tenants to acquire the leased property.

38. DISCLAIMER

This Lease is effective only insofar as the rights of the United States in the Leased Premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Leased Premises. It is understood that the granting of this Lease does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of March 3, 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

39. AVAILABILITY OF FUNDS

The Lessor’s obligation to pay or reimburse any money under this Lease is subject to the availability of appropriated funds, and nothing in this Lease shall be interpreted to require obligations or payments by the United States in violation of the

Anti-Deficiency Act; provided that the Lessor shall otherwise comply with applicable statutory requirements and its obligations under the terms of this lease.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____
day of _____, _____.

_____

APPENDIX 8-C

LEASE FORMATS UNDER 16 U.S.C. § 460d

PUBLIC PARK LEASE TO

STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNALS AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATE ON
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. COVENANT AGAINST CONTINGENT FEES
33. OFFICIALS NOT TO BENEFIT
34. MODIFICATIONS
35. DISCLAIMER

NO. _____

DEPARTMENT OF THE ARMY

LEASE TO STATES

FOR PUBLIC PARK AND RECREATIONAL PURPOSES

_____
(SITE)

_____
(PROJECT NAME)

_____
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ years, beginning _____, _____ and ending _____, _____.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee,to _____ _____; and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, _____ _____, _____ _____ _____,or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer or "Lessor" shall

include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. **DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit _____which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

6. **STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION.**

7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION,** noting any deficiencies and providing a schedule for correction.

8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and said improvements. A copy of said report is attached hereto as Exhibit _____and made a part hereof. Upon the

expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

11. **FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

12. **ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of

Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

13. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

14. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

15. **LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

16. **INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance,

c. The District Engineer may require closure of any or all of the premises during any period for which the sub-lessees and concessionaires do not have the required insurance coverage.

17. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

18. **NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee’s operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is recieving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. S 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

19. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

20. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM4), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

21. **COMPLIANCE,CLOSURE, REVOOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee’s past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on NOTICES.

22. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions n the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

23. **PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

24. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

25. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

26. **DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

27. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state , interstate or local governmental agency, are hereby

made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Service for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

28. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION.**

29. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

30. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take apprpriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

31. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

32. **COVENANT AGAINST CONTINENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

33. **OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

34. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this _____day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____ day of _____ _____.

_____

PUBLIC PARK LEASE TO

POLITICAL SUBDIVISIONS OF STATES

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNALS AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATION
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. COVENANT AGAINST CONTINGENT FEES
33. OFFICIALS NOT TO BENEFIT
34. MODIFICATIONS
35. DISCLAIMER

Figure 8-C-2

NO. _____

DEPARTMENT OF THE ARMY
LEASE TO NON-STATE GOVERNMENTAL AGENCIES
FOR PUBLIC PARK AND RECREATIONAL PURPOSES

_____
(SITE)

_____
(PROJECT NAME)

_____
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____ _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ years, beginning_____,_____and ending _____, _____.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee,to _____ _____ _____ _____ _____;
and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, _____, _____,
or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. **DEVELOPMENT PLANS**

The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit_____ which shows the facilities and services necessary to meet the current and potential public demand and the management and developement activities to be undertaken by the Lessee and any sublessees. No later than _____ of each year the Lessee will submit the annual Plan to be mutually agreed on between the Lessee and the District Engineer. Such annul Plan shall include but is not limited to the following:

a. Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

b. Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

d. Minor modifications to the Development Plan. Major modifications are to be accomplished by amendment to the Plan before proceeding to implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION,** noting any deficiencies and providing a schedule for correction.

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

6. **STRUCTURE AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION.** However, not structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the District Engineer. The District Engineer may require the

Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do bisiness. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b . The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. The Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disability Act, as required in the condition on **NON-DISCRIMINATION,** noting any deficiences and providing a schedule for correction.

8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit _____and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lesse will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sub-lessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodations, or personal proprty on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

11. **FEES**

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

12. **ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall establish and maintain accurate records and accounts and provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sub-lessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

13. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or at the election of the District Engineer, reimbursement may be made threfor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

14. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner

whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

15. **LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

16. **INSURANCE**

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of $ _____, whichever is greater, for any number of parsons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee, sub-lessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the District Engineer. The Lessee’s insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The District Engineer may require closure of any or all of the premises during any period for which the Lessee and/or its sub-lessees and concessionaires do not have the required insurance coverage.

17. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the

premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

18. **NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is rec Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublesses and assignees.

19. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

20. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

21. **COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sub-lessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and

continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES.**

22. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

23. **PUBLIC USE**

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

24. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the

premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

25. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

26. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee’s knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee’s location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee’s affairs.

d. For Lessee claims of $50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

27. **ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent polution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state , interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

28. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal substances thereon is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. my such requirements will be completed by the lessee in accordance with the condition on **RESTORATION.**

29. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

30. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any spoil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

31. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

32. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retailed to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full ammount of such commision, percentage, brokerage, or contingent fee.

33. **OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However nothing herein contained shall be construed to extend to

any incorporated company if the lease be for the general benefit of such corporation or company.

34. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

35. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this _____ day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

_____

FISH AND WILDLIFE MANAGEMENT LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FISH AND WILDLIFE ACTIVITIES
10. TRANSFERS, ASSIGNMENTS, SUBLEASES
11. ACCOUNTS, RECORDS AND RECEIPTS
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13. RIGHT TO ENTER AND FLOOD
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18. SUBJECT TO MINERAL INTERESTS
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20. HEALTH AND SAFETY
21. PUBLIC USE
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24. ENVIRONMENTAL PROTECTION
25. PRELIMINARY ASSESSMENT SCREENING
26. HISTORIC PRESERVATION
27. SOIL AND WATER CONSERVATION
28. TRANSIENT USE
29. COVENANT AGAINST CONTINGENT FEES
30. OFFICIALS NOT TO BENEFIT
31. MODIFICATIONS
32. DISCLAIMER

NO. _____

DEPARTMENT OF THE ARMY

LEASE FOR

FISH AND WILDLIFE MANAGEMENT PURPOSES

_____
(SITE)

_____
(PROJECT NAME)

_____
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____ _____ _____,hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section(s)_____, and for the consideration hereinafter set forth, hereby grants to the Lessee: the land and/or water areas under the primary jurisdiction of the Department of the Army as identified in Exhibit(s) _____,attached hereto and made a part hereof, hereinafter referred to as the premises, for fish and wildlife management purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby granted for a term of _____ years, beginning _____,_____ and ending _____,_____.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to_____ _____ _____ _____and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, _____ _____ _____, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and

deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZE REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include its successors, employees and duly authorized representatives.

5. **DEVELOPMENT PLANS**

a. The Lessee shall be guided by a Fish and Wildlife Development and Management Plan (Development Plan), attached as Exhibit_____, which shows the facilities and management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

6 . **STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to accomplish the purposes of this lease. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the condition on **RESTORATION.**

7. **APPLICABLE LAWS AND REGULATIONS**

a . The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, and use of pesticides. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises, if any, have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION,** noting any deficiencies and providing a schedule for correction.

8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. An inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit_____and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

9. **FISH AND WILDLIFE ACTIVITIES**

a. The lessee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/or habitat for wildlife and for the development and conservation of land, fish and wildlife, forests, and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the lessee for wildlife habitat will be made available for lease by the District Engineer for agricultural or grazing purposes under conditions which would not be incompatible with the lessee’s use of the premises.

c. The Lessee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

10. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease, nor sublet the demised premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. Agreements covered by the condition on **FISH AND WILDLIFE ACTIVITIES** are not subject to this condition.

11. **ACCOUNTS, RECORDS AND RECEIPTS**

a. All monies received by the Lessee from operations conducted on the premises may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the District Engineer. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. The District Engineer shall have the right to perform audits of the Lessee’s records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of Lessee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not subject to this condition.

12. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

13. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

14. **LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

15. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

16. **NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7.

17. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

18. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

19. **COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to the United States in the manner prescribed in the condition on **NOTICES.**

20. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean and safe condition.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

21. **PUBLIC USE**

No attempt shall be made by the Lessee to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

22. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the condition on **DEVELOPMENT PLANS.** The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

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b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer,

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

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(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

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e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

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a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the

premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

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(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

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b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

29. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

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This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

IN WITNESS WHEREOF I have hereunto set my hand by authority of the Secretary of the Army this _____ day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____ day of_____, _____.

_____

COMMERCIAL CONCESSION LEASE

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No. _____

DEPARTMENT OF THE ARMY

LEASE

FOR COMMERCIAL CONCESSION PURPOSES

_____
SITE

_____
PROJECT NAME

_____
COUNTY, STATE

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and_____ _____ _____ _____ hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s)_____ _____ _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for commercial concession purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ years, beginning_____, _____and ending_____, _____.

2. **CONSIDERATION**

a. The rent due to the United States in consideration of this lease shall be calculated using the Revised Graduated Rental System (RGRS). The total gross receipts for each rental payment period will be multiplied by the applicable percentage rate and the resulting total due payable within ten days to_____ _____ _____

The percentage rate for the upcoming rental year will be selected from the following RGRS rental rate chart, using the line for the total gross receipts of the ending rental year:

GROSS RECEIPTS (GR)	% RENT
Under $50,000	2.0%
$50,000-$200,000	2.1%
$200,000-$400,000	2.2%
$400,000-$600,000	2.3%
$600,000-$800,000	2.4%
$800,000-$1,000,000	2.5%

$1,000,000-$1,200,000	2.6%
$1,200,000-$1,400,000	2.7%
$1,400,000-$1,600,000	2.8%
$1,600,000-$1,800,000	2.9%
$1,800,000-$2,000,000	3.0%
$2,000,000-$2,200,000	3.1%
$2,200,000-$2,400,000	3.2%
$2,400,000-$2,600,000	3.3%
$2,600,000-$2,800,000	3.4%
$2,800,000-$3,000,000	3.5%
$3,000,000-$3,200,000	3.6%
$3,200,000-$3,400,000	3.7%
$3,400,000-$3,600,000	3.8%
$3,600,000-$3,800,000	3.9%
$3,800,000-$4,000,000	4.0%
$4,000,000-$4,200,000	4.1%
$4,200,000-$4,400,000	4.2%
$4,400,000-$4,600,000	4.3%
$4,600,000-$4,800,000	4.4%
$4,800,000-$5,000,000	4.5%
$5,000,001 and above	4.6%

(1) Gross receipts are defined as the total of the concessionaire's receipts from business operations conducted on the premises, including receipts of sub-lessees and licensees. No reductions are permitted except the costs of hunting and fishing licenses, and license fees and taxes collected for direct remittance to a taxing authority, and the exact amount collected from customers for electrical service which is metered to the customer and collected by the Lessee as the servicing agent and paid to the power company. (OPTIONAL: Sale receipts from boats and motors are excluded and assessed a straight one-percent rent.)

(2) The rental payment shall be (monthly) (quarterly) (semi-annually) (annually) with the first payment due _____. The rental year (will begin on the beginning date of this lease, and each anniversary date thereafter) (will be a partial year the first year, beginning on the date of this lease and ending on 31 December_____; for each rental year thereafter, the year will begin on 1 January and end on 31 December.)

(3) RENT PAYMENT CALCULATION FORM

Reporting period _____

a) Gross receipts for this period:		$_____
b) Rent rate:	x	_____
c) Amount due (a x b)		$_____
IF OPTIONAL BOAT RATE SELECTED:		
d) Boat and motor sales:		$_____
e) Rate:	x	0.01
f) Amount due (d x e)		$_____
TOTAL DUE (C+f)		$_____

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. § 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an

additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charges.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to _____ _____ _____, and, if to the United States, to the District Engineer, Attn: Chief, Real Estate Division, _____ _____, _____ or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sub-lessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. **USE AND DEVELOPMENT OF THE PREMISES**

a. The premises may be occupied and used by the Lessee or duly authorized agents, sublessees, assignees, or transferees solely for the conduct of business in connection with the recreational development of the premises for the general use of the public. Lessee shall provide facilities and activities in accordance with the Use and Development Plan and its architectural theme and sign plan, as supplemented or amended, (Development Plan) and attached hereto as Exhibit_____. **(FOR RENEWALS WITHOUT SIGNIFICANT PROPOSED NEW DEVELOPMENT, REPLACE PRECEDING SENTENCE WITH THE FOLLOWING):** Lessee shall continue to provide current facilities and activities in accordance with a Use Plan showing location of existing facilities and current activities, attached exhibit _____, and will place and maintain signs in accordance with the sign plan, attached as exhibit_____.) The sign plan will be in accordance with the Sign Standards Manual, EP 310-1-6A, Chapter 17.

b. No structure may be erected or altered upon the premises unless and until said Development Plan **(FOR RENEWALS WITHOUT A DEVELOPMENT PLAN, REPLACE** "said Development Plan" with "such Structure) has been approved in writing by the District Engineer. The District Engineer may require the Lessee, upon

completion of each of the proposed developments, to furnish a complete "as built" site plan and "as built" construction plans for all facilities with certification by a Professional Engineer that the construction meets all codes and standards.

