

CHAPTER 19

OUTLEASING

TABLE OF CONTENTS

<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
<u>SECTION I - GENERAL</u>		
1.	<a href="#"><u>Scope</u></a> .....	19-1
2.	<a href="#"><u>References</u></a> .....	19-1
3.	<a href="#"><u>Definitions</u></a> .....	19-2
4.	<a href="#"><u>Department of Defense Leasing Policy</u></a> .....	19-3
5.	<a href="#"><u>Department of the Navy Leasing Policy</u></a> .....	19-3
6.	<a href="#"><u>Department of the Navy Leasing Objectives</u></a> .....	19-5
7.	<a href="#"><u>Department of the Navy Policy on Posting of Notices or Erection of Billboards</u></a> .....	19-6
<u>SECTION II - LEASING AUTHORITIES</u>		
8.	<a href="#"><u>Leasing Authority of Secretary of the Navy</u></a> .....	19-6
9.	<a href="#"><u>Environmental Considerations</u></a> .....	19-9
10.	<a href="#"><u>Requirements</u></a> .....	19-10
11.	<a href="#"><u>Secretarial Determination</u></a> .....	19-11
12.	<a href="#"><u>Authority of Commander, Naval Facilities Engineering Command to Outlease</u></a> .....	19-11
13.	<a href="#"><u>Authority for Commanders/Commanding Officers of Facilities Engineering Commands (FECs) to Outlease</u></a> .....	19-12
14.	<a href="#"><u>Installation, FEC, and NAVFAC Approvals and Procedures for Outleasing</u></a> .....	19-13
<u>SECTION III - LEASE DETERMINATIONS, CONTRACTING METHODS, AND CONSIDERATIONS</u>		
<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
15.	<a href="#"><u>Determination of Non-Requirement for Public Use</u></a> .....	19-19
16.	<a href="#"><u>Leasing on a Competitive Basis</u></a> .....	19-20
17.	<a href="#"><u>Leasing on a Negotiated Basis</u></a> .....	19-21

18.	<a href="#"><u>Consideration</u></a> .....	19-22
19.	<a href="#"><u>Expenditure of Rental Funds</u></a> .....	19-22
<b><u>SECTION IV - MAINTENANCE</u></b>		
20.	<a href="#"><u>General Maintenance</u></a> .....	19-23
21.	<a href="#"><u>Long-Term Maintenance</u></a> .....	19-23
22.	<a href="#"><u>Criteria for Direction or Approval of Long-Term Maintenance Items</u></a> .....	19-23
23.	<a href="#"><u>Long-Term Maintenance of Excess Leased Property</u></a> .....	19-24
24.	<a href="#"><u>Direction of Current Obligated Maintenance Amounts</u></a> .....	19-24
25.	<a href="#"><u>Long-Term Maintenance Administration</u></a> .....	19-24
26.	<a href="#"><u>Conservation Plan</u></a> .....	19-25
<b><u>SECTION V - INSURANCE</u></b>		
27.	<a href="#"><u>Insurance Requirements</u></a> .....	19-26
28.	<a href="#"><u>Insurance for Agricultural or Grazing Leases</u></a> .....	19-29
29.	<a href="#"><u>Specific Insurance Requirements</u></a> .....	19-29
30.	<a href="#"><u>Reserved</u></a> .....	19-30
31.	<a href="#"><u>Co-Insurer</u></a> .....	19-30
32.	<a href="#"><u>Insurance Waiver and Self-Insurance</u></a> ...	19-30
33.	<a href="#"><u>Security for Performance</u></a> .....	19-31
<b><u>SECTION VI - INSPECTIONS/ADMINISTRATION</u></b>		
34.	<a href="#"><u>Inspections</u></a> .....	19-31
35.	<a href="#"><u>Administrative Responsibility</u></a> .....	19-32
36.	<a href="#"><u>Standard Form of Lease</u></a> .....	19-32
37.	<a href="#"><u>Contract Consideration</u></a> .....	19-33
38.	<a href="#"><u>Timely Action for Lease Extension and Succeeding Leases</u></a> .....	19-33
39.	<a href="#"><u>Lease Termination</u></a> .....	19-33
40.	<a href="#"><u>Agricultural and Grazing Leases</u></a> .....	19-33

41.	<a href="#">Adjudication of Outlease Claims</a> .....	19-37
-----	---	-------

**SECTION VII - ON-BASE BANK LEASING**

42.	<a href="#">Banking Office Leasing</a> .....	19-40
43.	<a href="#">Establishment of On-Base Banking/Credit Union</a>	19-41
44.	<a href="#">Solicitations</a> .....	19-42
45.	<a href="#">Terminations</a> .....	19-43
46.	<a href="#">Lease Terms</a> .....	19-43
47.	<a href="#">Logistical Support</a> .....	19-43
48.	<a href="#">Land Leases</a> .....	19-44
49.	<a href="#">Construction</a> .....	19-45
50.	<a href="#">Construction Project Approval Authority</a> .....	19-45
51.	<a href="#">Bank Liaison Officer (BLO)</a> .....	19-46
52.	<a href="#">In-Store Banking</a> .....	19-46
53.	<a href="#">Automatic Teller Machines (ATMs)</a> .....	19-47

**SECTION VIII - ON-BASE CREDIT UNION LEASING**

54.	<a href="#">Credit Union Leasing</a> .....	19-47
55.	<a href="#">General Policy</a> .....	19-48
56.	<a href="#">Establishment of an On-Base Credit Union Office</a> .....	19-48
57.	<a href="#">Terminations</a> .....	19-48
58.	<a href="#">Use of Space for Credit Unions</a> .....	19-49
59.	<a href="#">Logistical Support</a> .....	19-50
60.	<a href="#">Administrative Fees</a> .....	19-51
61.	<a href="#">Land Leases</a> .....	19-51
62.	<a href="#">Construction</a> .....	19-51
63.	<a href="#">ATMs</a> .....	19-51
64.	<a href="#">In-Store Banking</a> .....	19-51
65.	<a href="#">Operating Agreements (OA)</a> .....	19-51

**SECTION IX - MOBILE SERVICE ANTENNA LEASING GUIDANCE**

66.	<a href="#">Policy Guidance</a> .....	19-52
67.	<a href="#">Implementation</a> .....	19-52
68.	<a href="#">Availability of Site(s)</a> .....	19-54
69.	<a href="#">Land Held in Trust and Native American Tribes</a> .....	19-55
70.	<a href="#">Lessee's Process and Management Costs</a> .....	19-55
71.	Reserved .....	19-55
72.	<a href="#">Specific Terms, Conditions and Limitations of the Lease</a> .....	19-55

SECTION X - DISTRIBUTION OF DOCUMENTS/AVAILABILITY OF FORMS

<u>Paragraph</u>	<u>Title</u>	<u>Page</u>
73.	<a href="#">Distribution</a> .....	19-58
74.	<a href="#">Availability of Forms</a> .....	19-59

--Department of the Navy General Purpose Out-Lease Table of Contents (NAVFAC (11011/43 (08/04)).....

-- Department of the Navy General Purpose Lease For Telecommunication Systems.....

--Department of the Navy Lease for Agricultural or Grazing Purposes (NAVFAC 11011/22 (Rev7-75) + NAVFAC Southwest Lease).....

--Agricultural and Grazing Lease Deposit Instructions for Collections Relative to Leases of Navy Lands.....\*

--Agricultural and Grazing Lease Deposit Instructions for Collections Relative to Leases of Marine Corps Lands.....\*

--Program Requirements Report Format.....\*

--Project Information Format.....\*

--Instructions for Preparing Agricultural Outlease Funded Project Information Sheet.....\*

Title 10 Report Preparation Guideline for Outleases.....\*

--Department of the Navy General Purpose OutLease (NAVFAC (11011/43 (08/04)).....

--Department of the Navy Lease for Agricultural or Grazing Purposes (NAVFAC 11011/22 (Rev 7-75))..... \*

---

\* (Forms will be updated in the future)

Appendix: A Sample Operating Agreement

CHAPTER 19

OUTLEASING

SECTION I - GENERAL

1. SCOPE

a. This chapter implements Department of Defense (DOD) and Department of Navy (DON) policy governing the leasing of all Navy-controlled real and related personal property when the Secretary of the Navy (Secretary) considers that leasing to be advantageous to the United States, with the exception of:

- (a);
- (1) Leases of excess property as defined in [reference \(a\)](#);
  - (2) Leases of oil, mineral, or phosphate lands for exploitation purposes, which are covered in P-73, Chapter 18; or
  - (3) Leases at bases closed under the authority of any Base Closure and Realignment Act. Those leases will generally follow the procedures set forth in this chapter, but will also be governed by the requirements set forth in subsection (f) of [reference \(b\)](#), and in the DOD Base Reuse Implementation Manual ([DOD 4165.66-M, March 1, 2006](#)).

b. **This** chapter further discusses the authority and delegation of authority for the outleasing of real property. It also prescribes the procedures to be followed in the granting, administration, modification, and termination of all leases executed under the authority of [reference \(b\)](#).

## **2. REFERENCES**

- (a) [Federal Property and Administrative Services Act of 1949 \(40 U.S.C. §§ 521-593\)](#)
  - (b) [10 U.S.C. § 2667](#)
  - (b1) [10 U.S.C. §§ 2668](#)
  - (c) [Federal Management Regulation, as amended, \(41 C.F.R. § 102-71.20\)](#)
  - (d) [OPNAVINST 5400.42 of 3 Oct 88](#)
  - (e) [DODD 4165.06 of 13 Oct 2004](#)
  - (f) [SECNAVINST 11011.46A of 30 Mar 88](#)
  - (g) [10 U.S.C § 2878](#)
  - (h) [Real Estate Procedural Manual, NAVFAC P-73](#)
  - (i) [20 U.S.C. § 107, Vending Facilities For Blind In Federal Buildings and OPNAVINST 4535.1B](#)
  - (j) [10 U.S.C § 2474](#)
  - (k) [OPNAVINST 5090.1C of 30 Oct 07](#)
  - (l) [16 U.S.C § 470h-3](#)
  - (m) [DoD Financial Management Regulation, Vol. 5, Chapter 34 of Sep 2000](#)
- 19-1**
- (n) [30 U.S.C. § 352](#)
  - (o) [10 U.S.C. § 2662](#)
  - (p) [Stewart B. McKinney Homeless Assistance Act, \(42 U.S.C. § 11411\) and 41 C.F.R. § 102-75.1170\(b\)\)](#)
  - (q) [ASN\(I&E\) Memorandum of 22 Dec 93 - Department of the Navy Environmental Procedures Applicable to Non-BRAC Real Estate Actions](#)
  - (r) [33 U.S.C. § 701c-3](#)
  - (s) [NAVCOMPT Manual Volume 4, Chapter 3](#)
  - (t) [MIL-STD-3007B of 30 Sep 01](#)
  - (u) [Telecommunications Act of 1996 \(Amends multiple sections of Title 47\)](#)
  - (v) [Federal Management Regulation \(41 C.F.R. pt 102-75\)](#)
  - (w) [SECNAVINST 7010.7 of 6 Dec 99](#)
  - (x) [SECNAVINST 11011.47B of 12 Jan 09](#)
  - (y) [NAVFACINST 11010.45, Comprehensive Regional Planning](#)

### 3. DEFINITIONS

As used in this chapter, "real property" includes any item of personal property that is an integral and necessary part, or is essential to the use or productive capacity, of the real property, and "property" refers to real property unless otherwise noted. "Installation" also includes an Activity.

a. Real Property. As defined in [reference \(c\)](#), real property is:

(1) Any interest in land, together with the improvements, structures, and fixtures on the land (including prefabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house-trailers with or without undercarriages), and appurtenances, under the control of any Federal agency, except:

(a) The public domain;

(b) Lands reserved or dedicated for national park purposes;

(c) Minerals in lands or portions of lands withdrawn or reserved from the public domain that the Secretary of the Interior determines are suitable for disposition under the public land mining and mineral leasing laws;

(d) Lands withdrawn or reserved from the public domain but not including lands or portions of lands withdrawn or reserved that the Secretary of the Interior, with the concurrence

#### 19-2

of the Administrator of General Services (Administrator), determines are not suitable for return to the public domain for disposition under the general public land laws because those lands are substantially changed in character by improvements or otherwise; and

(e) Crops when designated by the disposal agency for disposition by severance and removal from the land.