(DELETE THE FOLLOWING CONDITION FOR RENEWAL WITHOUT DEVELOPMENT PLANS)

c. The District Engineer may agree in writing to an extension of time for providing the facilities and activities designated in said Development Plan or may waive the providing thereof for other than those specified for the first lease year as designated in said development Plan, whenever, in the opinion of the District Engineer, the public demand does not reach the anticipated level at the time stated, or when a delay in providing the facilities and services is beyond the control of the Lessee; provided, however, that at the discretion of the District Engineer, such undeveloped areas may be withdrawn from the leased premises.

d. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer. Modifications to said Development Plan must be approved in writing by the District Engineer prior to implementation of the change.

e. All structures and equipment furnished by the Lessee shall be and remain the property of the Lessee, except as otherwise provided in the Condition on RESTORATION.

(DELETE THE FOLLOWING CONDITION FOR LEASE RENEWALS)

6. **PERFORMANCE OF CONTRACT**

The Lessee agrees to obtain and deliver to the District Engineer, within thirty (30) days, either a valid surety bond issued by a surety corporation licensed by a state regulatory entity, a performance deposit, or an irrevocable letter of credit issued by a Federally insured financial institution in a form satisfactory to the District Engineer. Said surety bond, performance deposit, or letter of credit shall be in the sum of $_____, payable to the United States, and conditioned upon full and satisfactory performance of the obligations of the Lessee herein set forth in this lease. To insure favorable performance by the Lessee of all the covenants, terms and conditions of this lease, said deposit shall be retained or said bond or letter of credit shall be kept in full force and effect by the Lessee until released in writing by the District Engineer upon completion of the development set out in said Development Plan, attached as Exhibit _____,as supplemented or amended, is completed.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the District Engineer and of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit _____ and made a part hereof. Upon the expiration revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be

either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY.**

8. **RATES AND PRICES**

a. The rates and prices charged by the Lessee or its sub-lessees shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The District Engineer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. The Lessee shall keep such rates and prices posted at all times in an appropriate and conspicuous place on the premises. The District Engineer may require submission of a schedule of the rates and prices at any time.

b. However, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

9. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer, or, at the election of the District Engineer, reimbursement may be made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to the District Engineer.

10. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government purposes; to make inspections; to remove timber or other material, exept proprty of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. **INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee’s officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. **INSURANCE**

a. At the commencement of this lease, the Lessee will obtain from a reputable insurance company, or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and

consistent with sound business practices or a minimum Combined Single Limit of $_____, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the Lessee under the terms and conditions of this lease, and the Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, a certificate of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance coverage required. The policy shall provide that the insurance company give the District Engineer thirty (30) days written notice of any cancellation, non-renewal or change in such insurance.

b. The lessee's sublessees and licensees, at the commencement of operating under the terms of this lease, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and licensees under the terms of this lease. The lessee shall require any insurance carrier or carriers to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

c. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the District Engineer thirty (30) days written notice of any cancellation or change in such insurance. The District Engineer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

d. As to those structures and improvements on the premises constructed by or at the expense of the United States, for such periods the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain at the Lessee's cost a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event of loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration, or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the United States, provided however, that the insurer, after payment of any proceeds to the Lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore, or replace the leased premises or any part thereof.

13. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

14. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the leased premises. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

15. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

16. **TAXES**

Payment of any and all taxes imposed by the state or its political subdivisions upon the property or business of the Lessee on the premises is the responsibility of the Lessee.

17. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, easments subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The lessee will not close any established access routes without written permission of the District Engineer.

18. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to Federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

19. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or a controlling interest therein (including, without limitation, mergers, consolidations, reorganizations, or other business combinations), nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease, nor shall this lease be assignable or transferable by process or operation of law including, but not limited to, insolvency proceedings, bankruptcy, or intestacy, or in any other manner whatever.

(1) Failure to comply with this condition or the procedures described herein shall constitute a material breach of this lease for which this lease may be revoked immediately by the District Engineer, and, the secretary shall not be obligated to recognize any right of any person or entity to an interest in this lease or to own or operate the facilities authorized hereunder acquired in violation hereof.

(2) The Lessee shall advise the person(s) or entity proposing to enter into a transaction described in Subsection a. above that the District Engineer shall be notified and that the proposed transaction is subject to review and approval by the District Engineer. The Lessee shall request in writing the District Engineer's approval of the proposed transaction and shall promptly provide the District Engineer all relevant documents related to the transaction, and the name(s) and qualifications of the person(s) or entity involved in the proposed transaction.

b. The District Engineer, in exercising discretion to approve or disapprove transfer, assignments, or subleases, shall among other matters, take into consideration the management qualifications of the individuals or entities that would thereby obtain a controlling interest in the facilities or services authorized hereunder, the experience of such individuals or entities with similar operations, and the ability of such individuals or entities to operate the operations authorized hereunder in the public interest.

c. The term "controlling interest" in a Lessee's ownership shall mean, in the instance of a corporate Lessee, an interest beneficial or otherwise, of sufficient outstanding voting securities or capital of the Lessee so as to permit exercise of substantial managerial influence over the operations of the

Lessee, and, in the instance of a partnership, joint venture, or individual Lessee, any beneficial ownership of the capital assets of the Lessee sufficient to permit substantial managerial influence over the operations of the Lessee. The District Engineer will determine at the request of interested parties whether or not an interest in a lease constitutes a controlling interest within the meaning hereof.

d. The Lessee may not enter into any agreement with any entity or person, except employees of the Lessee, to exercise substantial management responsibilities for the operation authorized hereunder or any part thereof without the prior written approval of the District Engineer.

e. No mortgage shall be executed, and no bonds, shares of stock, or other evidence of interest in, or indebtedness upon the assets of the Lessee located on the premises, including this lease, shall be issued, except for the purposes of installing, enlarging, refinancing or improving concession plant, equipment and facilities, provided that, such assets, in addition, may be encumbered for the purposes of purchasing existing concession plant, equipment and facilities. In the event of default on such a mortgage, encumbrance, or such other indebtedness, or of othor assignment, transfer, or encumbrance, the creditor or any assignee thereof shall succeed to the interest of the Lessee in such assets but shall not thereby acquire operating rights or privileges. Such rights or privileges shall be subject to disposition by the District Engineer.

f. The lessee may allow independent private service companies to enter and conduct business on the premises for the benefit of the Lessee’s customers on an as-called basis without a formal sublease or license agreement, provided that the service is occasional and incidental to the Lessee’s operation and that any compensation paid to the Lessee is included in gross receipts.

g. The Lessee will not sponsor or participate in timeshare ownership of any sructures, facilities, accommodations, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

20. **COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event that the Lessee violates any of its terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sublessees or licenses. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the leassee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee’s past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving six months prior written notice to the District Engineer in the manner prescribed in the Condition on **NOTICES.**

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due, then, and in such case, the District Engineer may elect to revoke this lease by notification in writing to the Lessee.

21. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions on the premises that presents an immediate threat to the health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected within the time specified, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee will be obligated to pay rental, notwithstanding any interruption or suspension of activities. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

22. **PUBLIC USE**

No attempt shall be made by the Lessee, nor any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee to manage the premises and provide safety and security to the visiting public.

23. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal; or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

24. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Condition on **USE AND DEVELOPMENT OF THE PREMISES** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber.

25. **ACCOUNTS AND RECORDS**

a. The Lessee shall maintain complete and accurate records and no later than 120 days following the end of the Lessee's fiscal year shall submit to the District Engineer reports and data for the preceding year to include a financial statement for the activity covered by the lease and compiled by an independent certified public accountant or by an independent licensed public accountant certified or licensed by a regulatory authority of a state.

b. The District Engineer shall have the right at any time (1) to verify all financial reports and copy the books, correspondence, memoranda, income tax returns and other records of the Lessee and sublessees, if any, and of the records of proprietary or affiliated companies, if any, related to this lease during the period of the lease (This right shall extend for such time thereafter as may be necessary to accomplish such verification, but in no event more than five (5) years after the close of the business year of the Lessee); (2) to require the Lessee to furnish an audited financial statement; or (3) to require the Lessee to furnish an audited statement of gross receipts for the concession operation, including the gross income of any sublease operation, and certification of the accuracy of the reported income.

c. Statements will be prepared by an independent certified public accountant or by a licensed public accountant certified or licensed by a regulatory authority of a state. Audits will be in accordance with the auditing standards and procedures promulgated by the American Institute of Certified Public Accountant. Financial statements requiring audits and accompanied by remarks such as "prepared from client records without audit" are unacceptable. Audited and reviewed financial statements shall contain appropriate footnotes. The independent licensed or certified public accountant shall include a statement to the effect that the amounts included in the financial report are consistent with those included in the Federal tax returns. If the amounts are not consistent, then a statement showing differences shall be included. An audit of Lessees tax returns is not required.

26. **ENVIRONMENT PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation

facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the property in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from the District Engineer before any pesticides or herbicides are applied to the premises.

27. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION.**

28. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

29. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected as directed by the District Engineer.

30. **LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

31. **HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

32. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites, said system to be acceptable to the District Engineer.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by the District Engineer.

33. **DISPUTES CLAUSE**

Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-6113) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the Condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

34. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

35. **OFFICIALS NOT TO BENEFIT**

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

36. **SEVERAL LESSEES**

If more than one Lessee is named in this lease the obligations of said Lessees herein contained shall be joint and several obligations.

37. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

38. **DISCLAIMER**

This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this _____ day of _____, _____.

_____

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

_____

PARK LEASE TO NONPROFIT ORGANIZATIONS

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. DEVELOPMENT AND MANAGEMENT PLANS
9. AVAILABILITY OF THE PREMISES
10. TRANSFERS AND ASSIGNMENTS
11. FEES
12. PROTECTION OF PROPERTY
13. RIGHT TO ENTER
14. INSURANCE
15. INDEMNITY
16. RESTORATION
17. NON-DISCRIMINATION
18. SUBJECT TO EASEMENTS
19. SUBJECT TO MINERAL INTERESTS
20. COMPLIANCE, CLOSURE, REVOCATION, RELINQUISHMENT
21. HEALTH AND SAFETY
22. PUBLIC USE
23. PROHIBITED USES
24. NATURAL RESOURCES
25. DISPUTES CLAUSE
26. ENVIRONMENT PROTECTION
27. PRELIMINARY ASSESSMENT SCREENING
28. HISTORIC PRESERVATION
29. SOIL AND WATER CONSERVATION
30. TRANSIENT USE
31. COVENANT AGAINST CONTINGENT FEES
32. OFFICIALS NOT TO BENEFIT
33. MODIFICATIONS
34. DISCLAIMER

Figure 8-C-5

No._____

DEPARTMENT OF THE ARMY

LEASE TO NONPROFIT ORGANIZATION

FOR PARK AND RECREATIONAL PURPOSES

_____
SITE

_____
PROJECT NAME

_____
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____ _____ _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration set forth herein, hereby leases to the Lessee, the property identified in Exhibit(s)_____, attached hereto and made a part hereof, hereinafter referred to as the premises for _____ _____ _____ _____

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of_____ years, beginning _____, _____ and ending _____,_____.

2. **CONSIDERATION**

a. The Lessee shall pay rental in advance to the United States in the amount of _____ ($_____), payable_____ to the order of the Finance and Accounting Officer, _____ District, and delivered to _____ _____ _____ _____ _____.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue

from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

2. **CONSIDERATION (ALTERNATE)** **(USE ONLY WITH THE ALTERNATE CONDITION ON NON-DISCRIMINATION)**

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to _____ _____ _____ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, _____ _____ _____ _____ _____ ,or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

5. **SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. **APPLICABLE LAWS AND REGULATIONS**

a. The lessee shall comply with all applicable federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable codes.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached as Exhibit _____ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY.**

8. **DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for park or recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION,** and shall be maintained by the Lessee to the satisfaction of said officer.

9. **AVAILABILITY OF THE PREMISES**

The Lessee agrees that the premises are leased for organized group recreational use only and that the premises and the facilities thereon must be made available on a rotational basis among any various groups within the lessee organization, and their guests. The Lessee further agrees to make the site and facilities available to other nonprofit organizations on a first come, first served reservation basis when not scheduled for use by members of the Lessee organization. The Lessee will not unreasonably withhold availability to such organizations.

10. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee will not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

11. **FEES**

Fees may be charged by the Lessee for use of the premises or facilities constructed thereon. The said officer shall have the right to review such fees and require an increase or reduction when it is determined that the objectives of this lease have been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. All monies received by the Lessee from operations conducted on the premises must be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Any such monies not so utilized or programmed for use within a reasonable time shall be paid to said officer at the end of each 5 year period. The Lessee shall furnish annual statements of receipts and expenditures to said officer.

12. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

13. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

14. **INSURANCE**

a. At the commencement of this, the Lessee shall obtain from a reputable insurance company or companies, liability insurance. The insurance

shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of $_____, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the lessee under the terms of this lease. The Lessee shall require its insurance company to furnish to said officer a copy of the policy or policies, or if acceptable to said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give said officer thirty (30) days written notice of any cancellation or change in such insurance. Said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lesseers cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event or loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

15. **INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the lessee, or for damages to the property or injuries to the person of the lessee’s officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

16. **RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the

lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

17. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

17. **NON-DISCRIMINATION (ALTERNATE)** **(USE ONLY WITH THE ALTERNATE CONDITION ON CONSIDERATION)**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

18. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

19. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said

mineral leases that are designed to protect the premises from activities that would interfere with the lessee's operations or would be contrary to local law.

20. **COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licensees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event the Lessee violates any of its terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Decisions by the said officer concerning future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall reflect the lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on NOTICES.

21. **HEALTH AND SAFETY**

a. The lessee shall keep the premises in good order and in a clean, sanitary and safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

22. **PUBLIC USE**

The lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

23. **PROHIBITED USES**

a. The lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the lessee organization and their guests. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

24. **NATURAL RESOURCES**

The lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS.** The lessee may salvage fallen or dead timber on the leased premises for use as firewood only. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

25. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee’s knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certificate shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

(A) A senior company official in charge at the Lessee's location involved; or

(B) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION.**

h. The lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

26. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The lessee shall require all sanitation facilities on boats moored at the lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising

from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

27. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION.**

28. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

29. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

30. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

31. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

32. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

33. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

34. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 19 ____

_____

THIS LEASE is also executed by the lessee this _____ day of _____, 19 _____

_____

PRIVATE RECREATION LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. DEVELOPMENT AND MANAGEMENT PLANS
9. TRANSFERS AND ASSIGNMENTS
10. PROTECTION OF PROPERTY
11. RIGHT TO ENTER AND FLOOD
12. INDEMNITY
13. RESTORATION
14. NON-DISCRIMINATION
15. SUBJECT TO EASEMENTS
16. SUBJECT TO MINERAL INTERESTS
17. COMPLIANCE, CLOSURE, REVOCATION, RELINQUISHMENT
18. HEALTH AND SAFETY
19. PROHIBITED USES
20. NATURAL RESOURCES
21. DISPUTES CLAUSE
22. ENVIRONMENTAL PROTECTION
23. PRELIMINARY ASSESSMENT SCREENING
24. HISTORIC PRESERVATION
25. SOIL AND WATER CONSERVATION
26. COVENANT AGAINST CONTINGENT FEES
27. OFFICIALS NOT TO BENEFIT
28. MODIFICATIONS
29. DISCLAIMER

NO _____

DEPARTMENT OF THE ARMY

LEASE FOR

PRIVATE RECREATION PURPOSES

_____
(SITE)

_____
PROJECT

_____
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises for private recreation purposes consisting of _____ _____ _____ _____ _____.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ years, beginning _____, _____ and ending _____, _____.

2. **CONSIDERATION**

A. The Lessee shall pay rental in advance to the United States in the amount of _____ ($_____), payable _____ to the order of the Finance and Accounting Officer, _____ District, and delivered to _____ _____.

b. All rent and other payments due under the terms of this lease must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 USC Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the Lessee). An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to _____ _____ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, _____ _____ _____, or as may from time to time otherise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army", "District Engineer" or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

5. **SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable federal, laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the current editions of the National Fire Protection Association (NFPA) code 70, National Electric Code, ANSI/NFPA standard 303, Marinas and Boatyards (DELETE IF NOT A MARINA), and other applicable codes and standards covering the type of facilities. Upon request by the District Engineer, the Lessee will provide a certification that all electrical installations on the premises have been inspected by a qualified individual and comply with the applicable NFPA codes.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by said officer and the Lessee to reflect the condition of said property and improvements. A copy of said report is be attached as Exhibit _____ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. The report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the condition on **PROTECTION OF PROPERTY.**

8. **DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises for private recreation purposes only and in accordance with a development and management plan as approved in writing by said officer. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the condition on RESTORATION, and shall be maintained by the Lessee to the satisfaction of said officer.

9. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of said officer the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee shall not subdivide nor develop the premises into private residential development.

10. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all property

located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Lessee, to flood the premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

12. **INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee's officers, agents or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. **RESTORATION**

On or before the expiration of this lease or its termination by the lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property, and restore the premises to the aforesaid condition within such time as said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, said property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this lease in restoring the premises.

14. **NON-DISCRIMINATION**

The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

15. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the Lessee.

16. **SUBJECT TO MINERAL INTERESTS**

This lease is subject to all outstanding mineral interests. As to federally-owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee’s operations or would be contrary to local law.

17. **COMPLIANCE, CLOSURE, REVOCATION, AND RELINQUISHMENT**

a. The Lessee is charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving thirty (30) days prior written notice to said officer in the manner prescribed in the condition on **NOTICES.**

c. In addition to the above right of revocation, if the rent or other payments provided to be paid by the Lessee or any part thereof shall be in arrears and unpaid for thirty (30) days after the same shall become due,then, and in such case, the said officer may elect to revoke this lease by notification in writing to the Lessee.

18. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, safe and sanitary condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

19. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

b. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises for members of the Lessee organization and their guests only.

c. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees, residing on the premises, for security purposes, if authorized by said officer.

20. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT PLANS.** The Lessee may salvage fallen or dead timber, however, no commercial use shall be made of such timber. All sales of timber or forest products will be conducted by the United States and the proceeds therefrom shall not be available to the lessee under the provisions of this lease.

21. **DISPUTES CLAUSE**

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim or action arising under the lease, and comply with any decision of said officer.

22. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or

instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the lessee as appropriate. The lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the lessee shall be liable to restore the damaged resources.

c. The lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

23. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or relinquishment of this lease another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirement of the Lessee. Any such requirements will be completed by the Lessee in accordance with the condition on **RESTORATION.**

24. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify said officer and protect the site and the material from further disturbances until said officer gives clearance to proceed.

25. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by said officer.

26. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

27. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

28. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

29. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state or local statute in connection with the use of the premises. It is understood that the granting of this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this_____ day of _____, 19 ____

_____

THIS LEASE is also executed by the Lessee this_____ day of _____, _____

_____

COOPERATIVE ASSOCIATION LEASE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. TRANSFERS AND ASSIGNMENTS
9. FEES, RATES AND PRICES
10. DEVELOPMENT AND MANAGEMENT PLANS
11. PROTECTION OF PROPERTY
12. RIGHT TO ENTER AND FLOOD
13. INSURANCE
14. INDEMNITY
15. RESTORATION
16. NON-DISCRIMINATION
17. SUBJECT TO EASEMENTS
18. SUBJECT TO MINERAL INTERESTS
19. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
20. HEALTH AND SAFETY
21. PUBLIC USE
22. PROHIBITED USES
23. NATURAL RESOURCES
24. DISPUTES CLAUSE
25. ENVIRONMENTAL PROTECTION
26. PRELIMINARY ASSESSMENT SCREENING
27. HISTORIC PRESERVATION
28. SOIL AND WATER CONSERVATION
29. TRANSIENT USE
30. COVENANT AGAINST CONTINGENT FEES
31. OFFICIALS NOT TO BENEFIT
32. MODIFICATION
33. DISCLAIMER

NO. _____

DEPARTMENT OF THE ARMY

**LEASE TO NONPROFIT ORGANIZATION
FOR COOPERATIVE MANAGEMENT OF**

_____
(SITE)

_____
(PROJECT)

_____
(COUNTY, STATE)

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____ _____, a non-profit corporation duly organized and existing under and by virtue of the laws of the State of _____, with its principal office in the City of _____, _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and pursuant to a Cooperative Agreement dated _____, hereinafter referred to as the Agreement, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s) _____ attached hereto and made a part hereof, hereinafter referred to as the premises, for the development and management, in cooperation with the Secretary.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of _____ years, beginning _____, _____ and ending _____, _____.

2. **CONSIDERATION**

The consideration for this lease is the operation and maintenance of the premises by the Lessee, in cooperation with the Secretary, for the benefit of the United States and the general public in accordance with the terms of this lease and those of the Agreement. It is understood and agreed that this lease will be controlling if there are any conflicts between the two documents.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to _____ _____ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, _____ _____, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage

prepaid in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, concessionaires, successors, and its duly authorized representatives.

5. **SUPERVISION BY THE DISTRICT ENGINEER**

The use and occupation of the premises shall be subject to the general supervision of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer, including any special provisions that may be established due to the cooperative joint management of the premises by the Lessee and the United States as contemplated by the Agreement.

6. **APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal, state, county, and municipal laws, ordinances and regulations wherein the premises are located.

7. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, Repairs to additions thereto except as may be required to carry out its responsibilities pursuant to the terms of the Agreement.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the said officer and the Lessee to reflect the condition of the said property and improvements. A copy of the said report is attached hereto as Exhibit _____ and made a part hereof. Upon the expiration, revocation or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such settlement will take into account the cooperative relationship of the parties, and will reflect an equitable apportionment of damages.

8. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the said officer the lessee shall neither transfer nor assign this lease, nor sublet the premises or any part thereof nor grant any interest, privilege or license whatsoever in connection with this lease. Failure to comply with this condition shall constitute a noncompliance for which the lease may be revoked immediately by the said officer.

b. The Lessee shall not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

9. **FEES, RATES AND PRICES**

The Lessee may charge a general admission fee and/or fees for visitor/interpretative services or special events. The said officer shall have the right to review such rates and prices and require an increase or reduction when it is determined that the objective of this paragraph has been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law. Monies received by the Lessee from operations conducted on the premises shall be utilized by the Lessee to fulfill its obligations under the Agreement. The Lessee shall furnish an annual report of itemized receipts and expenditures to said officer.

10. **DEVELOPMENT AND MANAGEMENT PLANS**

The Lessee shall construct, operate and maintain the premises in accordance with the Agreement. All structures shall be constructed and landscaping accomplished in accordance with plans approved by said officer. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the premises by any individual or group of individuals. Title to improvements constructed or placed on the premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION,** and shall be maintained by the Lessee to the satisfaction of said officer.

11. **PROTECTION OF PROPERTY**

The lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the lessee under this lease, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United states damaged or destroyed by the lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the lessee to a condition satisfactory to the said officer, or at the election of the said officer, reimbursement made therefor by the lessee in an amount necessary to restore or replace the property to a condition satisfactory to the said officer.

12. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the lands as may be necessary in connection with government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof.

13. **INSURANCE**

a. At the commencement of this lease, the lessee shall obtain, from a reputable insurance company or companies, liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum combined single limit in the amount of $_____, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons resulting from the operations of the Lessee under the terms of this lease. The Lessee shall reguire the insurance company or companies to furnish the said officer a copy

of the policy or policies, or if acceptable to the said officer, certificates of insurance evidencing the purchase of such insurance. The District Engineer shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall be of comprehensive form of contract and shall specifically provide protection appropriate for the types of facilities, services and activities involved. The Lessee shall require that the insurance company give the said officer thirty (30) days written notice of any cancellation or change in such insurance. The said officer may require closure of any or all of the premises during any period for which the Lessee does not have the required insurance coverage.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

c. As to those structures and improvements on the premises constructed by or owned by the United States, for such periods as the Lessee is in possession of the premises pursuant to the terms and conditions of this lease, the Lessee shall procure and maintain, at the Lessee's cost, a standard fire and extended coverage insurance policy or policies on the leased premises to the full insurable value thereof. The Lessee shall procure such insurance from a reputable company or companies. The insurance policy shall provide that in the event or loss thereunder, the proceeds of the policy or policies, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the leased premises or any part thereof.

14. **INDEMNITY**

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the Lessee, or for damages to the property or injuries to the person of the Lessee’s officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the Lessee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

15. **RESTORATION**

On or before the expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a condition satisfactory to the said officer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the Lessee shall fail or neglect to remove said property and

restore the premises, then, at the option of the said officer, said property shall either become the property of the United States without compensation therefor, or the said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this lease in restoring the premises.

16. **NON-DISCRIMINATION**

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural And Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant: to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation. 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

17. **SUBJECT TO EASEMENTS**

This lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of the said officer, interfere with the use of the premises by the Lessee.

18. **SUBJECT TO MINERAL INTEREST**

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on federal lands. The Secretary will provide lease stipulations to BLM for inclusion in said mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

19. **COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT**

a. The Lessee and/or any sublessees or licenses are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the said officer. This lease may be revoked in the event that the Lessee violates any of the terms and conditions and continues and persists in such non-compliance or fails to obtain correction of deficiencies by sublessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance.

Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to the said officer in the manner prescribed in the Condition on NOTICES.

20. **HEALTH AND SAFETY**

a. The Lessee shall keep the premises in good order and in a clean, safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, the said officer, upon discovery of any hazardous condition on the premises that present an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected said officer will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

21. **PUBLIC USE**

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this lease to manage the premises and provide safety and security to the facility users.

22. **PROHIBITED USES**

The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not conducted on or permitted on the premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to said officer.

23. **NATURAL RESOURCES**

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the condition on **DEVELOPMENT AND MANAGEMENT.** The Lessee may salvage fallen or dead timber on the premises for use as firewood. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

24. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. § 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to this lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion oy the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph C. (2) below. The routine request for rental payments that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as a liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the said officer for a written decision. A Claim by the Government against the Lessee shall be subject to a written decision by the said officer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that--

(i) the claim is made in good faith; and

(ii) supporting data are accurate and complete to the best of the Lessee’s knowledge and belief; and

(iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by --

(i) a senior company official in charge of the Lessee's location involved; or

(ii) an officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee’s affairs.

d. For Lessee claims of $50,000 or less, the said officer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the said officer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The said officer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest or the amount found due and unpaid by the Government from (1) the date the said officer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury as provided in the Act, which is applicable to the period during which the said officer receives the claim and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, or action arising under the lease, and comply with any decision of the said officer.

25. **ENVIRONMENTAL PROTECTION**

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or by any federal, state, interstate or local governmental agency, are hereby made a condition of this lease. Services for waste disposal shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

26. **PRELIMINARY ASSESSMENT SCREENING**

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation, or relinquishment of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining the environmental restoration requirements of the Lessee. Appropriate consideration will be given to the cooperative relationship between the parties.