(2) Improvements of any kind, structures, and fixtures under the control of any Federal agency when designated by that agency for disposition without the underlying land (including those items that may be located on the public domain, or lands withdrawn or reserved from the public domain, or lands reserved or dedicated for national forest or national park purposes, or on lands that are not owned by the United States) excluding, however, fabricated movable structures, such as Butler-type storage warehouses and Quonset huts, and house-trailers (with or without undercarriages).

(3) Standing timber and embedded gravel, sand, or stone under the control of any Federal agency whether designated by that agency for disposition with the land or by severance and removal from the land, excluding felled timber, gravel, sand, or stone excavated by or for the Government prior to disposition.

b. Related Personal Property. As further defined in [reference \(c\)](#), related personal property means any property:

(1) That is an integral part of real property or is related to, designed for, or specially adapted to the functional or productive capacity of the real property and removal of which would significantly diminish the economic value of the real property. Normally, common use items, including but not limited to general-purpose furniture, utensils, office machines, office supplies, or general-purpose vehicles, are not considered to be related personal property; or

(2) That is determined by the Administrator to be related to the real property. For base closure property only, the Administrator has delegated this authority to DOD. For procedures for reporting DOD personal property in defense-impacted communities, see [reference \(d\)](#).

#### **4. DEPARTMENT OF DEFENSE LEASING POLICY**

In accordance with [reference \(e\)](#), as implemented by [reference \(f\)](#), the military departments are encouraged to use [reference \(b\)](#) authority whenever possible to lease non-excess property.

**5. DEPARTMENT OF THE NAVY LEASING POLICY** (See reference (aa) for outgrants that require, and also are excepted from, prior

### **19-3**

approval of the Assistant Secretary of the Navy (Installations and Environment (ASN (EI&E))).

a. The Secretary holds real property for DON to fulfill the Navy and Marine Corps military mission. As such, the Secretary is responsible for policy matters relating to DON real property. Allowing use of Navy property by others, even for short periods of time, may have consequences that are detrimental to fulfilling the official Navy and Marine Corps mission. Accordingly, it is important to carefully consider the effects that non-Navy use will have on potential future military requirements before entering into agreements for non-Naval use of DON real property.

b. DON real property may only be made available for compatible non-Navy uses when it can be clearly shown that:

(1) It is not excess property as defined in [reference \(a\)](#);

(2) Its use by others will not interfere with the accomplishment of the activity's mission, or with the Department's present or foreseeable use of the property, or with other Departmental activities in the vicinity; and



(3) The use will be at minimal expense to the DON.

c. The user of DON real property shall be required to use, maintain, protect, and preserve the property in accordance with sound management practices and the terms of the outgrant.

d. Non-Federal users of DON property, except state, county, or local government agencies that are precluded by law from assuming liability, must assume, when appropriate, liability for loss of or damage to the real property, and for third party bodily injury and property damage. When these liabilities are imposed, the user will be required to demonstrate sufficient financial responsibility to assume these liabilities, or, at the user's own expense, procure, and maintain sufficient insurance to cover them. This requirement for insurance does not apply to voluntary, non-profit associations chartered to operate on DON installations.

e. Prior to making property available to other users outside of DON, the installation commander/commanding officer or the regional commander for Navy properties will prepare an Environmental Condition of Property of the property, together with a Finding of Suitability to Lease (FOSL), in accordance with [reference \(q\)](#).

f. Since it is inappropriate for the military departments to directly create competition with private enterprise, particularly in the third-party lodging and food service industries, the outgranting or otherwise making available of DON-controlled real property for these or related type uses, except for DOD-sponsored programs under [reference \(w\)](#), should be avoided.

#### 19-4

g. In authorizing the operation of vending facilities, including restaurants and cafeterias on DON property, priority should be given to blind persons licensed by a state agency as provided in [reference \(i\)](#).

h. DON will not authorize the posting of notices or erection of billboards or signs for commercial or political purposes on property under its control. However, in those rare instances [when](#) the Navy purchases property [that has a](#) billboard lease in effect, the Navy may allow the lease to remain in effect for the remainder of its term. In the event the Navy acquires property subject to such a billboard lease, such lease shall not be extended nor renewal options exercised. Any such billboard must be in compliance with all applicable Federal, state, and local laws and regulations.

i. Since it could be construed as a political endorsement by DON, space on DON property will not be made available, either by lease or other agreement, for use by a Member of Congress for a district office or other political uses.

## **6. DEPARTMENT OF THE NAVY LEASING OBJECTIVES**

a. DON real property may be leased for any legitimate non-Federal use consistent with approved departmental policy and legislative authorizations. Several objectives of leasing are:

(1) Promotion of the national defense and/or national economy. For example:

(a) Navy land may be leased where there exists a productive, non-Federal use potential that is compatible with the station's mission and promotes the national defense; or

(b) The leasing of Navy land may significantly assist the local economy and/or improve public relations in the area.

(2) Maintenance and protection of Navy real property consistent with current or future Navy requirements with a minimum expenditure of appropriated funds.

(a) Considerable savings of operation and maintenance funds may be achieved through leasing since doing so places the obligation for ordinary maintenance on the lessee.

(b) Further savings should be achieved where it is possible to place the obligation for directed long-term maintenance on the lessee as a part of the consideration of the lease.

(c) Improved management of agricultural and grazing lands should be obtained through incorporation of soil and water conservation plans in leases. Those plans are outlined in Volume

**19-5**

II of the P-73, emphasizing multiple-use programs for management of renewable natural resources.

(3) Obtaining the maximum cash return to the United States consistent with the accomplishment of objectives stated in this paragraph.

**7. DEPARTMENT OF THE NAVY POLICY ON POSTING OF NOTICES OR ERECTION OF BILLBOARDS**

DON will not authorize the posting of notices or erection of billboards or signs for commercial purposes on property under its control. However, in those rare instances when the Navy purchases property that has a billboard lease in effect, the Navy may allow the lease to remain in effect for the remainder of its term. In the event the Navy acquires property subject to such a billboard lease, that lease shall not be extended. Any billboard must comply with all applicable Federal, state, and local laws and regulations.

**SECTION II - LEASING AUTHORITIES**

**8. LEASING AUTHORITY OF SECRETARY OF THE NAVY**

a. The Secretary derives the authority to lease from [reference \(b\)](#), which provides in part that whenever the Secretary of a military department considers it advantageous to the United States, he/she may lease to a lessee and upon those terms that

he/she considers will promote the national defense or be in the public interest, real or personal property that is-

- (1) Under the control of that department; and
- (2) Not excess property, as defined in [reference \(b\)](#).

b. A lease under subsection a. above-

(1) May not be for more than five years, unless the Secretary determines that a lease for a longer period will promote the national defense or be in the public interest;

(2) May give 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;

(3) Permits the Secretary to terminate the lease at any time, unless he/she determines that the omission of that provision will promote the national defense or be in the public interest;

(4) Provides for the payment (in cash or in kind) by the lessee of consideration in an amount that is not less than the

**19-6**

fair market value of the lease interest, as determined by the Secretary; and

(5) May provide for the alteration, repair, or improvement by the lessee, of the property leased as the payment of part or all of the consideration for the lease.

c. (1) In addition to any in-kind consideration accepted under subsection b.(5) above, in-kind consideration accepted for a lease under this section may include the following:

(a) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities under the control of the Secretary.

(b) Construction of new facilities for the Secretary.

(c) Provision of facilities for use by the Secretary.

(d) Facilities operation support for the Secretary.

(e) Provision of other services relating to activities that will occur on the leased property that the Secretary considers appropriate.

(2) In-kind consideration under subparagraph c.(1) above may be accepted at any property or facility under the control of the Secretary that is selected for that purpose by the Secretary.

(3) [10 U.S.C. § 2802](#) and [reference \(o\)](#) do not apply to any

new facilities whose construction is accepted as in-kind consideration.

(4) In the case of a lease for which all or part of the consideration proposed to be accepted by the Secretary is in-kind consideration with a value in excess of \$750,000 over the term of the lease, the Secretary may not enter into the lease until 30 days after the date on which a report on the facts of the lease is submitted to the congressional defense committees.

d. (1)(a) The Secretary should deposit in a special account in the Treasury established for the Navy the following:

(i) All money rent received from leases entered into by the Secretary under this section.

(ii) All proceeds received from the granting of easements by the Secretary under [reference \(b1\)](#).

(iii) All proceeds received by the Secretary from authorizing the temporary use of other property under the control of the Navy.

#### 19-7

(b) [Subparagraph d.1\)\(a\)](#) above does not apply to the following proceeds:

(i) Amounts paid for utilities and services furnished to lessees by the Secretary under leases entered into under this section, and

(ii) non-money rents referred to in [subparagraphs b. \(4\) or \(5\)](#) above.

(c) Subject to subparagraphs (d) and (e) below, the proceeds deposited into the special account of the Navy under [subparagraph d.\(1\)\(a\)](#) above, will be available to the Secretary in amounts provided for in appropriation Acts, for the following:

(i) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.

(ii) Construction or acquisition of new facilities.

(iii) Lease of facilities.

(iv) Facilities operation support.

(d) At least 50 percent of the proceeds deposited in the special account of the Navy under subparagraph d.(1)(a) above, must be available exclusively at the military installation where the proceeds were derived for activities described in subparagraph d.(1)(c) above.

(e) The Secretary may not expend an amount in excess of \$500,000 for any of the items listed in subparagraph d.(1)(c)

above at a single installation until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.

(2) Payments for utilities and services furnished to lessees should be credited to the appropriation account or working capital fund from which the cost of furnishing the utilities and services was paid.

(3) Not later than March 15 of each year, the Secretary of Defense shall submit to the congressional defense committees a report that must include -

(a) An accounting of the receipt and use of all money rents that were deposited and expended during the fiscal year preceding the fiscal year in which the report is made; and

(b) A detailed explanation of each lease entered into,  
**19-8**

and of each amendment made to existing leases during the preceding fiscal year.

(4) Money rents received by the United States directly from a lease for agricultural or grazing purposes of lands under the control of the Secretary (other than lands acquired by the United States for flood control or navigation purposes or any related purpose, including the development of hydroelectric power) may be retained and spent by the Secretary in amounts that he/she considers necessary to pay the administrative expenses of leasing and to pay for the financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary.

(5) Money rents received by the United States from a lease under [reference \(b\)](#) must be deposited into the account established under section 2906(a) of the Defense Base Closure and Realignment Act of 1990 ([10 U.S.C. § 2687](#) note).

e. The interest of a lessee of property leased under this section may be taxed by state or local governments. A lease under this section must provide that, if and to the extent that the leased property is later made taxable by state or local governments under an Act of Congress, the lease will be renegotiated.

f. In addition to the authority contained in [reference \(b\)](#), the Secretary is also authorized to lease real property controlled by the Navy under the authority of [reference \(g\)](#), [reference \(j\)](#), historic buildings under [reference \(l\)](#), and by specific legislative authority. In entering into leases under these additional authorities, the policies and procedures set forth in this chapter should be followed, unless otherwise specifically directed by law.