27. **HISTORIC PRESERVATION**

Except as may be otherwise provided in the Agreement, the Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the said officer and protect

the site and the material from further disturbance until the said officer gives clearance to proceed.

28. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. My soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the said officer.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

29. **TRANSIENT USE**

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes if authorized by said officer.

30. **COVENANT AGAINST CONTINGENT FEES**

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bon fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach of violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

31. **OFFICIALS NOT TO BENEFIT**

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this lease is for the general benefit of such corporation or company.

32. **MODIFICATIONS**

This lease contains the entire agreement between the parties hereto, and no modification of this lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this lease.

33. **DISCLAIMER**

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of

this lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344) .

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 19____

_____

THIS LEASE is also executed by the Lessee this _____ day of _____, _____

_____

(ADD THE CORPORATE CERTIFICATE FORMAT)

RECREATION COST SHARE LEASE TO STATES

1. TERM
2. CONSIDERATION AND OBLIGATIONS
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. DEVELOPMENT PLANS
6. STRUCTURES AND EQUIPMENT
7. APPLICABLE LAWS AND REGULATIONS
8. CONDITION OF PREMISES
9. FACILITIES AND SERVICES
10. TRANSFERS AND ASSIGNMENTS
11. FEES
12. ACCOUNTS, RECORDS AND RECEIPTS
13. PROTECTION OF PROPERTY
14. RIGHT TO ENTER AND FLOOD
15. LIGHTS, SIGNAL AND NAVIGATION
16. INSURANCE
17. RESTORATION
18. NON-DISCRIMINATION
19. SUBJECT TO EASEMENTS
20. SUBJECT TO MINERAL INTERESTS
21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT
22. HEALTH AND SAFETY
23. PUBLIC USE
24. PROHIBITED USES
25. NATURAL RESOURCES
26. DISPUTES CLAUSE
27. ENVIRONMENTAL PROTECTION
28. PRELIMINARY ASSESSMENT SCREENING
29. HISTORIC PRESERVATION
30. SOIL AND WATER CONSERVATION
31. TRANSIENT USE
32. HOLD HARMLESS
33. COVENANT AGAINST CONTINGENT FEES
34. OFFICIALS NOT TO BENEFIT
35. MODIFICATIONS
36. DISCLAIMER

Figure 8-C-8

NO. _____

DEPARTMENT OF THE ARMY

LEASE TO STATES

FOR COST-SHARED PUBLIC PARK AND RECREATIONAL PURPOSES

_____
(SITE)

_____
(PROJECT NAME)

_____
(COUNTY, STATE)

THIS LEASE is made on behalf of the United States, between the SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, and _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Sections 460d and 4601-13, and Title 33, United States Code, Section 2213, and pursuant to a Project Cooperation Agreement entered into on _____ (hereinafter referred to as the PCA), and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit(s)_____ attached hereto and made a part hereof, hereinafter referred to as the praises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term of fifty (50) years, beginning _____, _____ and ending _____, _____.

2. **CONSIDERATION AND OBLIGATIONS**

The consideration for this lease is the operation and maintenance of the premises and the operation, maintenance, replacement and rehabilitation of the facilities and improvements shown on the inventory prepared under the condition on CONDITION OF THE PREMISES, by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth. As used in this lease the term "replacement" shall be construed to mean the replacement in whole or in part of any structure or improvement so worn or damaged by any cause as to no longer adequately serve its designed function with normal maintenance. As used in this lease the term "rehabilitation" shall mean to restore in whole or in part any structure or improvement to a good and useable condition.

3. **NOTICES**

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee to _____

_____ _____and, if to the United States, to the District Engineer, ATTN: Chief, Real Estate Division, _____ _____,or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," or "said officer" shall include their duly authorized representatives: Any reference to "Lessee" shall include sublessees, transferees, concessionaires, and its duly authorized representatives.

5. **DEVELOPMENT PLANS**

a. The Lessee shall be guided by an implementing Plan of Recreation Development and Management (Development Plan) ** NOTE adopted pursuant to Article I of the PCA and by this reference made a part hereof and the management and development activities to be undertaken by the Lessee and any sublessees. The Lessee shall provide a copy of any amendment to the Development Plan before proceeding to implement any changes in the development or management of the leased premises. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer.

****NOTE** The PCA, Art. I, attaches project technical documents, i.e. feasibility studies, GDM. If Federal land will be provided for recreational development, then the documents need to have the same details that would be in a non-cost shared park lease Development Plan.

b. During the term of the lease, the District Engineer will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

6. **STRUCTURES AND EQUIPMENT**

The Lessee shall have the right, during the term of the lease at its own expense, to erect additional structures and to provide such equipment upon the premises as may be necessary to furnish additional facilities and services in accordance with an approved amendment to the Plan as provided in the condition on **DEVELOPMENT PLANS.** Those additional structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION,** and shall not be added to the inventory described in the Condition on **CONDITION OF THE PREMISES.**

7. **APPLICABLE LAWS AND REGULATIONS**

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of law cited in the granting clause.

b. The Lessee will provide an annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION,** noting any deficiencies and providing a schedule for correction.

8. **CONDITION OF PREMISES**

a. The Lessee acknowledges that it has inspected the premises and all structures and improvements, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this lease an inventory and condition report of all personal property and improvements constructed in whole or in part with Federal funds under the terms of the PCA included in this lease shall be made by a representative of the District Engineer and a representative of the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit _____and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement.

9. **FACILITIES AND SERVICES**

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed and accepted by the District Engineer. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the District Engineer. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sublessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

10. **TRANSFERS AND ASSIGNMENTS**

a. Without prior written approval of the District Engineer, the Lessee shall neither transfer nor assign this lease or any property constructed in whole or in part with Federal funds on the premises. The lessee will not sponsor or participate in timeshare ownership of any structures, facilities, accommodation, or personal property on the premises. The lessee will not subdivide nor develop the premises into private residential development.

b. The Lessee shall neither sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, or license whatsoever in connection with this lease without prior written permission from the District Engineer.

(ALTERNATE b.) USE IF THE ENTIRE WATER RESOURCE DEVELOPMENT PROJECT IS LEASED SO THAT THE STATE IS THE PRIMARY LAND MANAGER

b. The Lessee may grant permits and licenses to adjacent private property owners for use of a portion of the premises if the use is conditioned on:

(1) Unrestricted use by the general public,

(2) Free and unimpeded passage along the shore,

(3) Compatibility with the Plan and the Environmental Impact Statement adopted for the project,

(4) Signs being posted to the effect that "This is public property open to the general public."

11. **FEES**

Fees may by charged by the lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sublessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

12. **ACCOUNTS, RECORDS AND RECEIPTS**

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee to fulfill its obligations under the PCA. The Lessee shall provide an annual statement of receipts and expenditures to the District Engineer. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The District Engineer shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sublessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the District Engineer with the results of such an audit.

13. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes.

14. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee.

15. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

16. INSURANCE

a. At the commencement of this lease, the Lessee, unless self-insured, and its sub-lessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the District Engineer a copy of the policy or policies, or, if acceptable to the District Engineer, certificates of insurance evidencing the purchase of such insurance.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the District Engineer be given thirty (30) days notice of any cancellation or change in such insurance.

c. The District Engineer may require closure of any or all of the premises during any period for which the sublessees and concessionaires do not have the required insurance coverage.

17. RESTORATION

On or before the expiration of this lease, the Lessee shall vacate the premises, remove the property of the Lessee therefrom, and restore the premises to a condition satisfactory to the District Engineer. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the Lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the District Engineer, said property shall either become the property of the United States without compensation therefor, or the District Engineer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

18. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102);

the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sublessees and assignees.

19. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the District Engineer, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the District Engineer.

20. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on Federal lands. The Department of the Army will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

21. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

The Lessee and/or any sublessees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the District Engineer. This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such violation. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent.

22. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sublessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the District Engineer, upon discovery of any hazardous conditions within the area covered by the lease that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the District Engineer will have the option to: (1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or, (2) revoke the lease. The Lessee and its concessionaires or sublessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

23. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sublessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

24. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the District Engineer.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

26. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613)(the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to that lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding $50,000 is not a claim under the Act until certified as required by subparagraph c. (2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim

under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A claim by the Lessee shall be made in writing and submitted to the District Engineer for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the District Engineer.

(2) For Lessee claims exceeding $50,000, the Lessee shall submit with the claim a certification that--

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certificate shall be executed by that individual. If the Lessee is not an individual, the certification shall be executed by

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of $50,000 or less, the District Engineer must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over $50,000, the District Engineer must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The District Engineer's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the District Engineer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the certificate described in paragraph c. (2) of this clause, and executed in accordance with paragraph c. (3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the District Engineer received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the District Engineer receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim. Rental amounts due to the Government by the Lessee will have interest and penalties as set out in the condition on **CONSIDERATION.**

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the District Engineer.

27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The disposal of any toxic or hazardous materials within the premises is specifically **PROHIBITED.** The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

28. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the District Engineer in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION.**

29. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the District Engineer.

31. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60)

consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, buildings, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the District Engineer.

32. HOLD HARMLESS

The Lessee shall hold and save the Government free from damages arising from the operation, maintenance, replacement and rehabilitation of the premises and the facilities and improvement, except for damages due to the fault or negligence of the Government or the Government's contractors.

33. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

34. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

35. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

36. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this _____day of _____ , _____ .

_____

THIS LEASE is also executed by the Lessee this _____ day of _____, _____.

_____

CONTRACT NO. _____

DEPARTMENT OF THE ARMY

LEASE

FOR COTTAGE SITE PURPOSES

_____
SITE

_____
PROJECT NAME

_____
COUNTY, STATE

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY,** hereinafter referred to as the Secretary, and _____, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and of Section 1134 of the Act of Congress approved 17 November 1986 (P.L. 99-662) and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in Exhibit _____, attached hereto and made a part hereof, hereinafter referred to as the premises, for recreational cottage site purposes and purposes incidental thereto.

That this lease grants no vested property rights but affords only a limited right to occupy the land pending termination as set out in Condition 14.

THIS LEASE is granted subject to the following conditions:

1. **TERM**

Said premises are hereby leased for a term beginning _____, 19__, and ending on _____ 20__, or until such time as the lease is terminated by the lessee, or by the secretary, as set out in Condition 14 on Termination.

2. **CONSIDERATION**

a. The consideration for this lease is the fair market rental, reviewed and adjusted every 5 years for compliance with fair market value, of the initial sum of _____ Dollars ($_____), payable as shown in the attached Exhibit A in advance to the order of the Finance and Accounting Officer (FAO), _____ _____ _____ _____ _____ _____ _____ _____, and delivered in the same manner as set out in condition 3 on Notices.

b. All rent and other payments due under the terms of this instrument must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, Title 31, United

States Code, Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administraative charge to cover the costs of processing and handling deliquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of rent. Interest will accrue from the due date. An administrative charge to cover the cost of processing and handling each late payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

3. **NOTICES**

All notices to be given pursuant to this lease shall be addressed, if to the Lessee, to if to the United States, to the District Engineer, _____ hereinafter referred to as the District Engineer, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Postal Service.

4. **AUTHORIZED REPRESENTATIVES INCLUDED**

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "District Engineer," "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include sublessees, assignees, transferees, and their duly authorized representatives.

5. **APPLICABLE LAWS AND REGULATIONS**

The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, water supply, sanitation, use of pesticides, licenses or permits. The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer and to such rules and regulations as may be prescribed from time to time.

6. **USE OF THE PREMISES**

a. The leased premises may be used by the lessee, lessee's family, agents, and guests, for recreational cottage site purposes and purposes incidental thereto and for no other different object or purpose. The lessee may maintain an existing private recreational dwelling, and may maintain existing accessory improvements, but agrees not to unreasonably expand these existing improvements. These existing improvements erected by the lessee or a predecessor under a previous lease shall remain the property of lessee, subject, however, to the provisions of Condition 15 hereof, and shall be maintained by the lessee in a usable and safe condition. Failure to maintain may be grounds for termination under Condition 14.

b. No improvement may be erected, expanded or altered upon the premises unless and until the type of use, design, and proposed location or alterations thereof shall have been approved in writing by the District Engineer.

7. **CONDITION OF PREMISES**

The Lessee acknowledges that he has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs, or additions thereto.

8. **TRANSFERS, ASSIGNMENTS, SUBLEASES**

The Lessee shall neither transfer nor assign this lease or any property on the demised premises, nor sublet the demised premises or any part thereof or any property thereon, nor grant any interest, privilege, in license whatsoever in connection with this lease without permission in writing from the District Engineer. The provisions and conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the lessee's heirs, representatives, successors and assigns.

9. **PROTECTION OF PROPERTY**

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease, and shall exercise due diligence in the protection of all improvements, trees or timber, and other property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the District Engineer or at the election of the District Engineer, reimbursement may be made at the current market value.

10. **RIGHT TO ENTER AND FLOOD**

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

b. This property is located within the 100-year floodplain and is subject to periodic flooding. This lease is subject to floodplain management requirements unless inconsistent with the approved cottage site use.

11. **HOLD HARMLESS**

The lessee agrees to hold the United States harmless from any claim for damages or injury to persons or property arising from the occupancy of or through the use of the premises.

12. **LIGHTS, SIGNALS AND NAVIGATION**

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the District Engineer shall be installed and maintained by and at the expense of the Lessee.

13. **PROHIBITED USES**

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which, in the opinion of the District Engineer, is contrary to good morals or is otherwise objectionable; or use the premises or permit them to be used for any illegal or immoral business or purpose. There shall not be carried on or permitted upon the premises any activity which would constitute a nuisance and the Lessee will use the premises in a quiet and inoffensive manner.

b. The Lessee will not conduct any commercial or business activities on the premises.

14. **TERMINATION**

a. This lease may be terminated by the lessee, any successors or assigns of the lessee, at any time by giving ten-days' notice in writing to the District Engineer. Provided that, in case of such termination, no remission shall be made by the United States of any rental theretofore paid, and provided further that, in the event that the notice is not given at least ten days prior to the next rental due date, the lessee shall be required to pay that rental payment. Abandonment or nonuse of the premises for one year or nonpayment of the rent for 90-days past the due date will be considered notice of termination of the lease by the lessee.

b. The Secretary may terminate this lease only if thepremises are needed for immediate use for public park purposes or other higher public use or for a navigation or flood control project; of if lessee substantially violates a provision of the lease. The lessee is charged at all times with full knowledge ofall the limitations and requirements of this lease, and the necessity for correction of deficiencies and with compliance with reasonable requests by the District Engineer. The lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. A termination notice will be given in writing to the lessee at lease 30 days prior to the termination date and designating the time for compliance with Condition 15.

c. In the event of termination by the lessee or the Secretary, the District Engineer may re-enter the premises andg from the Lessee's activities, the Lessee shall be liable to restore the damaged resources.

d. This lease does not exclude lessee from being required to obtain a Department of the Army permit under 33 U.S.C 403 or Section 404.

22. **HISTORIC PRESERVATION**

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the District Engineer and protect the site and the material from further disturbance until the District Engineer gives clearance to proceed.

23. **SOIL AND WATER CONSERVATION**

The Lessee shall maintain, in a manner satisfactory to the District Engineer, all terraces, retaining walls, drop structures, revetments and other soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the Lessee during the term of this lease, and the use and maintenance of the premises by the Lessee shall be in accordance with good soil and water conservation practices.

24. **SEVERAL LESSEES**

If more than one lessee is named in this lease the obligations of said lessees shall be joint and several obligations.

25. **HUNTING AND TRAPPING**

The Lessee shall not hunt or trap or allow hunting or trapping on the premises.

26. **COVENANT AGAINST CONTINGENT** FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, id States in the premises are concerned. The lessee shall obtain any further permission necessary on account of any other existing rights.

Before the execution of this lease, conditions were deleted, revised and added in the following manner:

IN WITNESS WHEREOF I have hereunto set my hand by authority/direction of the Secretary of the Army this _____ day of _____ , 19____.

_____

THIS LEASE is also executed by the Lessee this _____ day of _____ , 19___ .

_____

APPENDIX 8-D

EASEMENT AND CONSENT FORMATS

ELECTIRC POWER OR COMMUNICATION EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
0. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

NO. _____

DEPARTMENT OF THE_____

EASEMENT FOR ELECTRIC POWER OR

COMMUNICATION FACILITY

LOCATED ON

_____
(Project, Installation)

_____
County, State

THE SECRETARY OF THE _____, under and by virtue of the authority vested in the Secretary by Title 43, United States Code, Section 961, having found that the granting of this easement is not incompatible with the public interest, hereby grants to: _____

_____, hereinafter referred to as the grantee, an easement for

_____ , hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s) _____, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions.

1. TERM

This easement is hereby granted for a term of _____ years, beginning_____, _____, and ending _____,____.

2. CONSIDERATION

a. The grantee shall pay in advance to the United States the amount of (_____ $_____) (in full for the term hereof) (payable _____)) to the order of the Finance and Accounting Officer, _____ District and delivered to _____
_____

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the

amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the dept is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to _____ _____ and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division,_____ _____, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "Disrtict Engineer", "Instalation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the (District Engineer) (Installation Commander),_____ (District) (Installation), hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located, including but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB'S).

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee’s officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

14. REQUIRED SERVICES

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, the United States may cause such relocation at the sole expense of the grantee.

16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

18. ENVIRONMENT PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising

from the grantee's activities, the grantee shall be liable to restore the damaged resources.

19. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit____. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION.**

20. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

21. NON-DISCRIMINATION

The Grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

22. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C § 403), Section 404 of the clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary

of the _____, this _____ day of _____, -
_____.

_____

THIS EASEMENT is also executed by the grantee this _____ day of

_____ _____

_____

(Add Acknowledgments)

GAS, WATER AND SEWER PIPELINE EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION OF PREMISES
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. TRANSFERS AND ASSIGNMENTS
12. INDEMNITY
13. SUBJECT TO EASEMENTS
14. REQUIRED SERVICES
15. RELOCATION OF FACILITIES
16. TERMINATION
17. SOIL AND WATER CONSERVATION
18. ENVIRONMENTAL PROTECTION
19. PRELIMINARY ASSESSMENT SCREENING
20. HISTORIC PRESERVATION
21. NON-DISCRIMINATION
22. RESTORATION
23. DISCLAIMER

NO. _____

DEPARTMENT OF THE_____

EASEMENT FOR PIPELINE RIGHT-OF-WAY

LOCATED ON

_____
(Project, Installation)

_____
(County, State)

THE SECRETARY OF THE _____ under and by virtue of the authority vested in the Secretary by Title 10 United States Code, Section 2669, having found that the granting of this easement will be in the public interest and will not substantially injure the interests of the United States, hereby grants to, _____ _____ _____, hereinafter referred to as the grantee, an easement for_____ _____, hereinafter referred to as the facilities, over, across, in and upon lands of the United States as identified in Exhibit(s)_____, hereinafter referred to as the premises, and which are attached hereto and made a part hereof.

THIS EASEMENT is granted subject to the following conditions.

1. TERM

This easement is hereby granted for a term of_____ years beginning _____, _____, and ending _____,_____.

2. CONSIDERATION

a. The grantee shall pay in advance to the United States the amount of _____ ($_____) (in full for the term hereof) (payable_____) to the order of the Finance and Accounting officer, _____ District and delivered to _____ _____

b. All consideration and other payments due under the terms of this easement must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, 31 U.S.C. Section 3717. This statute requires the imposition of an interest charge for the late payment of debts owed to the United States, an administrative charge to cover the costs of processing and handling delinquent debts, and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statute will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment, or portion thereof, more than ninety (90) days past due. The penalty shall accrue from the date of the delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to _____ and, if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, _____, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited postage prepaid in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the (District Engineer) (Installation Commander), _____ (District) (Installation), hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this easement and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account there against the United States or any officer, agent, or employee thereof.

11. TRANSFERS AND ASSIGNMENTS

Without prior written approval by said District Engineer, the grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the representatives, successors and assigns of the grantee.

12. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

13. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements, or those subsequently granted as well as established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the grantee, and easements will not be granted which will, in the opinion of said officer, interfere with the use of the premises by the grantee.

14. REQUIRED SERVICES

The grantee shall furnish through said facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates granted by the grantee for similar service.

15. RELOCATION OF FACILITIES

In the event all or any portion of the premises occupied by the said facilities shall be needed by the United States, or in the event the existence of said facilities is determined to be detrimental to governmental activities, the grantee shall from time to time, upon notice to do so, and as often as so notified, remove said facilities to such other location on the premises as may be designated by said officer. In the event said facilities shall not be removed or relocated within ninety (90) days after such notice, The United States may cause such relocation at the sole expense of the grantee.

16. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

17. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

18. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground, and water. The grantee shall promptly comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is strictly prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee's activities, the grantee shall be liable to restore the damaged resources.

19. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous

substances thereon, is attached hereto and made a part hereof as Exhibit____. Upon expiration, revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION.**

20. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until said officer gives clearance to proceed.

21. NON-DISCRIMINATION

The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin, or religion in the conduct of operations on the premises.

22. RESTORATION

On or before the expiration or termination of this easement, the grantee shall, without expense to the United States, and within such time as said officer may indicate, remove said facilities and restore the premises to the satisfaction of said officer. In the event the grantee shall fail to remove said facilities and restore the premises, the United States shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions , of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403) Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the premises.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____ day of _____, _____.

_____

THIS EASEMENT is also executed by the grantee this _____ day of _____, _____,

_____

(Add Acknowledgments)

PUBLIC ROAD OR STREET EASEMENT

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRIC ENGINEER) (INSTALLATION COMMANDER)
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITION OF PREMISES
8. INSPECTION AND REPAIRS
9. PROTECTION OF GOVERNMENT PROPERTY
10. RIGHT TO ENTER
11. RIGHT TO CONNECT
12. OTHER AGENCY AGREEMENTS
13. TERMINATION
14. SOIL AND WATER CONSERVATION
15. ENVIRONMENTAL PROTECTION
16. PRELIMINARY ASSESSMENT SCREENING
17. HISTORIC PRESERVATION
18. NON-DISCRIMINATION
19. RESTORATION
20. DISCLAIMER

NO. _____

DEPARTMENT OF THE _____

EASEMENT FOR PUBLIC ROAD OR STREET

LOCATED ON

_____
(Project, Installation)

_____
(County, State)

THE SECRETARY OF THE _____ under and by virtue of the authority vested in the Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, hereby grants to _____
_____
_____,
hereinafter referred to as the grantee, an easement for a road or street, hereinafter referred to as the facilities, over, across, in and upon the lands of the United States as identified in Exhibit(s)_____, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS EASEMENT is granted subject to the following conditions:

1. TERM

This easement is granted in perpetuity.

2. CONSIDERATION

The consideration for this easement shall be the construction, operation and maintenance of a public road for the benefit of the United states and the general public in accordance with the terms herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this easement shall be addressed, if to the grantee, to _____
_____,
and if to the United States, to the District, Engineer, Attention: Chief, Real Estate Division, _____
_____,
or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

5. SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION COMMANDER)

The construction, operation, maintenance, repair or replacement of said facilities, including culverts and other drainage facilities, shall be performed at no cost or expense to the United States and subject to the approval of the (District Engineer) (Instalation Commander), _____(District)(Installation), hereinafter referred to as said officer. Upon the completion of any of the above activities, the Grantee shall immediately restore the premises to the satisfaction of said officer. The use and occupation of the premises for the purposes herein granted shall be subject to such rules and regulations as said officer prescribes in writing from time to time.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows the condition, and understands that the same is granted without any representation or warranties whatsoever and without any obligation on the part of the United States.

8. INSPECTION AND REPAIRS

The grantee shall inspect the facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by said officer to repair any such defects.

9. PROTECTION OF GOVERNMENT PROPERTY

The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this easement, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

10. RIGHT TO ENTER

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the grantee, to flood the premises and/or to make any other use of the lands as may be necessary in connection with government purposes, and the grantee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

11. RIGHT TO CONNECT

The United States reserves the right to make such connections between the road or street herein authorized and roads and streets on other government lands as said officer may from time consider necessary, and also reserves to

itself rights-of-way for all purposes across, over or under the right-of-way hereby granted; provided that such rights shall be used in a manner that will not create unnecessary interference with the use and enjoyment by the grantee of the right-of-way herein granted.

12. OTHER AGENCY AGREEMENTS

It is understood that the provisions of the conditions on **SUPERVISION BY THE (DISTRICT ENGINEER)(INSTALATION COMMANDER)** and **RIGHT TO ENTER** above shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the United States with regard to financial aid to the grantee in connection with the construction, maintenance, or repair of the facilities herein authorized.

13. TERMINATION

This easement may be terminated by the Secretary upon 30 days written notice to the grantee if the Secretary shall determine that the right-of-way hereby granted interferes with the use or disposal of said land by the United States, or it may be revoked by the Secretary for failure of the grantee to comply with any or all of the conditions of this easement, or for non-use for a period of two (2) years, or for abandonment.

14. SOIL AND WATER CONSERVATION

The grantee shall maintain, in a manner satisfactory to said officer, all soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed by the grantee during the term of this easement, and the grantee shall take appropriate measures to prevent or control soil erosion within the right-of-way herein granted. Any soil erosion occurring outside the premises resulting from the activities of the grantee shall be corrected by the grantee as directed by said officer.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties hereto shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this easement. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the premises shall be in conformance with all applicable Federal, state, interstate, and local laws and regulations. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

c. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the grantee’s activities, the grantee shall be liable to restore the damaged resources.

16. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS), documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon revocation or termination of this easement, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee in accordance with the condition on **RESTORATION.**

17. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

18. NON-DISCRIMINATION

a. The grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national, origin or religion.

b. The grantee, by acceptance of this easement, is recieving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defence Directive 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the grantee, its agents, successors, transferees, and assignees.

19. RESTORATION

On or before the termination or revocation of this easement, the grantee shall, without expense to the United States and within such time as said officer may indicate, restore the premises to the satisfaction of said officer. In the event the grantee shall fail to restore the premises, at the option of said officer, said improvements shall either become the property of the United States without compensation therefore, or said officer shall have the option to perform the restoration at the expense of the grantee, and the grantee shall have no claim for damages against the United States or its officers or agents for such action.

20. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the premises.

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this_____day of _____, _____.

_____

THIS EASEMENT is also executed by the grantee this _____ day of _____, _____.