## **9. ENVIRONMENTAL CONSIDERATIONS**

a. In accordance with the National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4370h)(NEPA), as implemented by [reference \(k\)](#), an environmental evaluation should be made for each proposed outlease. From the evaluation, it will be determined whether the proposed leasing action may be covered under a Categorical Exclusion (CATEX), or if an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) is required. If the proposed lease requires the approval of COMNAVFACENGCOM or higher authority, the transmittal letter should make a statement about compliance with NEPA and include the environmental documentation, as appropriate.

b. In accordance with [reference \(q\)](#):

#### 19-9

(1) An Environmental Condition of Property (ECP) must be prepared for all leases of real property. In preparing an EBS, the procedures set forth in the COMNAVFACENGCOM Environmental Baseline Survey Guidelines of March 1995 shall be followed. The scope of the ECP (investigation and documentation) must be appropriate to the proposed use and the property involved.

(2) A Finding of Suitability to Lease (FOSL) must be prepared for each lease. The FOSL shall be executed by the FEC Commander for Navy Activities and the cognizant Commanding General for Marine Corps Activities, or their designee. The EBS and FOSL must be permanently retained in the real estate contract file.

(3) In the preparation of an ECP and FOSL for a non-BRAC lease, Federal, state, and local regulators must be consulted as necessary and appropriate, e.g., EPA where the parcel involved is part of an NPL site. Regulator involvement is not required and not appropriate for most leases.

(4) Attached as [Appendix C](#) are model environmental provisions. These provisions shall be included in all leases of Navy real property. Any modifications of these provisions require the approval of FEC counsel and of HQ, NAVFACENGCOM.

### 10. REQUIREMENTS

a. Secretarial standards for the leasing of Navy real Property are set forth in [reference \(x\)](#) that implements the authority contained in [reference \(b\)](#).

b. Prior to lease execution, Navy must conduct an environmental inspection of the premises to serve as a baseline so that both Navy and the lessee begin the term with the same understanding. The ECP report will be attached to the lease, preferably before the lease is executed, or as soon as possible after the commencement, depending on the time needed to complete the report. At the conclusion of the lease term, another inspection must be conducted to determine if a material deviation

occurred during the occupancy for which the lessee should be held liable.

c. Prior to lease execution, the Navy and the lessee will conduct a joint non-environmental inspection and inventory of the Leased Premises and reduce that inspection to a report (JIIR) for attachment to the lease. The inspection should be conducted following the steps contained in Paragraph 6 of the General Purpose Lease template attached to the end of this Chapter.

d..In some cases, the FEC needs to recognize the limitation of resources related to either or both of the ECP and JIIR. Travel time and costs attendant to the inspection and production

19-10

of a report may exceed the annual rental income. The installation requesting the lease or other occupancy must certify in its request that it will deliver the initial reports on a timely basis. If needed, the FEC can arrange to handle those inspections for the installation on a reimbursable basis.

## 11. SECRETARIAL DETERMINATION

a. Pursuant to the authority of [reference \(b\)](#), the Secretary determines that the leasing of DON real property will be advantageous to the United States and will promote the national defense, or be in the public interest, when the policies set forth in [reference \(x\)](#) have been met. Unless the COMNAVFACENGCOM or his/her designee determines that there is only one available lessee or that leasing to a selected lessee can be fully justified as being in the best interests of the Government, leases should be awarded through a competitive process consistent with current market conditions and sound business practices. This process includes evaluating the potential benefits and detriments of the responsive offers received. The successful offer will be awarded based on the overall benefits to the DON or other public interests, and not necessarily limited to monetary compensation or value of services received.

b. Further, the Secretary determines ([reference \(m\)](#)) that the granting of a lease for a term in excess of five years, and/or the omission from a lease of his/her unqualified right to revoke it at any time, will promote the national defense, or be in the public interest, when the COMNAVFACENGCOM or his/her designee finds that one of the following conditions exist:

(1) The lease is for the placement of a mobile service or other antenna provided for in [reference \(y\)](#), for a term not to exceed 20 years.

(2) The lease of a parcel of land for agricultural purposes for a term not to exceed 10 years.

(3) The lease of land pursuant to [reference \(m\)](#) is for the construction of a building to house a banking institution or credit union for a term not to exceed 25 years. Those leases will be subject to periodic review every five years to assess changes in fair market rent.



(4) The lease of government space to house a bank or credit union that uses its own funds to improve the existing government space pursuant to [reference \(m\)](#), for a term not to exceed 25 years. Those leases will be subject to periodic review every five years to assess changes in fair market rental.

**12. AUTHORITY OF COMMANDER, NAVAL FACILITIES ENGINEERING  
COMMAND TO OUTLEASE**

19-11

a. Subject to the reporting requirements of [10 U.S.C. § 2662](#) and the approvals set forth below, the Secretary of the Navy, by SECNAVINST 11011.47C ([reference \(x\)](#)), has delegated to the Commander, Naval Facilities Engineering Command (COMNAVFACENGCOM), with the right to re-delegate, authority to take all necessary action to grant, execute, amend, administer, and terminate all instruments granting the use of Navy-controlled real property to departments, agencies, organizations, and persons outside DON. This requires that each lease entered into under this authority contain these provisions:

(1) The lease term, including all rights of renewal, cannot exceed five years unless a determination for a term in excess of five years has been made pursuant to Paragraph 11.b. above, or unless the requirement is waived by ASN (EI&E).

(2) The right in the Government to terminate the lease at any time unless a determination is made pursuant to [Paragraph 11.b.](#), or unless that requirement is waived by the ASN(EI&E).

(3) A right in the Government to terminate the lease unilaterally during a national emergency declared by the President.

(4) A prohibition forbidding subleasing or licensing by the lessee of all or any part of the property without the prior written approval of the COMNAVFACENGCOM, or his/her designee.

(5) To the extent that the leased property is later made taxable by state or local governments under an act of Congress, the entire lease must be renegotiated.

(6) As the above delegation of authority is derived from authority placed in the Secretary by [reference \(b\)](#), it is restricted by that law to property that is not excess property, as defined in [reference \(a\)](#).

b. The Secretary has further delegated to COMNAVFACENGCOM all administrative determinations involving outleasing of Navy property.

**13. AUTHORITY FOR COMMANDERS/COMMANDING OFFICERS OF  
FECs TO OUTLEASE**

a. All rights to grant, modify, administer, and terminate leases delegated to the COMNAVFACENGCOM, as indicated in Paragraph 12 above, are hereby redelegated to the



Commanders/Commanding Officers of the FECs with authority to further re-delegate. These contracting actions can be undertaken only by warranted real estate contracting officers (RECO) that are qualified in accordance with P-73, Chapter 10.

(1) In all cases where specific authority to lease has

#### 19-12

not been delegated, the FEC Commanders/Commanding Officers are authorized to grant, modify, administer, and terminate leases upon NAVFACENGCOM advice to proceed and within those limitations imposed in the specific case in question.

(2) Authority is delegated to issue decisions in outlease disputes. This authority may be redelegated, but not to the contracting officer for the lease in dispute or to any person below the level of the RECO.

(3) Authority is also delegated to the Commander/Commanding Officer of the FEC for the approval, award, and administration of agricultural outleasing projects. This authority may be redelegated.

#### 14. ACTIVITY, FEC, AND NAVFAC APPROVALS AND PROCEDURES FOR OUTLEASING

##### a. Approvals and Exceptions

(1) The following approvals apply to Navy and Marine Corps leases:

(a) Prior to the execution of any proposed outlease; the FEC must obtain the approval of the Commanding Officer of the concerned shore activity, the regional commander for that activity and the Commander, Naval Installations Command (CNIC). For all leases of Marine Corps property, the approval of the Commandant of the Marine Corps will also be obtained. Further, all proposed outleases must be processed for site approval in accordance with [reference \(z\)](#).

(b) All leases that have a term in excess of five years (including options) and/or result in the lessee being authorized to construct improvements on the leased property with a value in excess of \$5,000, unless excepted from this policy under subparagraph b. below, require the approval of the Deputy Assistant Secretary of the Navy (Installations and Facilities) (DASN) (I&F). That approval will be obtained by the COMNAVFACENGCOM, and should be sent via CNIC for Navy property.

(c) COMNAVFACENGCOM is responsible for submitting a report to the Armed Services Committees of Congress for all leases of real property if the estimated annual fair market rental value of the property is more than the statutory limitation contained in reference (o), [10 U.S.C. § 2662](#), (currently \$750,000). COMNAVFACENGCOM is also responsible for submitting a report to the Armed Services Committees of Congress before issuing a contract solicitation or other lease offering

for a lease with an annual payment, including in-kind consideration, that will exceed \$750,000 over the term of the lease pursuant to reference (b), [10 U.S.C. § 2667\(c\)\(4\)\(A\)](#).

19-13

(d) Approval of the Regional Engineer and mission commander, as appropriate, must be obtained for any leases that require the approval of CNIC.

(e) Other approvals may be required for leases authorized by authorities other than [reference \(g\)](#). Those approvals shall be coordinated with COMNAVFACENGCOM, CNIC or Commandant of the Marine Corps (CMC), and DASN (I&F).

(2) The following leases are excepted from the requirement to obtain the approval of the DASN (I&F):

(a) Agricultural outleases, including leases allowing improvements approved in agricultural lease conservation plans, for a term not to exceed 10 years.

(b) Leases for placement of mobile service antennas or other antennas, including construction of a tower and structures necessary to house telecommunications equipment, for a term not to exceed 20 years. Those leases should be coordinated with the Joint Spectrum Center and the Space and Naval Warfare Systems Command for site approval pursuant to [reference \(z\)](#).

(c) Leases for a term of five years or less where the lessee will not be permitted to construct improvements with a value over \$5,000.

(d) Leases for banking institutions or credit unions that use their own funds to improve existing government space or construct a new building, for a term not to exceed 25 years.

b. Notice of Potential Lease Requiring DASN (I&F) Approval

(1) If the proposed lease is expected to meet any of the criteria set forth in [Paragraph 14](#) that would require DASN (I&F) approval, a notice must be submitted to DASN(I&F) to document any objections to be presented prior to any of the parties expending any significant amount of resources on the proposal. The notice is not given for the purpose of obtaining approval of the lease. Rather, it is needed to give decision makers in the Navy chain of command an opportunity to voice any concerns, objections, or suggestions, prior to the activity making a commitment, either actual or implied, that someone can lease Navy property. Once a proposal is under review by the Installation, the Installation should provide the information listed below to the FEC. After reviewing and discussing the proposal with the Installation, the FEC should provide the information to the appropriate mission component command, region, and COMNAVFACENGCOM. Upon receipt of written endorsements from the mission commander, as appropriate, and regional engineer, COMNAVFACENGCOM will then forward those endorsements in a memorandum requesting concept approval to CNIC/CMC, counsel, and DASN (I&F), as appropriate.

(2) The information that the Installation must state in the notice should include the following items:

- (a) The identity of the Installation;
- (b) A map delineating the location of the property;
- (c) Proposed use or allowable uses of the property;
- (d) Proposed term of the lease, and justification, if in excess of 5 years;
- (e) Proposed consideration, if other than cash;
- (f) Any other information concerning the lease that is known, including estimate of the rent to be received and the name of lessee;
- (g) Potential benefits to the Navy, such as:
  - (i) Gross estimate of consideration
  - (ii) Proposed in-kind consideration, if applicable
  - (iii) Intangible benefits
- (h) Potential negative impact on the Navy, such as:
  - (i) Conflicts with mission
  - (ii) Potential to increase encroachment
  - (iii) Conflicts with private enterprise
  - (iv) Future use of the property
  - (i) Any restrictions to be placed on the lessee's use of the property.
- (j) Any political interest in the proposed lease.
- (k) Description of any proposed improvements, if known.

c. Installation Submission to FEC

(1) Typically, there are two events that trigger a proposal to lease DON property. One is a request from an interested party such as a bank or credit union that wishes to construct a facility or a telecommunications company that wants to locate an antenna on DON property. The second instance may occur when an Installation determines that a non-excess, but not

fully utilized, property would be suitable for a commercial use to defray protection and maintenance costs. In either event, the Installation should contact the FEC and work with it to develop a plan of action and to obtain the required approvals.

(2) Once approval of the concept has been received from DASN (I&F), or if the proposed lease does not require the level of approvals discussed above, the Installation should provide the leasing proposal, together with the approvals of the mission component command/regional commander to the FEC. The proposal must be supported by a comprehensive leasing plan, including the following items:

(a) A map/legal description (a reproducible map and written description of the property, with the area in acres, of the proposed premises).

(b) Proposed use of the property.

(c) The appropriate documentation that the requirements of NEPA have been met as set forth in [Paragraph 9](#) above.

(d) The EBS and FOSL required in [Paragraph 8](#) above. These can be provided by the FEC.

(e) An estimate of management costs to the Installation to execute the lease, and if the Installation does not want management costs borne by the lessee, then a commitment to reimburse the FEC for its management costs.

(f) Congressional interest. If appropriate, indicate whether local congressional delegations have been notified of the proposed lease and the method of that notification. Furnish copies of any press releases announcing the proposed lease.

(g) Any of the following information that applies to the particular leasing situation:

(i) For a term in excess of five years, complete justification to support the required term.

(ii) If the lease requires the omission of the Secretary's unqualified right to terminate at any time, complete justification to support the requirement.

(iii) If leasing on a negotiated basis is recommended rather than on a competitive bid basis, a statement that the proposed lessee is the only available lessee. If there are other available lessees, a statement with supporting evidence that leasing to a selected lessee will be in the best interest of the Government. In addition, the following certification, signed by the Commanding Officer:

**19-16**

(A) To the best of the Commanding Officer's knowledge and belief, no personnel in the Commanding Officer's command who has any responsibility regarding the

prospective lease, has any present or anticipated personal or financial interest in the lease; and

(B) To the best of the Commanding Officer's knowledge and belief, none of those personnel has received any gift or gratuity in connection with the proposed lease.

(h) The Installation's Unit Identification Code (UIC) for the outleasing action.

(i) If consideration will be other than cash, a brief description of the proposed in-kind consideration. If the consideration will be in the form of other services relating to activities that will occur on the leased property as the Secretary considers appropriate as set forth in subsection (c)(1)(E) of [reference \(b\)](#), then additional documentation for submission to DASN (I&F).

(j) For agricultural outleases, an agriculture outlease conservation plan. (Proposed items for development of a conservation plan must be included as a part of an agricultural outlease).

(k) For a lease for construction of a credit union building or banking facility, space criteria as set forth in [reference \(t\)](#).

d. Action by FEC Upon Receipt of a Leasing Request

(1) Upon receipt of a leasing request, the FEC will take the following actions:

(a) Provide the Installation/lessee with an estimate of applicable management costs and obtain a commitment to pay them.

(b) Obtain an estimate of the fair market rental value.

(c) Work with the Installation on alternatives and determine if the proposed leasing action is feasible and develop a leasing plan.

(2) For those leases that require approval of DASN (I&F), the FEC should submit the following items to COMNAVFACENGCOM:

(a) All leasing proposals requiring approvals or clearances at the Comptroller, Secretarial, or Congressional level.

**19-17**

(b) All leasing proposals when property is going to be leased to a state or a political subdivision of a state and obtain Deputy Secretary of Defense approval.

(c) All outlease dispute claims, in the event the lessee appeals a preliminary FEC decision on some aspect of the outlease.

(3) When COMNAVFACENGCOM approval is required, submit the leasing proposal in writing. This proposal should be supported by a comprehensive leasing plan that includes any of the following items, as appropriate:

(a) A general identification and description of the property proposed for leasing, together with a map depicting its relation to the remainder of the Installation.

(b) A statement about the determination of non-requirement for public use and its basis.

(c) Details of the Navy's real estate interest in the property.

(d) Report all proposed deviations from the terms and conditions of the standard lease form, together with adequate justification.

(e) Draft of any proposed lease departing from the standard lease form.

(f) For any lease for a term (including renewals) in excess of five years or when the Government's right to terminate the lease at any time without notice has been modified. The justification must be sufficient to support a determination by DASN (I&F) that the action will either promote the national defense or be in the public interest.

(g) Proposed draft of any Notice of Availability and Invitation for Bids or Solicitation of Lease Proposals, if applicable.

(h) When leasing (other than for agricultural or grazing purposes) is proposed that requires submitting a report to the Armed Services Committees of Congress pursuant to references (o), [10 U.S.C. § 2662](#), and (b), [10 U.S.C. § 2667, as amended](#), the leasing plan should include the information necessary to prepare a Disposal Report.

#### e. COMNAVFACENGCOM Action

(1) COMNAVFACENGCOM will take the following general and specific actions:

(a) Review the proposed outlease to determine  
**19-18**  
required action/approvals.

(b) Review documentation for adequate information.

(c) Coordinate with appropriate personnel to acquire additional information and/or coordinate actions.

(d) Prepare appropriate correspondence or documentation as required to obtain higher level approvals.

(2) Leases involving the construction of a bank building by a banking institution

(a) Process the proposal as required for ASN (FM&C) and Assistant Secretary of Defense (Comptroller) approvals.

(b) Make the determinations required by [reference \(m\)](#).

(3) Proposed leases not authorized by [this chapter](#).

(a) Obtain the approval of DASN (I&F) for those outgrants that depart from the provisions of this chapter.

(b) Obtain the approval of ASN (EI&E) for those leases for [reference \(n\)](#) that may require a Secretarial determination not made in this chapter.

(4) Leases that require a report to the Armed Services Committees of Congress

(a) Obtain the approval of the Armed Services Committees of Congress in accordance with [10 U.S.C. § 2662](#) and [10 U.S.C. § 2667, as amended](#). This requirement does not apply to leases for agricultural or grazing purposes.

(5) Leasing involving the private sector for the express purpose of seeking private capital investment in lieu of using military construction funds

(a) Obtain approval of the Armed Services Committees of the Congress.

### **SECTION III - LEASE DETERMINATIONS, CONTRACTING METHODS AND CONSIDERATIONS**

#### **15. DETERMINATION OF NON-REQUIREMENT FOR PUBLIC USE**

a. Prior to exercising any leasing authority, the proposed premises must be determined to be not excess and advantageous to the United States to lease. The Commander/ Commanding Officer of the applicable FEC must first screen the property for use through:

#### **19-19**

(1) Other Navy and Marine Corps activities;

(2) Other military departments;

(3) The Coast Guard; and

(4) Local and regional offices of General Services Administration.

b. Unless the property proposed for non-Federal use meets any of the exceptions to the suitability criteria for homeless use set forth in [41 C.F.R. § 102-75.1175](#), it must be reported to the Department of Housing and Urban Development (HUD) for screening for use by the homeless in accordance with [reference \(p\)](#).

c. Prior to making property available to other users outside DON, the Commanding Officer will prepare an Environmental Condition of Property in accordance with [reference \(q\)](#).

## **16. LEASING ON A COMPETITIVE BASIS**

a. To obtain the benefits of competition and to eliminate any sound basis for criticism on grounds of favoritism, leases must be awarded through a competitive process consistent with current market conditions and sound business practices. This process involves evaluating the potential benefits and detriments of the responsive offers received. The successful offeror will be awarded a lease based on the overall benefits to the Navy or other public interests, and not necessarily based on monetary compensation or value of benefits received.

b. Alternatively, the sealed bidding process may be used as outlined below. Although anyone, including Government employees, may submit a bid in response to an Invitation For Bid (IFB), the FEC may reject any bid that creates the possibility or appearance of a conflict of interest. The reasons for a rejection will be fully documented. The procedure for obtaining bids will be substantially as follows:

(1) A Notice of Availability and/or an IFB should be prepared for each property proposed for outleasing. The format may be developed locally and should be adapted to the particular transaction. The notice and invitation should adequately identify the property offered, permitted uses, general terms and conditions of the lease, and the amount of any performance bond required. The amount of consideration to the Government should be the only variable supplied by the bidder. The FEC will determine the time and location of the bid opening, considering all the circumstances, and state the time and location clearly in the IFB. The FEC must also determine if higher level approval must be obtained pursuant to [Paragraph 14.a.](#) prior to publication

### **19-20**

of the notice and/or invitation. The local FEC counsel must review the lease for legal sufficiency and any deviation from the terms and conditions of the standard lease form. The FEC shall deliver a copy to COMNAVFACENGCOM.

(2) The RECO at the FEC should give the Notice of Availability and the IFB the circulation and publication deemed appropriate and reasonable under the circumstances.

(3) Estimate the fair market value of the property to be leased and its market rental value when leasing for the purpose, term, and conditions proposed.



(4) Bids will be received and opened in accordance with the Notice of Availability and the IFB. The FEC will evaluate the bids for adequacy of the amount bid and the responsibility of the bidder. The opening of bids may be delegated to the Installation level when the bid opening is not held at the FEC office.

(5) The FEC will accept the highest responsible bid and enter into a lease in accordance with the provisions of this chapter.

(6) If no acceptable bid is received, the FEC may re-advertise the property or, if circumstances warrant, negotiate with one or more of the unsuccessful bidders to obtain the highest possible rent for the Government.

c. Leasing by other than competitive means are authorized only when it can be conclusively demonstrated that there is only one available lessee, or when leasing to a selected lessee will be in the best interest of the Government (See next paragraph).

## **17. LEASING ON A NEGOTIATED BASIS**

a. Negotiated leasing with a selected lessee, except as provided below, is contrary to Navy policy. Departures from this policy are authorized only when it can be conclusively demonstrated that there is only one available lessee, or when leasing to a selected lessee will be in the best interest of the Government. If the Commander/Commanding Officer of an FEC determines that a particular property should be leased to a selected lessee on a negotiated basis, documentation will be prepared and retained in the FEC files to support this position. That documentation should also include a signed certification from the officer commanding the installation concerned, stating as follows:

(1) To the best of his/her knowledge and belief, no personnel in the command who have any responsibility regarding the prospective lease have any present or anticipated personal or financial interest in the lease; and

**19-21**

(2) That, to the best of his/her knowledge and belief, no personnel have received any gift or gratuity in connection with the proposed leasing.

b. When a significant modification or amendment is proposed for an existing lease, a certification required by this chapter is also required.

## **18. CONSIDERATION**

a. Consideration for any lease executed under the authority of [reference \(b\)](#) must be paid in cash or in-kind, in an amount that is not less than the fair market value of the lease interest, as determined by DASN(I&F).

b. A lease may allow the improvement, maintenance, protection, alteration, repair, or restoration, including environmental restoration by the lessee, of the property leased, or at any property or facility under the control of DASN (I&F) that he/she selects for that purpose.

#### **19. EXPENDITURE OF RENTAL FUNDS**

a. In accordance with the provisions of [reference \(b\)](#), money rent received from a lease for other than agricultural or grazing purposes must be placed into a special Treasury account. Congress authorizes the transfer and use of these funds in the annual defense appropriation bill. The money rent from these leases are allocated to the mission component commands to disburse to the respective installations. Further, at least 50% of the proceeds go to the installation where the leased property is located to be used for the following activities:

- (1) Maintenance, protection, alteration, repair, improvement, or restoration (including environmental restoration) of property or facilities.
- (2) Construction or acquisition of new facilities.
- (3) Lease of facilities.
- (4) Facilities operation support.

However, the Secretary cannot spend more than \$500,000 of the cash rent at an installation until 30 days after the date on which a report on the facts of the proposed expenditure is submitted to the congressional defense committees.

b. According to subsection (d)(4) of [reference \(b\)](#), money rent received directly from a lease for agricultural or grazing purposes may be retained and spent by the Secretary in amounts necessary to:

- (1) Cover the administrative expenses of leasing for  
**19-22**  
those purposes; and
- (2) Cover the financing of multiple-land use management programs at any Navy or Marine Corps installation.

c. Lease revenues are not intended, and may not be used, for capital improvements normally funded under military construction projects.