_____

(Add Acknowledegments)

DEPARTMENT OF _____

EASEMENT AND RELINQUISHMENT OF ACCESS RIGHTS FOR A SECTION OF THE NATIONAL SYSTEM OF INTERSTATE AND DEFENSE HIGHWAYS

(Indicate reservations)

The United States of America, acting by and through the SECRETARY OF THE _____, under and by virtue of the authority of Title 10, U.S.C., Section 2668, and in furtherance of Title 23, U.S.C., Section 107(d), hereby grants to the State of _____ (appropriate title of the highway department), hereinafter designated as the grantee, an easement for a right-of-way for a controlled-access highway, as part of the National System of Interstate and Defense Highways, on, over, across, in and upon lands of the United States which are a portion of _____ the (indicate reservation), as shown on the map marked Exhibit _____, and more particularly described on Exhibit _____, which exhibits are attached hereto and made a part hereof, together with all abutters' existing, future or potential rights of access to, from and between the right-of-way of the public way known as _____ and the-remaining lands of said reservation, except for such rights as may be hereinafter specifically reserved in this instrument.

THIS EASEMENT is granted subject to the following provisions and conditions:

1. That the grantee shall, at all times, maintain said highway in good condition and shall promptly make all repairs thereto needed to preserve a smooth-surface highway.

2. That any property of the United States damaged or destroyed by the grantee incident to the use and occupation of the said premises shall be promptly repaired, replaced or relocated by the grantee, to the satisfaction of the local representative of the DEPARTMENT OF _____, and in accordance with plans and specifications approved, in advance, by the said officer, or, in lieu of such repaur, replacement or relocation, the grantee shall, if so required by said representative, pay to the United States, money in an amount sufficient to compensate for the loss sustained by the United States by reason of damages to, or destruction of, United States property.

3. a. That the United States reserves the right to construct, from time to time, grade separation crossing structures or pedestrian crossing structures over or under the controlled-access highway, at such points as it may deem necessary; provided, that such structures shall be constructed in accordance with standards for the National System of Interstate and Defense Highways, approved by the Department of Transportation, Bureau of Public Roads. The United States also reserves the right to cross over and/or under the right-of-way hereby granted with utility lines and related facilities; provided, however, that such rights shall be exercised in accordance with regulations issued by the Secretary of Transportation and policies adopted by the Federal Highway Administrator.

b. That, during any emergency declared by the President or Congress of the United States, the United States shall have the right to enter and exit directly to and from said right-of-way from the abutting Government-owned land, including the right to construct temporary direct entrances and exits, crossings at grade, or substandard grade-separation structures, including acceleration and deceleration lanes; provided, that all such temporary facilities shall, subject to availability of appropriations, be removed within a reasonable time after official termination of the emergency.

4. That it is to be understood that this instrument is effective only insofar as the rights of the United States in the property over which the said highway is to be extended are concerned, and that the grantee shall obtain such permission as may be necessary because of any other existing rights.

5. That all, or any part, of such right-of-way herein granted may be terminated by the Secretary of the _____ for failure to comply with any or all of the terms or conditions of this grant, or for nonuse for a two-year period, or abandonment of rights granted herein.

6. Additional special provisions as may be necessary to meet particular circumstances of each case, such as the following:

a. Provision for construction and maintenance at the expense of grantee of necessary controlled-access facilities to, over, under and across the highway to meet the requirements of the military installation affected, pursuant to plans, specifications and maps approved by the installation commanders and attached as exhibits to the grant.

b. Provision of construction and maintenance of special signs, signals, markers, etc.

c. Relocation of facilities adjacent to and adversely affected by the highway construction, etc.

7. That the grantee, within the limits of its respective legal powers, shall comply with all Federal, interstate, state and/or local governmental regulations, conditions, or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

8. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, _____ District, and the site and the material shall be protected by the grantee from further disturbance until a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

9. That the grantee shall not discriminate against any person or persons because of race, color, age, sex, handicap, national origin or religion in the conduct of operations on the easement premises.

10. Merger Clause. Prior to the execution of this easement, the following conditions were deleted:_____; changed:_____; added: _____

This easement is not subject to Title 10, U.S.C., Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the_____, this_____ day of _____, _____.

_____

THIS EASEMENT is also executed by the grantee this _____ day of _____, _____.

(Add Acknowledgments)

DEPARTMENT OF THE ARMY

EASEMENT FOR

FUEL CARRYING PIPELINE

THE SECRETARY OF THE ARMY, under and by virtue of the eauthority vested in him by 30 U.S.C. 185, hereby grants to _____ _____ hereinafter designated as the grantee, for a period of _____ years from _____, an easement for a right-of-way for the installation, construction, operation, maintenance, and repair of a _____-inch underground gas pipeline for the purpose of _____ over, across, in, and upon land the Army at the location shown in red on Exhibit _____ attached hereto and made a part hereof, and described on Exhibit _____ attached hereto and made a part hereof.

THE EASEMENT is granted subject to the following conditions:

1. The grantee shall pay to the United States in advance upon delivery of this easement the sum of _____ per annum for the easement, the sum of _____ as reimbursement for the costs incurred by the United States in processing the application, and the sum of _____ as reimbursement for the cost of monitoring construction, operation and maintenance of said pipeline for the entire term of the easement. In the event of termination of this easement, the grantee further agrees to reimburse the United States for any and all costs incurred by the United States in monitoring the termination. All payments shall be made to the Finance and Accounting Office, U.S. Army Corps of Engineers and forwarded by the grantee to the District Commander, U.S. Army Engineer District, _____ no later than _____. The U.S. will impose a charge, the amount to be determined by law or regulation on late payment of rent or other payments due under this agreement for each 30 day period that the payment is overdue. The full late charge will also be applicable to periods of less than 30 days.

2. The grantee shall construct, operate, maintain, and terminate the said pipeline in all accordance Federal, state, county, and municipal laws, regulations, and ordinances.

3. The installation and/or operation and maintenance of said line shall be accomplished without cost or expense to the United States under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter designated as "said officer," and in such manner as not to endanger personnel or property of the United States on the said United States land or obstruct travel on any road thereon. The grantee shall have the right of ingress and egress for such purposes, subject to approval of access by said officer.

4. The use and occupation of said land incident to the exercise of the privileges hereby granted shall be subject to such rules and regulations as the said officer may from time to time prescribe.

5. Upon completion of the installation of said line and the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition in which they existed prior to the commencement of such work, to the satisfaction of the said officer. The grantee shall supervise the said line and cause it to be inspected at reasonable intervals, and shall immediately repair any leaks found therein as a result of such inspection, or when requested by said officer to repair any defects.

6. The grantee shall be strictly liable to the United States for damage or injury which may arise from or be incident to the construction, maintenance or removal of said line and the use or occupation of the right-of-way herein granted. Damages to property of the United States shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer, or in lieu of such repair or replacement the grantee shall, if so required by the said officer, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States. All owners of any interest in, and all affiliates or subsidiaries of the grantee, except for corporate stockholders, shall be jointly and severally liable to the United States in the event that a claim for damage or injury is not satisfied by the grantee. Liability without fault hereunder shall be limited to (insert maximum amount commensurate with the foreseeable risks or hazards presented) for any one incident. Liability of such grantee for damages in excess (insert figure above) shall be in accord with ordinary rules of negligence. However, this condition shall not impose strict liability on the grantee for damage or injury resulting from (a) an act of war, or (b) negligence of the United States. In any case where liability without fault is imposed pursuant to this condition and the damage or injuries involved were caused by the negligence of a third party, the rules of subrogation shall apply in accordance with the law of the jurisdiction where the damage or injury occurred.

7. The United States shall not be responsible for damages or injuries which may arise from or be incident to the construction, maintenance, and use of said line, nor for damages to the property of the grantee, nor for damages to the property or injuries to the person of the grantee’s officers, agents, servants, or employees, or others who may be on said premises at the grantee's invitation or any one of them. The grantee does hereby accept liability, if any, imposed by Federal and state statutes to third parties for injuries incurred in connection with the use and occupancy of the right-of-way. The grantee shall hold the United States harmless from any and all such claims.

8. The United States reserves to itself and its grantees or licensees the right to construct, use, and maintain on or adjacent to the right-of-way hereby granted, electric transmission, telephone, telegraph, water, gas, gasoline, oil and sewer lines, roads and permits for other compatible uses in such manner as not to create any unreasonable interference with the use of the right-of-way herein granted.

9. That the grantee shall furnish through said line such service as may be required from time to time for governmental purposes on said land, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates charged by the grantee for similar service.

10. In the event all or any portion of said land occupied by said line shall be needed by the United States, or in the event the existence of said line shall be considered detrimental to governmental activities, the grantee shall, from time to time, upon notice to do so, and as often as so notified, remove said line and related facilities to such other location or locations on said land as may be designated by said officer. And in the event said line shall not be removed or relocated within ninety (90) days after any aforesaid notice, the United States may cause the same to be done at the expense of the grantee.

11a. Abandonment of a right of way herein granted or noncompliance with any provisions of this easement or applicable provisions of 30 U.S.C. 185 may be grounds for suspension or termination of the right of way if ta) after due notice to the holder of the right of way, (b) a reasonable opportunity to comply with this section, and (c) an appropriate administrative proceeding

pursuant to Title 5, U.S.C., Section 554, the Secretary determines that any such ground exists that suspension or termination is justified.

b. If the Secretary of the Army determines that an immediate temporary suspension of activities within a right-of-way or permit area is necessary to protect public health or safety or the environment, he may abate such activities prior to an administrative proceeding.

c. Deliberate failure of the grantee to use the right-of-way for the purpose for which it was granted or renewed for any continuous two-year period shall constitute a rebuttable presumption of abandonment of the right-of-way: Provided, that where the failure to use the right-of-way is due to circumstances not within the holder's control, the Secretary is not required to commence proceedings to suspend or terminate the right-of-way.

12. Upon the expiration or termination of this grant, the grantee shall, without expense to the United States, and within such time as the Secretary of the Army may indicate, remove the said line from said land and restore the premises hereby authorized to be used and occupied to a condition satisfactory to the said officer. In the event the grantee shall fail, neglect, or refuse to remove the said line and so restore the premises, the United States shall have the option either to take over the said line as the property of the United States, without compensation therefor, or to remove the said line and perform the restoration work as aforesaid at the expense of the grantee, and in no event shall the grantee have any claim for damages against the United States or its officers or agents, on account of the taking over of said line or on account of its removal.

13. The conditions of this instrument shall extend to and be binding upon and shall inure to the benefit of the representatives, successors, and assigns of the grantee.

14. That it is understood that this instrument is effective only insofar as the rights of the United States in the said property are concerned, and that the grantee shall obtain such permission as may be necessary on account of any other existing rights.

15. The pipeline and related facilities herein authorized shall be constructed, operated, and maintained as common carriers. The owners or operators of the pipeline herein authorized shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to the pipeline without regard to whether such oil or gas was produced on Federal or nonfederal lands. (Delete this clause if inapplicable)

16. It is understood that the provision of Condition No. 3, above, shall not abrogate or interfere with any agreements or commitments made or entered into between the grantee and any other agency of the;United States with regard to financial aid to the grantee in connection with the installation, operation, or maintenance of said line.

17. That the pipeline will be buried at a depth of not less than _____ feet below the surface and such installation will be in accordance with applicable Federal and state standards.

18. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, _____ District, and the site and the material shall be protected by the grantee from further disturbance until

a professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

This easement is not subject to Title 10, U.S.C., Section 2662.

IN WITNESS WHEREOF, I have hereunto set my hand this _____ day _____of 19 _____ by authority of the Secretary of the Army.

_____

The above easement is hereby accepted this _____ day of _____, 19_____ by authority of the Secretary of the Army.

BY _____

_____

(TITLE)

C O R P O R A T E C E R T I F I C E

I, _____, certify that I am the _____ of the corporation named as grantee herein; that _____, who signed this easement on behalf of the grantee was then _____ of the corporation, and that said easement was duly signed for and in behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

_____

(SEAL)

(ACKNOWLEDGMENT)

DEPARTMENT OF THE _____
CONSENT TO CROSS U. S. GOVERNMENT EASEMENT
AT

_____

KNOW ALL MEN BY THESE PRESENTS:

That the consent of the United States is hereby granted to _____ _____ hereinafter designated as grantee, to construct, use, maintain, control, operate and repair a _____, herein referred to as "structure", across, over and under the lands where the United States has acquired a perpetual _____ easement identified as Tract(s) No(s) _____, _____ (Project/Installation) and which is recorded in Deed Book _____, Page_____, in the records of _____ county, (State). The right-of-way for said structure for the purpose of this consent is specifically identified-as Parcel(s) _____, located as shown on Exhibit "A" attached hereto and made a part hereof and described as follows:

This consent is granted subject to the following conditions:

1. That it is understood that this consent is effective only insofar as the pxoperty rights of the United States in the land to be occupied are concerned, and that it does not relieve the grantee from the necessity of obtaining grants from the owners of the fee and/or other interests therein.

2. That the proposed construction authorized herein shall not be commenced until appropriate rights shall have been obtained by the grantee from the record owners and encumbrances of the fee title to the lands involved.

3. That the exercise of the privileges hereby consented to shall be without cost or expense to the Department of the_____, under the general supervision and subject to the approval of the officer having immediate jurisdiction over the property, hereinafter referred to as "said officer," and subject to such regulations as may be prescribed by the District Commander, _____, District, from time to time, including, but not limited to, the specific conditions, requirements and specifications set forth in Exhibit "B" attached hereto and made a part hereof.