#### **SECTION IV - MAINTENANCE**

#### **20. GENERAL MAINTENANCE**

In addition to the rental obligation set forth in the lease, the lessee has the responsibility under the general provisions of the standard lease form to maintain the leased property in a satisfactory condition, to prevent or repair any damages

resulting from the lessee's use, and to restore the property to the condition in which it was received or to the improved condition that it may have been placed in during the lease term.

## **21. LONG-TERM MAINTENANCE**

a. [Reference \(b\)](#) permits the Navy to accept, as part or all of the consideration for the lease, the performance by the lessee of maintenance, protection, repair, or restoration, including environmental restoration, of the leased property, or of any property or facilities under the control of SECNAV.

b. The long-term maintenance provisions are described in detail in the General Provisions of the General Purpose Lease.

## **22. CRITERIA FOR DIRECTION OR APPROVAL OF LONG-TERM MAINTENANCE ITEMS**

a. Long-term maintenance provisions are included in the standard forms of the General Purpose Lease for the benefit of the Government to permit savings in maintenance and operating funds. These provisions allow the Government absolute discretion to determine what items of maintenance performed will entitle a lessee to credit against its lease obligations. The provisions do so by restricting these obligations to items that not only satisfy the definition of long-term maintenance, but also provide for them to be either approved or directed by the Commander/Commanding Officer of the FEC. The necessity for his/her approval or direction permits the Commander/Commanding Officer, to the extent that the lessee's accrued obligations will cover the costs, to direct performance of any item he/she considers necessary to protect the Government's interest in the property.

b. The provisions impose no obligation on the Government to

### **19-23**

authorize any item of maintenance, but they do permit the Commander/Commanding Officer, in consideration of maintenance items proposed by a lessee, usually for its own purposes, to approve or disapprove the items proposed, at his/her discretion. This discretion should be exercised in determining whether the performance of those items by the lessee will sufficiently benefit the Government to justify the expenditure of funds involved. Generally, when leased property will be retained by the Government, mutual benefit will result for most items, thereby satisfying the definition of long-term maintenance. However, the relative priority of necessary items to be approved or directed must be determined by the FEC Commander/Commanding Officer.

## **23. LONG-TERM MAINTENANCE OF EXCESS LEASED PROPERTY**

The benefit accruing to the Government from performance of long-term maintenance items changes considerably when leased property is determined to be excess. This condition necessitates a complete review of the long-term maintenance policy for the property. Under those circumstances, the FEC Commander or

Commanding Officer should review any long-term maintenance item submitted for his/her approval in light of the disposal plan for the property. Standards for maintenance and protection of excess property are outlined in Subpart D of part 102-75 of [reference \(v\)](#). Generally, approval should be restricted to items that are necessary to preserve the overall value of the property for disposal purposes. Cases involving unusual circumstances require FEC approval.

#### **24. DIRECTION OF CURRENT OBLIGATED MAINTENANCE AMOUNTS**

Determining whether the Current Obligated Maintenance Amount should be carried forward to succeeding lease years, or whether all or any portion should be paid as cash rent, are matters within the discretion of the FEC Commander/Commanding Officer. This discretion should be exercised to assure both accrual of sufficient obligations to accomplish necessary items of long-term maintenance and prevention of over-accrual of obligations beyond apparent or contemplated requirements.

#### **25. LONG-TERM MAINTENANCE ADMINISTRATION**

a. Accomplishing the purposes of the long-term maintenance provisions will require proper administration in light of the relevant comments. Proper administration requires the following actions on the part of the Commander/Commanding Officer.

(1) General planning of long-term maintenance items to be performed during the lease term. As the Maximum Amount to be Expended accrues, establish priorities on the basis of relative urgency of requirements and resultant benefit. Timely review of planned maintenance items is important to give proper

#### **19-24**

consideration to any change in circumstances that may develop during the lease term. Because maintenance items may include those items that benefit both the Government and the lessee, as well as those items solely for the benefit of the Government, consultation with the lessee in general planning is appropriate.

(2) Prepare and/or review plans and specifications and estimates of costs of particular items proposed to be directed or submitted for approval, as may be appropriate.

(3) Approve or direct the lessee's performance of particular items in accordance with approved plans and specifications. Where they will be performed in whole or in part under a lessee's contract with third parties, prior approval of the amount of the contract is required.

(4) During the performance of any item, supervision of the work is required to assure its prompt and satisfactory completion under the approved plans and specifications.

(5) During the performance of any item, tentative credit allowance may be given for the estimated amount of actual costs incurred. Upon completion of the work, final determination of actual costs should be made and final credit given. Lessees

are required to maintain adequate accounting records that permit prompt determination of actual costs allocated to each item. Where the Commander/Commanding Officer considers it necessary or appropriate, he/she should request the Navy Regional Accounts Office to audit the lessee's records.

(6) Perform periodic review of the Current Obligated Maintenance Amount under each lease to determine the advisability of permitting further accruals, or of directing payment of all or any part as cash rent.

## **26. CONSERVATION PLAN**

a. As a part of an agricultural or grazing lease, a conservation plan should be considered similar to a plan for long-term maintenance contained within a general purpose lease. The work performed under a conservation plan may be considered as the long-term maintenance of the soil; therefore, the lessee may receive credit toward his/her obligation. The content of a conservation plan is further discussed in Volume II of this Manual.

b. Marine Corps Installation Commanders will have primary responsibility for conservation plans supporting Marine Corps activity agricultural outlease contracts. However, FECs will normally prepare conservation plans supporting agricultural outlease contracts for Marine Corps activities, unless a Marine Corps activity chooses to prepare the plan. FEC costs in preparing conservation plans and inspecting leases to insure

### **19-25**

compliance with the conservation plans will be funded by the Marine Corps. FECs will approve conservation plans prepared by Marine Corps activities before the plans are made a part of an agricultural outlease (real estate) contract.

## **SECTION V - INSURANCE**

### **27. INSURANCE REQUIREMENTS**

a. General. Lessees or occupants of improved real property must assume all risk of loss or damage, and that includes damage from environmentally connected causes. It is Navy's policy to limit liability to the amount of insurance required, or actually carried, whichever is greater. However, maintaining the required insurance will not reduce the lessee's or occupant's liability for any loss and damage resulting from its willful misconduct, lack of good faith, or failure to exercise due diligence by it, or parties charged by it, with the supervision or direction of the premises. The RECO, in consultation with FEC counsel, should specify the types and amounts of insurance coverage required to protect persons and the various kinds of Government property involved against hazards that are customarily insured against locally.

b. All-Risk Policies. Structural property loss and damage is now insured under all-risk policies. (An all-risk is called "primary coverage" and is different than an umbrella policy. An umbrella policy insures an amount above the primary coverage, so

if, for example, \$2 million coverage is required, the insured can buy \$1 million primary coverage and \$1 million umbrella coverage. The premium is often less expensive to do that.) Insurers of all-risk policies will only underwrite premises for structural coverage if the lessee or occupant has an "insurable interest" in it. When Navy leases an entire building to one party, that "interest" is satisfied. Replacement cost value for the structure should be reviewed every five years. The coverage not only includes structural members, but also installed items and major systems. An all-risk policy covers loss and damage to all of the leased property unless that property is specifically excluded. All-risk policies contain considerable exclusions, so it is important that those exclusions be reviewed prior to policy issuance to determine if there is a category that should be insured in the premises. If there is, Navy must ask the lessee or occupant to procure an endorsement that will cover that property. It is a good practice to obtain from the lessee or occupant or its insurer or insurance agent a blank copy of the all-risk policy form to review well in advance of the document execution.

c. Less Than Entire Building. For a lessee or other occupant, or multiple lessees or occupants, using less than the entire building, a commercial general liability (CGL - see item d.) has a provision called "fire/legal liability" coverage. Under this part of the policy, the insurer will pay for a loss or

#### 19-26

damage to the structural portions of the landlord's building, that is, portions outside the interior of the occupied space, in the event that the tenant or other occupant causes that loss or damage. Usually there is a standard limitation of \$500,000 or \$1 million per occurrence, but the lessee or other occupant can purchase higher coverage. If necessary, consult with the FEC realty appraiser to determine the amount of needed coverage for the entire building, and make a tickler file to check that value every five years.

d. Personal Injury and Personal Property. Loss or damage to the interior of the premises and liability for bodily injury (this term in policies is defined to include death) and loss or damage to the personal property of others is typically covered by a CGL. Navy seeks coverage under a so-called single limit CGL policy each occurrence for bodily injury and third-party personal property loss or damage sustained in each occurrence during the premium year. There are two types of CGL policies - "occurrence" and "claims made." Navy prefers the former because it allows claims to be made even after the policy expires for events that occur during the premium year. A "claims made" policy costs less but will only pay claims made during the premium year, thus precluding coverage for an event that occurred during the premium year, but may not have been discovered until after the premium year.

e. Determining Personal Injury Coverage. There are several factors that can be analyzed to determine how much bodily injury liability coverage should be required from lessees or occupants, but by far the most significant among them are jury verdicts in

personal injury cases in the area. Other key factors that should be considered are the nature of the lessee's operations and the number of its employees.

f. Effects of Federal Tort Claims Act. Generally, if a CGL is in effect covering the premises, any claims of damage or injury should be settled between the lessee or occupant and the insurer for payment. However, even with a CGL, a person injured (or his/her property damaged) on federally owned land can file a claim under the Federal Tort Claims Act (**28 U.S.C. §§ 2671-2685**). The claimant has two years to file. Navy review of the claim must make sure that the claim does not have a value beyond the coverage limit, otherwise, the Navy may be responsible for any overage. The reviewer must be assured that legal liability exists under state law before any money is paid to the claimant. The claimant can appeal the amount that Navy determines is the Federal liability.

g. Doubt About Coverage. In unique situations, consider contacting a local insurance broker who sells CGL policies and get his/her opinion on the amount of liability coverage needed.

h. Certificate of Coverage. The new lessee or occupant must

#### 19-27

deliver a signed certificate of required insurance to Navy **prior to gaining entry to the premises**. NO ENTRY OF ANY NATURE FOR ANY REASON SHOULD BE PERMITTED unless and until Navy has possession of the required certificate(s) that commence coverage on the first day of the lease or occupancy term. Resist demands from the lessee or occupant that it absolutely must get on the premises. If that person suffers bodily injury or the vehicle he or she is driving sustains a loss or damage and Navy does not have proof of the required coverages in hand, then Navy could be exposed to potential legal liability that could have easily been avoided. This point cannot be emphasized enough. These facts must be firmly and clearly communicated to the lessee or occupant early in the outgrant process so that it has sufficient time to obtain the certificate(s).

i. Renewal Certificates. When reviewing certificates of insurance in renewal, just do not look at the address of the premises and put it in the file. Read the coverages and deductibles carefully to see that they are the same as those required. If exterior building coverage is in effect, check especially the replacement cost value of the premises to see if the amount makes sense, given the passage of time.

j. Other Coverages.

(1) Business Auto. If the lessee or occupant owns or leases business vehicles that will be operating on military land, those vehicles must be registered and insured in accordance with installation requirements

(2) Flood. If the premises consist of an entire building located in an area of a state that is prone to suffer property loss and damage from earthquake, flood, windstorm, or

rainstorm, then Navy should consider a special risks or perils endorsement to the all-risk policy from a commercial insurer or from a state or Federal program, with amounts, limitations, and deductibles satisfactory to the RECO and FEC counsel. If the premises consist of less than an entire building and are similarly located, Navy may, if the RECO and FEC counsel deem it necessary, procure that insurance coverage and seek pro-rata reimbursement from the lessee or occupant.

(3) Workers' Compensation. Every business, whether for-profit or non-profit, must carry workers' compensation insurance under most state laws. While the failure to do so may result in civil and criminal penalties to the lessee or occupant as an employer, it may also put Navy at legal risk in the event of an employee injury that occurs on the premises. In those cases, the United States as building landlord is at risk of being named a defendant in a lawsuit, thus requiring Department of Justice and Navy counsel involvement.

(4) Aircraft Hangars. On rare occasion, a firm  
**19-28**

specializing in some facet of aircraft maintenance, manufacture, or training may seek to lease or occupy a vacant hangar. If these activities require aircraft to be flown, the firm will have use of the runways and taxiways. For insurance purposes, this kind of entity is known as an airport operator, and therefore, it must carry airport operator's liability insurance, including, but not limited to, insurance against contractual liability for claims or causes of action arising in connection with use of the premises as an airfield. If the lessee or occupant will not fly aircraft in connection with its work, then ordinary CGL coverage applies.

## **28. INSURANCE FOR AGRICULTURAL OR GRAZING LEASES**

a. Agricultural or grazing leases are essentially leases of land only typically located in remote areas where outsiders are not likely to roam, and in those rare cases, the RECO, in consultation with FEC counsel, can waive CGL after review of the financial profile of the lessee. Where coverage is required, consult the insurance coverage matrix.

b. Where improvements are involved, insurance may be required if it is needed to protect the Government's interest. Coverage should be purchased in an amount equal to the replacement cost, or, depending on the condition of the improvements, actual cash value. (Structures, due to their condition, that are not insurable for replacement cost are insured for "actual cash value," meaning the actual worth of the structure when the lease begins.) The lessee will, in any event, be responsible for destruction and damage to any Government property located on or adjacent to the premises.

c. Third-party liability insurance should also be required where the RECO, in consultation with FEC counsel, determines that the Government may be exposed to the risk of personal injury lawsuits, including by trespassers, whether injury arises



from active use or from what tort law calls known passive conditions for which DON, as fee holder, could be potentially liable in some states.

## **29. SPECIFIC INSURANCE REQUIREMENTS**

a. The matrix attached to this Chapter contains the suggested coverages and deductibles for various uses of Navy real property. These coverages are subject to increase or decrease in amounts based on the judgment of the RECO and FEC counsel in any specific circumstance.

b. The lessee or occupant of any Navy-controlled real property is responsible for any contamination of that property by either itself, its agents, or assigns and invitees. Prior to the execution of an outgrant, the Commander/Commanding Officer of the FEC will make a determination about the risk of contamination.

### **19-29**

Where the lessee or occupant will process, dispose, generate, or handle any contaminants, hazardous wastes, or hazardous substances, it must procure a separate environmental insurance policy (because the conventional CGL policy does not cover environmentally caused loss or damage), or post a bond or irrevocable letter of credit from an FDIC-insured financial institution in an amount sufficient to cover possible cleanup costs. The FEC counsel will determine, based upon the risk, the categories, amounts, and deductibles of an insurance policy, or the amount of a bond or irrevocable letter of credit. The lessee or occupant must also deliver to the RECO a copy of all permits that may be required for the proposed use of the premises and that demonstrate to the satisfaction of the RECO and FEC counsel that the use will comply with applicable local, state, and Federal laws and regulations.

## **30 (Reserved)**

## **31. CO-INSURER**

If a prospective lessee or occupant requests to be a co-insurer, consent may be given subject to the condition that any reduction in the amount of insurance payable under the policy will be assumed as the sole risk of the lessee or occupant and will not relieve it of its liability to the Government in the full amount of insurance required. This consent must be expressed in writing specifying that it will be of no force and effect until the written acceptance of the conditions by the lessee or occupant is delivered to the Commander/Commanding Officer of the FEC.

## **32. INSURANCE WAIVER AND SELF-INSURANCE**

a. If a lessee or occupant is a governmental entity, that is, a state, a political subdivision, a statutory agency or entity, or a public school district or entity chartered by the state, we can grant a waiver from the insurance requirements upon receipt of a citation to the state authority

exempting it from carrying commercial insurance. In the section of the lease or occupancy agreement that requires insurance coverage, the exempting authority should be cited in support of the statement of waiver. Although an agency may be relieved of an insurance obligation, it must nevertheless assume the same liabilities arising out of its use of Government real property as any non-exempt lessee or occupant to the extent permitted by law.

b. If a lessee or occupant is not a governmental entity, and asserts that it is self-insured, then it must identify to the RECO and FEC counsel its "risk structure," which may include excess coverage. Very few corporations are totally self-insured. What is more typical is self-coverage for an initial amount, say, up to \$1 million, and then above that amount, the entity

19-30

purchases commercial coverage. Navy must obtain evidence of that commercial coverage. The RECO and FEC counsel should satisfy themselves by any reasonable means that the lessee or occupant is financially solvent enough to meet its self-coverage level. If necessary, NAVFAC AM1 and Office of Counsel should be consulted to reach a final decision. In the section of the lease or occupancy agreement that requires insurance coverage, the risk structure should be written.

### **33. SECURITY FOR PERFORMANCE**

In leases where consideration to the Government is other than cash payable in advance, the RECO, in consultation with FEC counsel, should require the lessee to furnish security for the performance of the obligation. This requirement may be waived only when it is determined that a payment and performance bond or other security would offer no greater assurance of performance than the lease instrument, or when the penal amount of the bond is so small that it would be uneconomical to require one. A lessee may furnish an irrevocable letter of credit from a FDIC-insured financial institution, cash, or negotiable Government bonds in lieu of a performance bond. The amount of a letter of credit or bond should be based on the value of the premises and the value of the work performed under the outlease conservation plan or under the long-term maintenance obligation. Federal Standard Form 25 "PERFORMANCE BOND" should be used if possible, but forms issued by any corporation authorized by the Secretary of the Treasury to act as surety are acceptable if they contain substantially the same provisions. Ensure that the performance bond furnished is clearly identified with the secured lease.

## **SECTION VI - INSPECTIONS/ADMINISTRATION**

### **34. INSPECTIONS**

a. On or before the effective date of any lease, authorized representatives of the FEC and the lessee will jointly inspect the property and prepare two reports, one for physical condition (Condition of Property Report) and one for the environmental condition (Environmental Condition of Property Report), each signed by the inspectors. The reports will be attached to, and made a part of, the lease as an exhibit. Of equal importance to the initial inspection is the inspection made upon expiration or

termination of the lease. This final inspection should also be made by authorized representatives of the FEC and the lessee. The final condition reports, when compared with the initial reports, will serve as the measure of the lessee's restoration obligations under the lease. The adequacy and accuracy of the condition reports are essential to their usefulness. Historically, the absence of adequate condition reports has frequently led to unenforceable claims against lessees who have failed to fulfill their obligations. Commanders/Commanding Officers of FECs are authorized to develop and utilize condition report forms appropriate to their needs. The liberal use of

**19-31**

photographs and videotapes in the reports is encouraged.

b. During the term of an outlease, periodic inspections should be made of the outleased properties to assure lessee compliance with the terms and conditions of the lease. Prompt and decisive action must be taken to correct any violations revealed by the inspections. In those instances where the FEC is unable to perform inspections, it should seek the assistance of the station Commanding Officer and/or Public Works Officer. Technically qualified FEC natural resources personnel must conduct periodic inspections of agricultural and grazing leases, as necessary, to insure compliance with the provisions of the Soil and Water Conservation Plans and the protection and enhancement of the affected natural resources.

**35. ADMINISTRATIVE RESPONSIBILITY**

a. Paragraph 13 vests Commanders/Commanding Officers of the FECs with full responsibility for administration of all leases of Navy and Marine Corps real property in their geographical area within the scope of this Chapter 19. Within the prescribed limits, full authority has been delegated to FECs to grant, amend, administer, and terminate leases for the use of DON real property. The supervision and administration of leases in a businesslike manner is essential to the best interest of the Government. Where desirable or necessary because of distance or special conditions imposed, the FEC should initiate action to obtain the assistance of the Commanding Officer and the Public Works Officer at the station in the administration of leases.

b. Commanders/Commanding Officers should require that all personnel responsible for real property management be familiar with and understand all of the general provisions of the Standard Forms of lease and the particular provisions of individual leases under their administration. It is equally important that lessees be informed of the limits of their rights and the extent of their obligations under the leases prior to their execution.

**36. STANDARD FORM OF LEASE**

a. Standard Forms of leases are contained in Section X of this chapter. Any deviation must be approved by FEC Counsel. However, FEC counsel may modify environmental provisions as needed and in order to achieve consistency with a Region's instruments.

b. The Agricultural or Grazing Lease contains both the specific and the general provisions.

c. The General Purpose Lease consists of two parts. Part I contains specific terms and conditions which apply to that lease while Part II contains the general provisions of all leases.

## 19-32

### 37. CONTRACT CONSIDERATION

The consideration under a lease may be in one or more forms, such as designated maintenance, conservation practices, repair, protection, security or restoration, as well as cash. When part or all of the consideration is cash, it must be paid in advance.

### 38. TIMELY ACTION FOR LEASE EXTENSION AND SUCCEEDING LEASES

The standard form of lease permits unilateral extension of the term for a stated maximum period simply by lessee giving the contracting officer required notice of its intention to extend. However, certain leases may require mutual agreement for extension prior to the expiration of the current term. Care should be taken to assure compliance with the notice requirement. If action by COMNAVFACENGCOM is required in connection with any extension or the granting of a succeeding lease, all requests should be received by COMNAVFACENGCOM not later than 60 days prior to the expiration of the current term or final expiration date of the current lease. The requests should be accompanied by the requisite approvals required by [Paragraph 14](#) above, and must be supported by factual data supporting the recommended action.

### 39. LEASE TERMINATION

Unless waived, most leases entered into under authority of this chapter reserve in the Government a right to terminate the lease at any time and without cause. It must be recognized that this right of revocation should never be exercised in an arbitrary or capricious manner. It must be clearly demonstrated that lease termination is necessary or in the public interest, that due consideration has been given to the interests of the lessee, and that no reasonable alternate course of action is available.

### 40. AGRICULTURAL AND GRAZING LEASES

a. Many active and inactive military installations contain agricultural and/or grazing lands that must be retained as buffer or safety zones, security of the installation, mobilization needs, or future requirements. However, these lands may be used for agricultural or grazing purposes and remain consistent with the military requirement of the installation. This will accomplish the dual purpose of optimizing utilization of natural resources on Navy lands and minimizing maintenance funds that must be expended. The general rules of outleasing are equally applicable to agricultural and grazing leases. Those leases should include soil and water conservation plans prepared in accordance with [reference \(q\)](#).

(1) Agricultural or Grazing Outlease Receipts

(a) The enactment of reference (b) was based in  
**19-33**

part on a General Accounting Office (GAO) Report dated 25 November 1981, entitled "DOD Can Increase Revenues Through Better Use of Natural Resources It Holds In Trust," that recommended more aggressive natural resources initiatives and programs. It contended that agricultural outleasing would reduce maintenance costs and generate additional income that could, ultimately, result in a net increase in funds deposited in the Treasury.

(b) Reference (r) allows for payment to the states of 75 percent of annual rental receipts deposited into the Treasury from leases of lands acquired by the United States for flood control, navigation, and allied purposes, including hydroelectric power. Lands acquired for these purposes are specifically excluded from the provisions of reference (b) and the related outleasing guidance.

(c) DON and DOD policy is to aggressively promote agricultural outleases along with other secondary uses of land to the maximum degree compatible with operational requirements. However, a balanced, multiple-use natural resources program through professional management is the ultimate goal.