4. That the grantee shall supervise and maintain the said structure and cause it to be inspected at reasonable intervals, and shall immediately repair any damage found therein as a result of such inspection, or when requested by said officer to repair any defects. Upon completion of the installation of said structure or the making of any repairs thereto, the premises shall be restored immediately by the grantee, at the grantee's own expense, to the same condition as that in which they existed prior to the commencement of such work, to the satisfaction of said officer.

5. That any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges hereby granted shall be promptly repaired or replaced by the grantee to the satisfaction of the said officer or in lieu of such repair or replacement, the grantee shall, if so required by the said officer and at his option, pay to the United States money in an amount sufficient to compensate for the loss sustained by the United States by reason of damage to or destruction of Government property.

6. That the United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the

privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee, or the persons of grantee's officers, agents, servants, or employees or others who may be on said premises at their invitation or the invitation of one of them arising from governmental activities on or in the vicinity of the said premises, and the grantee shall hold the United States harmless from any and all such claims.

7. That this consent is effective only as to the following rights of the United States in the lands hereinabove described.

8. That the United States shall in no case be liable for any damage or injury to the construction herein authorized which may be caused by any action of the Government, under the rights obtained in its easements, either hidden or known, or that may result from future operations under taken by the Government, and no claim or right to compensation shall accrue from such damage or injury, and if further operations of the United States require the alteration or removal of the structure herein authorized, the grantee shall, upon due notice from the Chief of Engineers, Department of Army, alter or remove said structure without expense to the Government and subject to the supervision and approval of the officer having jurisdiction over the property and no claim for damages shall be made against the United States on account of such alterations or removal.

9. That construction and/or operation maintenance and use of said structure incident to the exercise of the privileges hereby granted shall be in such a manner as not to conflict with the rights of the Government, nor to interfere with the operations by the Government under such rights, nor to endanger lives and safety of the public.

10. That this consent may be terminated by the Secretary of the _____ upon reasonable notice to the grantee if the Secretary of the_____ shall determine that installation to which consent is hereby granted interferes with the use of said land or any part thereof by the United States, and this consent may be annulled and forfeited by the declaration of the Secretary of the _____ for failure to comply with any and all of the provisions and conditions of this consent, or for nonuse for a period of two years, or for abandonment.

11. That upon the relinquishment, termination, revocation, forfeiture or annulment of the consent herein granted, the grantee shall vacate the premises, remove all property of the grantee therefrom, and restore the premises to a condition satisfactory to the officers having immediate jurisdiction over the property. If the grantee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the_____, the said property shall either become the property of the United States without compensation therefor, or the Secretary of the _____ may cause it to be removed and the premises to be so restored at the expense of the grantee, and no claim for damages against the United States, or its officers or agents, shall be created by or made on account of such removal and restoration.

12. That the terms and conditions of this consent shall extend to and be binding upon the heirs, successors and assigns of the grantee.

13. That the grantee within the limits of his respective legal powers shall comply with all Federal, interstate, state and/or local governmental regulations, conditions or instructions for the protection of the environment and all other matters as they relate to real property interests granted herein.

14. That the grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, vestiges, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify the District Commander, _____ District, and the site and the material shall be protected by the grantee from further disturbance until a Professional examination of them can be made or until clearance to proceed is authorized by the District Commander.

15. Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include assignees, transferees and their duly authorized representatives.

16. Merger clause. Prior to the execution of this consent, the following conditions were deleted: _____; changed: _____; or added: _____.

This consent is not subject to Title 10, U.S.C., Section 2662.

In Witness Whereof, I have hereunto set my hand, by authority of the Secretary of the _____ this _____ day of _____, 19 _____.

_____

APPLICATION FOR CONSENT TO CROSS U. S. GOV'T EASEMENT

Date _____

APPLICATION IS MADE for the consent of the Department of _____ to construct, maintain, control, operate and repair a (state type of structure). located as shown on the attached print, over, under or across the Easement vested in the United States of America, and identified as Acquisition Tract No. _____ and situated in Section _____, Township North, Range _____, Montana Principal Meridian _____, County _____.

Names and addresses of Record Owners are _____
_____
_____

Names and addresses of Record Encumbrances are _____
_____
_____

(Fill in as applicable)
1. Width of right-of-way desired _____.
2. Diameter of pipe _____.
3. Kind of pipe _____.
4. Substance pipe to carry _____.
5. Type of service if electrical (Power, feeder, light feeder, telephone) _____.
6. A.C. or D.C. _____, Voltage _____ Phase _____ Cycle _____
7. No. wires or cables _____, ultimate number wires or cable conductors_____, guage _____, diameter of cable _____, kind of wire (copper, iron, etc.) _____. Is wire bare or insulated _____, solid or strand _____?

The undersigned agrees that construction of the facility or structure involved in this application shall not begin until the Consent to Cross U.S. Government Easement, herein applied for, shall have been granted and appropriate rights shall have been acquired from the record owners and encumbrances of the underlying fee in the land involved.

_____

_____

_____

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS
_____ DISTRICT

Consent No. _____
Project: _____
Tract No. _____

CONSENT TO EASEMENT STRUCTURES

WHEREAS, the United States has acquired a perpetual _____ easement over Tract(s) No(s) _____, _____, (Project/Installation) and which is recorded in Deed Book _____, Page _____, in the records of _____ County, __(State).

(DELETE THE FOLLOWING WHEREAS, IF NOT APPLICABLE)
WHEREAS, said easement grants to the United States the right of prior approval for any structure to be located within the easement area, which area is under the administrative control of the District, Corps of Engineers;

WHEREAS, the United States has been requested to give consent for (the construction / placement / location of _____ _____ _____ _____ _____) on the above identified tract (s).

NOW THEREFORE, the United States hereby gives consents to _____ for (the construction / placement / location of _____ _____ _____) at the location shown on Exhibit "A" attached hereto;

PROVIDED HOWEVER, that this consent is subject to the following conditions:

1. All activities conducted on the premises shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

2. The giving of this consent does not in any way subordinate the United States prior easement rights. The United States shall in no case be liable for any damage or injury to the structures herein consented to, which may be caused by any action of the United States under its easement, or that may result from future operations undertaken by the United States, and no claim or right to compensation shall accrue from such exercise of the United States' easement rights.

3. The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the consented activity.

4. This instrument is effective only insofar as the rights of the United States in the premises are concerned; and the consentee shall obtain such permission as may be required on account of any other existing rights. It is understood that this consent does not eliminate the necessity for obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), Section 404 of the Clean Water Act (33 U.S.C. § 1344) or any other permit or license which may be required by Federal, state, interstate or local laws in connection with the use of the premises.

5._____ _____ _____ _____
_____ _____ _____ _____

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____ day of _____, _____.

_____

THIS CONSENT is also executed by the grantee this _____ day of _____, _____.

_____

APPENDIX 8-E

LICENSE FORMATS

GENERAL PURPOSE LICENSE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER
6. APPLICABLE LAWS AND REGULATIONS
7. CONDITIONAL USE BY GRANTEE
8. CONDITION OF PREMISES
9. COST OF UTILITIES
10. PROTECTION OF PROPERTY
11. INDEMNITY
12. RESTORATION
13. NON-DISCRIMINATION
14. TERMINATION
15. ENVIRONMENTAL PROTECTION
16. HISTORIC PRESERVATION
17. DISCLAIMER

No. _____

DEPARTMENT OF THE _____ LICENSE

_____
PROJECT/INSTALLATION

_____
COUNTY, STATE

THE SECRETARY OF THE _____, hereinafter referred to as the Secretary, under authority of _____, herby grants to _____
_____
hereinafter referred to as the grantee, a license for_____
_____
over, across, in and upon lands of the United States, as identified in Exhibit(s)_____, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of _____, beginning _____, _____and ending _____, _____, but revocable at will by the Secretary.

2. CONSIDERATION

a. The grantee shall pay in advance to the United States the amount of_____ ($_____), (in full for the term hereof) (payable _____) to the order of the Finance and Accounting Officer, _____ District, and delivered to _____
_____

b. All consideration and other payments due under the terms of this license must be paid on or before the date they are due in order to avoid the mandatory sanctions imposed by the Debt Collection Act of 1982, (31 U.S.C. Section 3717). This statute requires the imposition of an interest charge for the late payment of debts owed to the United States; an administrative charge to cover the costs of processing and handling delinquent debts; and the assessment of an additional penalty charge on any portion of a debt that is more than 90 days past due. The provisions of the statue will be implemented as follows:

(1) The United States will impose an interest charge, the amount to be determined by law or regulation, on late payment of debts. Interest will accrue from (the due date) (the later of the due date or the date notification of the amount due is mailed to the grantee). An administrative charge to cover the cost of processing and handling each payment will also be imposed.

(2) In addition to the charges set forth above, the United States will impose a penalty charge of six percent (6%) per annum on any payment or portion thereof, more than ninety (90) days past due. The penalty shall

accrue from the date of delinquency and will continue to accrue until the debt is paid in full.

(3) All payments received will be applied first to any accumulated interest, administrative and penalty charges and then to any unpaid rental or other payment balance. Interest will not accrue on any administrative or late payment penalty charge.

3. NOTICES

All notices and correspondence to be given pursuant to this license shall be addressed, if to the grantee, to _____ _____; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, _____ _____ ; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", "Installation Commander", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The use and occupation of the premises shall be subject to the general supervision and approval of the (District Engineer) (Installation Commander), _____ (District) (Installation hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

7. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

a. without cost or expense to the United States;

b. subject to the right of the United States to improve, use or maintain the premises.

c. subject to other outgrants of the United States on the premises.

d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

8. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any

representations or warranties whatsoever and without any obligation on the part of the United States.

9. COST OF UTILITIES

The grantee shall pay the cost, as determined by the officer having immediate supervision over the premises, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

10. PROTECTION OF PROPERTY

The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

11. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property of the grantee, or for damages to the property or injuries to the person of the grantee's officers, agents, or employees or others who may be on the premises at their invitation or the invitation of any one of them, and the grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

12. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the District Engineer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

13. NON-DISCRIMINATION

The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities because of race, color, religion, sex, age, handicap or national origin in the conduct of operations on the premises. The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

14. TERMINATION

This license may be terminated by the grantee at any time by giving the District Engineer at least ten (10) days notice in writing provided that no refund by the United States of any consideration previously paid shall be made and provided further, that in the event that said notice is not given at least ten (10) days prior to the rental due date, the grantee shall be required to pay the consideration for the period shown in the Condition on CONSIDERATION.

15. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

16. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or distrubed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

17. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be require by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army

permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____ day of _____ , _____.

_____

THIS LICENSE is also executed by the grantee this _____ day of _____, _____.

_____

FISH AND WILDLIFE LICENSE

1. TERM
2. CONSIDERATION
3. NOTICES
4. AUTHORIZED REPRESENTATIVES
5. SUPERVISION BY THE DISTRICT ENGINEER
6. STRUCTURES AND EQUIPMENT
7. ANNUAL MANAGEMENT PLANS
8. FISH AND WILDLIFE ACTIVITIES
9. ACCOUNTS, RECORDS AND RECEIPTS
10. APPLICABLE LAWS AND REGULATIONS
11. CONDITIONAL USE BY GRANTEE
12. CONDITION OF PREMISES
13. PROTECTION OF PROPERTY
14. RESTORATION
15. NON-DISCRIMINATION
16. TERMINATION
17. NATURAL RESOURCES
18. ENVIRONMENTAL PROTECTION
19. HISTORIC PRESERVATION
20. DISCLAIMER

Figure 8-E-2

NO. _____

DEPARTMENT OF THE ARMY LICENCE

FOR FISH AND WILDLIFE ACTIVITIES ON

_____
PROJECT/INSTALLATION

_____
COUNTY, STATE

THE SECRETARY OF THE ARMY, hereinafter referred to as the Secretary, under authority of _____ hereby grants to _____ _____ hereinafter referred to as the grantee, a license for fish and wildlife activities over, across, in and upon lands of the United States, as identified in Exhibit(s) _____, attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS LICENSE is granted subject to the following conditions.

1. TERM

This license is granted for a term of_____, beginning _____ _____ and ending _____, _____, but revocable at will by the Secretary.

2. CONSIDERATION

The consideration for this license is the operation and maintenance of the premises by the grantee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this license shall be addressed, if to the grantee to _____; and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division, _____; or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary", "District Engineer", or "said officer" shall include their duly authorized representatives. Any reference to "grantee" shall include any duly authorized representatives.

5. SUPERVISION BY THE DISTRICT ENGINEER

The use and occupation of the premises shall be subject to the general supervision and approval of the District Engineer, hereinafter referred to as said officer, and to such rules and regulations as may be prescribed from time to time by said officer.

6. STRUCTURES AND EQUIPMENT

The grantee shall have the right, during the term of the license, to erect such structures and to provide such equipment upon the premises to accomplish the purposes of the license and as provided for in the Annual Management Plan. Those structures and equipment shall be and remain the property of the grantee, except as otherwise provided in the condition on **RESTORATION.**

7. ANNUAL MANAGEMENT PLANS

The grantee shall administer the premises in accordance with an Annual Management Plan which shows the management and development activities to be undertaken by the grantee. No later than _____ of each year, the grantee will submit the Annual Management Plan to be mutually agreed upon between the grantee and the said officer. Such Annual Management Plan shall include but is not limited to the following:

a. Plans for management, maintenance, and development activities to be undertaken by the grantee or jointly by the Corps of Engineers and the grantee which shall include plans for any proposed structures and improvements.

b. The areas to be utilized for agricultural purposes.

c. The variety and scope of crops to be planted, as well as any rotations.

d. The type of wildlife cover to be cultivated, if any.

e. The areas designated for various species of fish and wildlife propagation.