(d) All new or revised land management plans will incorporate the potential for additional agricultural outleases and include related documentation in a section of the plans dealing specifically with agricultural outleasing. If the potential exists for additional agricultural outleases (compatible with mission requirements and in consideration of a balanced natural resources program), FECs will submit a written report to the installation Commanding Officer including maps of potential outlease areas, a summary of potential agricultural outlease uses, a summary of benefits the Government will derive from outleasing, and a brief economic analysis of current and potential outlease land uses. FEC professional judgment will determine when exceptions to this format are appropriate. If the installation Commanding Officer chooses not to implement recommendations to outlease land for agricultural uses, the FEC will document the reasons for not making an affirmative decision. The economic analysis should consider:

(i) the cost of required improvements prior to and during outleasing;

(ii) estimated fair market rental value;

(iii) annual operating maintenance expenses;

(iv) long-term maintenance expenses;

(v) dollar value of conservation benefits;

and

(vi) advantages/disadvantages of a contract for more than the normal five-year maximum term.

**19-34**

(e) Annual on-site inspections and initial and final inspections of agricultural outleases (with formal documentation of the results of each inspection) are required. Use of photographs and videotapes to substantiate land conditions at the time of the initial inspection and all subsequent inspections is encouraged.

(f) Before outleasing land, FECs will prepare a preliminary environmental assessment and make a "not excess" determination. Additional environmental impact analysis documentation is not required unless there is a known potential for adverse environmental impact(s) or likelihood of controversy.

(g) Proceeds from the agricultural outlease program will be used by COMNAVFACECOM to fund the following program requirement categories through increases in the FECs O&MN Operating Budgets:

(i) Category I. Administrative expenses of outleasing land for agricultural and grazing use. (This includes permanent and temporary employee labor costs.)

(ii) Category II. Administrative expenses of planning and implementing natural resources (multiple-use) programs, other than Category I expenses. (This includes temporary employee labor costs.)

(iii) Category III. Natural resources projects that support objectives of multiple-use natural resources plans, with the exception of plans for commercial forest production, covered by [reference \(k\)](#).

(h) Requirements that may be covered by the above general categories but cannot be funded with agricultural outlease proceeds include:

(i) Improvements normally provided for in the annual Military Construction Authorization and Appropriations Acts.

(ii) Permanent position labor costs not wholly attributable to the agricultural outlease program.

(iii) Projects and expenses supporting commercial forest production.

(i) The priority designation for funding administrative expenses and multiple-use land management projects is as follows:

(i) Priority "A" Expenses of outleasing land for agricultural and grazing users.

(ii) Priority "B" Projects that enhance, improve or perpetuate the potential to increase agricultural and grazing outlease proceeds. Projects may be for any cost-effective work necessary to bring land into agricultural and grazing use.

(iii) Priority "C" Land management improvement projects to accomplish or support soil surveys, soil maps, erosion control, watershed management, and other similar requirements.

(iv) Priority "D" Contracted surveys and inventories essential for development and implementation of multiple-use natural resources management plans and cooperative agreements.

(v) Priority "E" Expenses of preparing multiple-use natural resources management plans.

(vi) Priority "F" Other natural resources projects that support conservation and natural environment enhancement objectives of approved multiple-use, natural resources management plans.

(j) Receipts from agricultural outleases will pay for administrative expenses and finance multiple land use programs per (k) and (l) below.

(k) FECs will:

(i) Establish written collection procedures to prevent improper extension of credit and limit losses during default procedures.

(ii) Process all agricultural outlease program receipts as required by paragraphs 043000, 043002 and 043003 of reference (s).

(iii) Deposit all collections from outleases on Navy installations to the Budget Clearing Account 17F3875.25AG, except receipts from land acquired for flood control, navigational, or hydroelectric purposes.

(iv) Deposit all collections generated by agricultural outleases on Marine Corps installations to the budget clearing account, 173875.27AG (MARCORPS), except receipts from land acquired for flood control, navigational, and hydroelectric purposes. Forward copies of collection vouchers (NAVCOMPT FORM 2277) for Marine Corps installation rental fees to CMC(LFL).

(v) Include budget year funding requirements for each of the priority designations described above as part of the annual tentative operating plan price out. Show these estimates as O&MN - Unfunded Reimbursable

**19-36**

Requirements. Also, indicate estimated budget year collections.

(vi) Complete and forward the Program Requirements Report Format Form to COMNAVFACENGCOM not later than

30 days after the close of each fiscal year quarter. Each project shown on the form will be supported with information required by the Project Information Format form. Approval authority for projects identified in the Program Requirements Report Format Form is delegated to each FEC. Marine Corps Installation projects will be processed separately by the Marine Corps in accordance with the Memorandum of Agreement On Agricultural Outleasing between the Commandant of the Marine Corps and COMNAVFACENGCOM.

(vii) Charge all expenses for requirements covered by criteria described above to functional/sub-functional account H3.

(viii) Notify NAVFACENGCOM as soon as possible if any portion of the agricultural outleasing reimbursable resource authorization cannot be used.

(1) NAVFACENGCOM will:

(i) Identify funding for this program on the NAVCOMPT Form 2168 - Resource Authorization.

(ii) Use the Budget Clearing Account to reimburse appropriation 17\*1804 at the headquarters level for all FEC and headquarters expenses. (\*Indicates year of appropriation.)

(iii) Determine the level of FEC funding based on budget year funding requirements in the annual tentative operating plan price-out.

(iv) Approve/disapprove projects or administrative expenses not covered by criteria identified in this policy document.

(m) FECs and naval installations may not request that Defense Finance and Accounting Service or any other disbursing office make disbursements of any kind from the budget clearing account without COMNAVFACENGCOM prior written approval.

(n) Marine Corps agricultural outlease proceeds will cover all FEC expenses of administering Marine Corps agricultural outleases. Before 1 August of each year, an estimate of FEC expenses for administering agricultural outleases and completing supplemental lease agreement projects on Marine Corps lands must be forwarded to COMNAVFACENGCOM (Code ENV). Funds will be transferred early in the fiscal year by CMC(LFL) to the FECs. Adjustments in funds to pay for actual costs will be negotiated between FECs and CMC(LFL).

**19-37**

(o) FECs will forward copies of all new Marine Corps installation lease contracts and finalized supplemental agreements to CMC(LFL).

#### **41. ADJUDICATION OF OUTLEASE CLAIMS**



a. All claims arising from the outlease of DON real property will be resolved under the provisions of the Contract Disputes Act of 1978, as amended, ([41 U.S.C. §§ 601-613](#))(CDA) and the following procedures:

(1) A claim by the lessee must be made in writing and, unless otherwise stated in the lease, submitted within six years after accrual of the claim to the Commander/Commanding Officer of the FEC for a written decision. A claim by the Government against the lessee must also be subject to a written decision by the FEC.

(2) Lessee claims that (i) exceed \$100,000, or (ii) regardless of the amount of the claim, when using (A) arbitration conducted pursuant to [5 U.S.C. §§ 575-580](#), or (B) any other alternative dispute resolution (ADR) technique that the agency elects to handle in accordance with the ADR Act, should contain the following certification:

I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the lessee believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the lessee.

(3) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim. The certification may be executed by any person authorized to bind the lessee for the claim.

(4) For lessee claims of \$100,000 or less, the FEC Commander/Commanding Officer must, if requested in writing by the lessee, render a decision within 60 days of the lessee's written request. For lessee-certified claims over \$100,000, the FEC Commander/Commanding Officer must, within 60 days, decide the claim or notify the lessee of the date when the decision will be made.

(5) The decision of the FEC Commander/Commanding Officer will be final unless the lessee appeals or files a suit as provided in the CDA. (See [subparagraph a.\(13\) below](#))

(6) At the time the lessee's claim is submitted to the FEC, or a claim by the Government against the lessee is presented to the lessee, the parties may mutually agree to use alternative means of dispute resolution. When using arbitration conducted

**19-38**

pursuant to [5 U.S.C §§ 575-580](#), or when using any other ADR techniques that the FEC agrees to handle in accordance with the ADR Act, any claim, regardless of amount, must be accompanied by the lessee's certification and executed as noted.

(7) The Government will pay interest on the amount found due and unpaid by the Government from (i) the date the FEC Commander/Commanding Officer received the claim (properly certified if required), or (ii) the date payment otherwise would

be due, if that date is later, until the date of payment. For claims having defective certifications as defined in [48 C.F.R. § 33.201](#), interest will be paid from the date the FEC receives the claim. Simple interest on claims will be paid at the rate fixed by the Secretary of the Treasury that is applicable to the period during which the FEC receives the claim, and then at the rate applicable for each 6-month period fixed by the Treasury during the pendency of the claim.

(8) The lessee should 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 shall comply with any decision of the FEC Commander/Commanding Officer.

(9) Upon receipt of a claim under the disputes clause, the FEC will forward, by certified mail, a copy of the following information to the lessee:

(a) The lease and all modifications.

(b) Any findings, reports, or audit reports made in connection with the dispute.

(c) Copies of relevant correspondence between the FEC and the lessee.

(10) The lessee will have 20 days from the date of receipt of the FEC forwarding letter to submit supplementary information to the FEC. Within five days of receipt of the lessee's supplementary information, or 40 days from the date of the FEC letter forwarding all documents at issue, the FEC will set a hearing date. The hearing date will be set no sooner than 15 days and no longer than 30 days from the day the hearing date is set.

(11) The hearings will be conducted at the FEC or other appropriate location by a hearing officer designated by the FEC. The hearing will be conducted in a manner to give the parties an opportunity to present evidence and arguments as time, the nature of the proceedings, and the public interest permit.

(12) Within 15 days from the date of the hearing, the FEC will issue a decision that includes the following:

**19-39**

(a) Brief statement of the lessee's position.

(b) Brief statement of the Navy's position.

(c) Finding of fact.

(d) Conclusion/Decision.

(e) Appeal rights to COMNAVFACENGCOM.

(13) As noted in subparagraph a.(5) above, the decision of the FEC will be sent by certified mail to the lessee and will

be final and conclusive unless, within 30 days from the date of receipt of the decision, the lessee mails or otherwise delivers to the COMNAVFACENGCOM, a written appeal. If a final decision is appealed to COMNAVFACENGCOM, he/she will acknowledge the appeal by certified letter to the lessee. From that date, COMNAVFACENGCOM will provide the lessee a copy of all subsequent correspondence/communications associated with the appeal.

(14) COMNAVFACENGCOM will request that the FEC deliver copies of all documents at issue in the dispute within 30 days from acknowledgment of the appeal. This documentation will include:

- (a) The lease and all modifications.
- (b) A transcript of the hearing held by the FEC.
- (c) Any findings, reports or audit reports made in connection with the dispute.
- (d) Copies of relevant correspondence between the FEC and lessee.
- (e) FEC Decision.

(15) On the date the information is forwarded to COMNAVFACENGCOM, the FEC will notify the lessee, by certified mail, of that fact. The notification will state that within five days of receipt of the appellant's supplementary information or 40 days from the date of receipt of the FEC letter forwarding all documents at issue, the lessee will be notified by certified mail that a final decision will be made within 30 days based upon the information available at that time.

(16) COMNAVFACENGCOM, will issue a final determination that will be sent by certified mail to the lessee.

#### **SECTION VII - ON-BASE BANK LEASING**

**42. BANKING OFFICE LEASING.** (This section contains information common to both domestic banks and credit unions. More specific

**19-40**

credit union information is covered in Section VIII below). COMNAVFACENGCOM supports DOD general policy stated in [reference \(m\)](#) that on-base banks will be recognized and assisted, given their role in promoting morale and welfare at Navy installations.

a. [Reference \(m\)](#) also contains guidance for leasing of land and facilities to banking offices on Navy installations. Requests for the establishment of a banking facility, a branch bank, or an independent bank must be endorsed by the installation commander, the activity having command responsibility, and its echelon of command, and the FEC to COMNAVFACENGCOM. COMNAVFACENGCOM will obtain additional approvals of the Chief of Naval Operations or Commandant of the Marine Corps and the Assistant Secretary of the Navy (Financial Management and

Comptroller) (ASN) (FM&C). Final review for and recommendations to the Treasury Department or other cognizant offices are the responsibility of the ASN (FM&C).