8. FISH AND WILDLIFE ACTIVITIES

a. The grantee may plant or harvest crops, either directly, by service contract, by sharecrop agreements with local farmers, or by agricultural agreements to provide food and/orhabitat for wildlife and for the development and conservation of land, fish and wildlife, forests,and other natural resources. Where feasible, contracts and agreements with third parties shall be by competitive bid procedures.

b. Any lands not being managed by the grantee for wildlife habitat will be made available for lease by the said officer for agricultural or grazing purposes under conditions which would not be incompatible with the grantee’s use of the premises.

c. The grantee may take, trap, remove, stock or otherwise control all forms of fish and wildlife on the premises, and may place therein such additional forms of fish and wildlife as it may desire from time to time, and shall have the right to close the area, or any parts thereof from time to time, to fishing, hunting or trapping, provided that the closing of any area to such use shall be consistent with the state laws for the protection of fish and wildlife.

9. ACCOUNTS, RECORDS AND RECEIPTS

a. All monies received by the grantee from operations conducted on the premises may be utilized by the grantee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this license and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid

to said officer. The grantee shall provide an annual statement of receipts and expenditures to the said officer. The said officer shall have the right to perform audits of the grantee's records and accounts.

b. Payment of direct expenses is authorized for planning and development of optimum wildlife habitat including planting of wildlife food plots, necessary timber clearing, erosion control or habitat improvements such as shelter, restocking of fish and wildlife, and protection of endangered species. Payment of grantee's employees who are directly engaged in such activities at the project is also authorized. However, proceeds will not be used for the payment of general administrative expenses.

c. Proceeds derived from the sale of fishing and hunting leases are not

10. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable federal, state, county and municipal laws, ordinances and regulations wherein the premises are located.

11. CONDITIONAL USE BY GRANTEE

The exercise of the privileges herein granted shall be:

a. without cost or expense to the United States;

b. subject to the right of the United States to improve, use or maintain the premises.

c. subject to other outgrants of the United States on the premises.

d. personal to the grantee, and this license, or any interest therein, may not be transferred or assigned.

12. CONDITION OF PREMISES

The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the United States.

13. PROTECTION OF PROPERTY

The premises shall at all times be protected and maintained in good order and condition by and at the expense of the grantee. The grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

14. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove the property of the grantee, and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises to the aforesaid condition within such time as the said officer may designate. In either event, if the grantee shall fail or neglect to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the United States without compensation therefor, or said officer may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work, The grantee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or termination of this license in restoring the premises.

15. NON-DISCRIMINATION

a. The grantee shall not discriminate against any person or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises, because of race, color, religion, sex, age, handicap or national origin.
The grantee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The grantee, by acceptance of this license, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300)issued as Department of Defense Directive 5500.11 and 1020.1, and Army Regulation 600-7.

16. TERMINATION

This license may be terminated by the grantee at any time by giving the said officer at least thirty (30) days notice in writing.

17. NATURAL RESOURCES

The grantee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the approved Annual Management Plan. The grantee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the grantee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the grantee under the provisions of this license.

18. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions, or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or

local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

c. The grantee must obtain approval in writing from said officer before any pesticides or herbicides are applied to the premises.

19. HISTORIC PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains or objects of antiquity. In the event such items are discovered on the premises, the grantee shall immediately notify said officer and protect the site and the material from further disturbance until said officer gives clearance to proceed.

20. DISCLAIMER

This license is effective only insofar as the rights of the United States in the premises are concerned; and the grantee shall obtain any permit or license which may be require by Federal, state, or local statute in connection with the use of the premises. It is understood that the granting of this license does not preclude the necessity of obtaining a Department of the Army permit for activities which involve the discharge of dredge or fill material or the placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 USC 403), and Section 404 of the Clean Waters Act (33 USC 1344).

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____ day of _____, _____.

_____

THIS LICENSE is also executed by the grantee this _____ day of _____, _____.

_____

NATIONAL GUARD LICENSE

1. TERM
2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)
3. APPLICABLE LAWS AND REGULATIONS
4. FACILITY MAINTENANCE
5. RIGHT TO USE
6. COST OF UTILITIES
7. USE RESTRICTIONS
8. IMPROVEMENTS AND ALTERATIONS
9. CONDITION OF PREMISES
10. TERMINATION
11. EXPIRATION AND RESTORATION
12. USE BY OTHERS
13. PROTECTION OF PREMISES
14. ENVIRONMENTAL PROTECTION
15. PRELIMINARY ASSESSMENT SCREENING
16. HISTORICAL PRESERVATION
17. NON-DISCRIMINATION

Figure 8-E-3

NO. _____

DEPARTMENT OF THE _____
LICENSE FOR
NATIONAL GUARD PURPOSES

_____
PROJECT/INSTALLATION

_____
COUNTY, STATE

THE SECRETARY OF THE _____, hereinafter referred to as the Secretary, under the authority of Title 32, United States Code, Section 503, hereby grants to the State of _____, hereinafter referred to as the grantee, a license to use and occupy for training and support of the _____ National Guard certain land and improvements, hereinafter referred to as the premises, as shown identified in Exhibit(s) _____, attached hereto and made a part hereof.

THIS LICENSE is granted subject to the following conditions:

1. TERM

This license is granted for (an indefinite term,) (a term of _____ years, beginning _____ and ending _____, _____,) but revocable at will by the Secretary.

***NOTE:** See chapter 8 for additional wording when licensed area is not owned in fee by the United States.

2. SUPERVISION BY THE (DISTRICT ENGINEER) (INSTALLATION COMMANDER)

The use and occupancy of the premises shall be without cost to the regular establishment of the military departments of the Department of Defense and shall be under the general supervision of the (District Engineer) (Active Army Installation Commander) (U.S. Property and Fiscal Officer), _____, (District) (Installation) hereinafter referred to as said officer, and subject' to such rules and regulations as may be prescribed from time to time by said officer.

3. APPLICABLE LAWS AND REGULATIONS

The grantee shall comply with all applicable Federal, state, county, and municipal laws, ordinances, and regulations wherein the premises are located

4. FACILITY MAINTENANCE

The grantee shall maintain and keep the premises in good repair and condition and all costs of operation, maintenance, and restoration shall be paid for from funds available to the grantee, or from funds other than those appropriated for the regular establishment of the military departments.

5. RIGHT TO USE

The United States, hereinafter referred to as the Government, reserves the right to use the premises, or any part thereof, including all buildings

and improvements situated thereon, for such purposes as said officer deems necessary in the interest of national defense.

6. COST OF UTILITIES

The grantee shall pay the cost, as determined by the officer having immediate jurisdiction over the premises, of producing and/or supplying any utilities or other services furnished by the Government or through Government-owned facilities for the use of the grantee, including the grantee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced and supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the officer having such jurisdiction.

7. USE RESTRICTIONS

The buildings and improvements included in this license shall not be used for the quartering of personnel engaged in the national guard activities except when such personnel are in the federal service or are participating in authorized training.

8. IMPROVEMENTS AND ALTERATIONS

Additions to or alteration or improvement of the premises shall not be made without prior written approval of the District Engineer. All such additions, alterations or improvements shall be maintained by the grantee in good repair and condition. All such work designated as permanent by said officer shall, upon completion, become property of the Government.

9. CONDITION OF PREMISES

a. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Government.

DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

b. As of the date of this license, an inventory and condition report of all personal property and improvements of the Government included in this license shall be made by the District Engineer and the grantee to reflect the condition of said property and improvements. A copy of said report is attached hereto as Exhibit _____ and made a part hereof. Upon the expiration, revocation or termination of this license, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored as provided for in the condition on **RESTORATION.**

10. TERMINATION

This license may be terminated by the grantee at any time by giving the District Engineer at least thirty (30) days notice in writing.

11. RESTORATION

On or before the expiration of this license or its termination by the grantee, the grantee shall vacate the premises, remove its property (except those permanent additions, alterations, and improvements which have become

property of the Government under provision of the condition on **IMPROVEMENTS AND ALTERATIONS)** and restore the premises to a condition satisfactory to said officer. If, however, this license is revoked, the grantee shall vacate the premises, remove said property and restore the premises within such time as the said officer may designate. In either event, if the grantee fails to remove said property and restore the premises, then, at the option of said officer, the property shall either become the property of the Government without compensation therefor, or said officer may cause the property to be removed at the expense of the grantee, and no claim for damages against the Government shall be created on account of such action.

12. USE BY OTHERS

The grantee shall not transfer or assign this license, or any interest in the premises, however, upon concurrence of the Director, (Army) (Air force) National Guard, National Guard Bureau, the grantee may (1) permit the temporary or intermittent use of the premises by elements of the Department of Defense for joint use or individual training purposes, provided such use will not interfere with the National Guard use; or (2) issue licenses for nonprofit, community service-type activities under the same conditions as those allowed by active installation commanders by existing (Army) (Air Force) regulations.

13. PROTECTION OF PROPERTY

a. The grantee shall keep the premises in good order and in a clean, safe condition by and at the expense of the grantee. The granted shall be responsible for any damage that may be caused to property of the United States by the activities of the grantee under this license, and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the grantee incident to the exercise of the privileges herein granted shall abe promptly repaired or replaced by the grantee to a condition satisfactory to said officer, or at the election of said officer, reimbursement made therefor by the grantee in an amount necessary to restore or replace the property to a condition satisfactory to said officer.

b. Upon termination of the grantee’s requirement for the premises, the grantee shall remain responsible to protect and maintain the premises until transfer to and acceptance by another accountability officer is accomplished or in accordance with applicable laws, rules and regulations.

14. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this license shall protect the premises against pollution of its air, ground and water. The grantee shall comply with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the premises is specifically prohibited. Such regulations, conditions or instructions in effect or prescribed by said Environmental Protection Agency, or any Federal, state, interstate or local governmental agency are hereby made a condition of this license. The grantee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs from the grantee's activities, the grantee shall be liable to restore the damaged resources.

15. PRELIMINARY ASSESSMENT SCREENING

A Preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances thereon, is attached hereto and made a part hereof as Exhibit _____. Upon expiration, revocation or relinquishment of this license, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the said officer in determining any environmental restoration requirements. Any such requirements will be completed by the grantee to the satisfaction of the said officer.

16. HISTORICAL PRESERVATION

The grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural, or other cultural artfacts, relics, or objects of antiquity. In the event such items are discoverde on the premises, the grantee shall immediately notify said officer and protect the site and material from further disturbance until the said officer gives clearance to proceed.

17. NON-DISCRIMINATION

The grantee shall not discriminate against any person or persons or exclude them from participation in the grantee's operations, programs or activities conducted on the licensed premises because of race, color, religion, sex, age, handicap or national origin. The grantee by acceptance of this license, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. 2000d); the Age Discrimination Act of 1975 (42 U.S.C 6102); the Rehabilitation Act of 1973 as amended (29 U.S.C. 794); and all requirements imposed by or pursuant to the Department of Defense Directive 5500.11 (32 CFR Part 300) issued on December 28, 1964.

THIS LICENSE is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the _____, this _____ day of _____, 19__.

_____

This license is executed by the grantee this _____ day of _____, _____.

_____

APPENDIX 8-F

PERMIT FORMATS

NO. _____

DEPARTMENT OF THE _____

PERMIT TO OTHER FEDERAL GOVERNMENT DEPARTMENT OR AGENCY

TO USE PROPERTY LOCATED ON

_____
(project, installation)

THE SECRETARY OF THE _____ , hereinafter referred to as the Secretary hereby grants to _____ _____ _____, hereinafter referred to as the grantee, a permit for _____ _____, over, access, in and upon the lands identified in Exhibit(s) _____ attached hereto and made a part hereof, hereinafter referred to as the premises.

THIS PERMIT is granted subject to the following conditions.

1. This permit is hereby granted for a term of _____ years, beginning _____, _____, and ending _____, _____, but revocable at will by the Secretary.

(DELETE THE FOLLOWING CONDITION IF NOT APPLICABLE)

2. The grantee shall pay rental to the Department of the _____ in the amount of _____ ($_____), payable _____ to the order of the Finance and Accounting Officer, _____ District and delivered to _____.

3. All correspondence and notices to be given pursuant to this permit shall be addressed, if to the grantee, to _____ _____ _____ and if to the United States, to the District Engineer, Attention: Chief, Real Estate Division _____ _____ _____, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope or wrapper addressed as aforesaid, and deposited, postage prepaid, in a post office regularly maintained by the United States Postal Service.

4. The use and occupation of the premises shall be without cost or expense to the Department of the _____, and under the general supervision and subject to the approval of the (District Engineer) (Installation Commander), _____ (District) (Installation), or his duly authorized representative, hereinafter referred to as said officer and to such rules and regulations as may be prescribed from time to time by said officer.

5. The grantee acknowledges that it has inspected the premises, knows its condition, and understands that the same is granted without any representations or warranties whatsoever and without any obligation on the part of the Department of the _____.

6. The grantee shall, at its own expense and without cost or expense to the Department of the _____, maintain and keep the premises-in good repair and condition.

7. Any interference with the use of or damage to property under control of the Department of the _____ incident to the exercise of the