**43. ESTABLISHMENT OF AN ON-BASE BANKING/CREDIT UNION OFFICE.**

The following information should be included in the installation commander's request for establishment of banking/credit union offices:

a. The approximate number of DOD personnel at the installation and other personnel who may be authorized to use the banking/credit union office.

b. The distance between the installation and any financial institutions in the vicinity, including the names of those institutions.

c. Available transportation between the installation and the financial institutions listed in the subparagraph immediately above.

d. The number of DOD personnel in duty assignments that confine them to the installation or who cannot obtain transportation (such as hospital patients).

e. The name and location of the depository used to make official deposits for credit to the Treasury General Account (TGA).

f. A list of organizational and non-appropriated fund accounts, the names and locations of financial institutions where deposited, and the average daily activity and balance of each account.

g. A written description and photographs of the space proposed for the banking/credit union office use.

h. A statement listing the requirements of the proposed banking/credit union office for safes and a vault, alarm systems, and surveillance equipment, when necessary.

**19-41**

i. Reasons for use of space controlled by the General Services Administration (GSA). All GSA-assigned space, whether leased space or Federal office building space, is reimbursable to GSA at the standard level user charge. Therefore, space occupied by a banking/credit union office to serve military needs will be assigned and charged by GSA.

j. Any other information pertinent to the establishment of a banking/credit union office.

**44. SOLICITATIONS**

a. Solicitation letters will be sent to local banking institutions or to eligible credit unions informing them of an opportunity to establish a banking/credit union office. An announcement will be placed in the local newspaper(s) and forwarded to financial institution associations.

b. If the ASN (FM&C) or designee determines that the geographic coverage of the solicitation needs to be expanded, a prospectus will be forwarded to financial institutions in the larger geographic area as well as financial institutions and regulatory authorities in the state where the installation is located.

c. If it is determined that the geographic coverage of the solicitation needs to be expanded further, the prospectus shall be published in the Commerce Business Daily and in financial institution trade journals.

d. Banking institutions should not be coerced when banking arrangements are under consideration or after banking offices are established. If otherwise proper, this prohibition does not include:

(1) Discussions with banking institutions prior to submitting a proposal for a new banking office.

(2) Helping a banking office extend its operations in support of an installation requirement.

(3) Discussions with banking institutions to improve services or to create savings for the bank or DOD personnel.

(4) Seeking proposals for banking services as directed by the higher Navy authority.

(5) Negotiations preparatory to signing a banking agreement.

e. When soliciting for banking services, proposals will be evaluated on specific factors identified in the solicitation. At a minimum, these factors should be predicated on the services to

#### **19-42**

be provided as outlined in Appendix C, paragraph 3 of [reference \(m\)](#), the financial institution's schedule of services and charges, and the extent of logistical support required. Prior to issuing the solicitation, identify (for internal use during the evaluation period) the weights to be applied to the factors reflected in the solicitation. Proposals should be evaluated and ultimately selected based upon the factors and weights developed for the solicitation. Selection will be made by the ASN (FM&C), or designee.

**45. TERMINATIONS.** Requests for termination of financial services must be approved by the installation commander, substantiated by sufficient evidence, and forwarded to the ASN (FM&C), or designee. Termination of banking office operations should be initiated by the installation commander only under the circumstances listed in subparagraph 340504 of [reference \(m\)](#).

#### **46. LEASE TERMS**

a. The consideration for the lease will be determined by appraisal of the fair market rental value (FMRV) in accordance

with [reference \(b\)](#). Periodic reappraisals will be based upon the FMRV exclusive of the improvements made by the bank.

b. The lease term cannot exceed five years except where the banking institution uses its own funds to improve existing Government space as outlined in subparagraph 7.f. below. If the space is assigned by the GSA, charges to the bank for space and services will be made at the standard level user charge rate.

c. Leases must include the following provisions:

(1) The Government has the right to terminate the lease due to national emergency; installation inactivation, closure, or other disposal action; or default by the lessee.

(2) The lessee must deliver written notice 180 days prior to voluntarily terminating the lease.

(3) Upon a lease termination, the Government has the option to cause title to all improvements to be vested in the United States without reimbursement, or require the lessee to remove the improvements and restore the land to its original condition.

#### **47. LOGISTICAL SUPPORT**

a. The banking office will be housed in a building accessible to DOD personnel on the installation and in a reasonably secure location.

b. Banking institutions will perform all maintenance, repair, improvements, alterations, and construction on the banking premises.

#### **19-43**

c. Banking institutions will pay for all utilities, heating and air conditioning, intra-station telephone service, and custodial and janitorial services, including garbage disposal and outdoor maintenance (such as grass-cutting and snow removal) at rates set forth in the lease, operating agreement, or other written agreement between the installation and the banking institution.

d. Leases executed prior to the issuance of [reference \(m\)](#) in September 2000 will not be altered solely as a result of the provisions of [reference \(m\)](#), unless a lease specifically requires a re-negotiation under those provisions. No lease may be negotiated or re-negotiated, or may any rights be waived or surrendered without compensation to the Government.

e. When a banking institution participates in the construction of a shopping mall complex, the leased premises will encompass only the land where the banking office is physically located.

f. When a banking institution uses its own funds to improve existing Government space, leases may be negotiated for a term up to 25 years subject to periodic review every five years to assess changes in FMRV. The terms of those leases may be set for a

period commensurate with the appraised value of the leasehold improvements divided by the annual rent.

#### **48. LAND LEASES**

a. A lease of land for construction of a building to house a banking office should be made at the appraised FMRV. Charges will apply over the term of the lease, not to exceed 25 years, subject to periodic review every five years to assess changes in FMRV.

b. If determined to be in the Government's interest, an existing lease of land may be extended prior to expiration of its term. Passage of title to facilities will be deferred until all extensions have expired. The extensions will not exceed terms of five years, with lease payments set at the appraised FMRV of the land only as determined on the date of each extension. Banking institution lessees will continue to maintain the premises and to pay for utilities and services furnished.

c. When title to improvements passes to the Government under the terms of the lease, arrangements will typically be made as follows:

(1) When the square footage exceeds that authorized in [reference \(t\)](#), the banking institution will be given the first choice to continue occupying the excess space under a lease at FMRV of the land underlying the excess space.

#### **19-44**

(2) The charge for continued occupancy of improved space by a banking office shall be the FMRV for the associated land only. The lessee will continue to maintain the premises and to pay the cost of utilities and services furnished.

**49. CONSTRUCTION**. Banks may construct buildings subject to the following provisions:

a. The building shall be solely for the use of the banking institution and may not provide for other commercial enterprises or Government entities.

b. Construction projects must meet the criteria set forth in [reference \(t\)](#).

#### **50. CONSTRUCTION PROJECT APPROVAL AUTHORITY**

(5) Projects costing \$25,000 or more must be approved by the chain of command, including mission component command/region with an information copy to the Assistant Secretary of the Navy (Energy Installations and Environment) (ASN) (EI&E) and DASN (I&F). ASN (EI&E) will have 30 days to deliver comments to the mission component command/region before final approval for the project can be granted.



- (6) Projects costing less than \$25,000, including interior alterations and room or office additions to existing banking offices, should be approved by the installation commander. Copies of approvals, including the identification of project costs, should be furnished to the ASN (EI&E) and DASN (I&F).
- (7) Prior to contract execution, Congress must be notified of all construction projects that use other than appropriated funds and costing over \$500,000 in accordance with [DoD Instruction 7700.18](#).

d. Projects for construction of structures on an installation at a banking installation's expense should be reviewed and reported in accordance with [reference \(y\)](#) and other applicable Navy regulations. The following information should be listed to support each proposal:

(1) The number of DoD personnel at the installation, including others, who may use the banking office.

(2) The square footage of the proposed building.

(3) The land area to be leased to the banking institution.

**19-45**

(4) The term of the lease.

(5) The estimated cost of construction.

(6) The estimated fair market value of the land to be leased.

(7) A statement that the banking institution will be responsible for the cost of utility connections and other utility and maintenance costs.

(8) A statement that the building will be used only for delivering financial services.

(9) A statement that the financial institution officials understand, and are willing to assume, the potential for loss of the building in the event of the installation's closure or other delimiting condition.

(10) A justification for waiver of space criteria if the building exceeds the specification in reference (t).

e. Banks must pay for interior alteration and maintenance as well as utilities, custodial, and other services furnished.

f. Banks must pay all construction costs.

**51. BANK LIAISON OFFICER (BLO).** Each installation commander having an on-base banking officer should appoint a BLO as described in paragraph 340508 of [reference \(m\)](#).



**52. IN-STORE BANKING.** Under the direction and approval of the installation commander, an on-base financial institution may render in-store banking within the premises of a commissary operated by the Defense Commissary Agency, a military exchange, or any other on-base facility.

c. Rendering of the requested services and any associated stipulations should be documented as an amendment to the existing Operating Agreement (OA) (See [Appendix A.](#))

d. The amendment to the OA should be coordinated closely among the requesting DoD component representative, the on-base banking office representative, the BLO, and the installation commander or designee. The final amendment should be signed by the installation commander and the on-base banking office with the acknowledgement of the DoD component that will host the in-store banking operation.

c. The installation commander should extend the opportunity to offer requested in-store banking services to all financial institutions located on the installation. The selection process is outlined in Appendix D of [reference \(m\).](#)

**19-46**

d. The installation commander should grant space to the banking institution that will provide the in-store services.

**53. AUTOMATIC TELLER MACHINES (ATMs).** On-base financial institutions are encouraged to install ATMs at those installations where they are located.

a. A financial institution that proposes to install ATMs on Navy installations should bear the cost of installation, maintenance, and operation. The installation commander will enter into an agreement with the on-base financial institution wherein the installation may acquire and offer ATMs to the on-base financial institutions under certain circumstances, such as where it is advantageous to the Government to have one or more ATMs available but the acquisition cost to the financial institution is prohibitive. No ATM can be purchased by an installation unless approved by DASN (I&F). In those cases, installation costs and all logistic support must be borne by the financial institution.

b. The installation commander has the authority to approve an on-base financial institution's proposal to place ATMs on the installation. This approval should be reflected as an amendment to the OA.

c. Where there is no on-base financial institution, follow the solicitation procedures in [Paragraph 44.](#)

d. Proposals by an installation commander to install ATMs on domestic installations from other than on-base financial institutions, including the Military Exchange Service, morale, welfare and recreational activities, and/or other non-appropriated fund instrumentalities, should be considered only

when (i) ATM service is unavailable or existing service is inadequate, and (ii) only when the on-base financial institution(s) either decline(s) to offer the service, fails to improve existing service so that it is adequate, or does not formally respond to the request for service within 30 days of the date of the request. Any ATM service from other than on-base financial institutions is considered an exception to this policy. The procedures to establish an on-base financial institution set forth in [Paragraph 43](#) should be followed when soliciting ATM services. Proposals offering shared-access ATMs (ATMs operated by two or more financial institutions where their account holders are not assessed any or all fees applicable to non-account holders) should receive preference.

#### **SECTION VIII - ON-BASE CREDIT UNION LEEASING**

**54. CREDIT UNION LEASING.** This section lays out procedures for leasing as well as licensing of Government-owned space for use by on-base credit unions.

#### **19-47**

**55. GENERAL POLICY.** COMNAVFACENGCOM supports DoD general policy stated in [reference \(m\)](#) that on-base credit unions should be recognized and assisted given their role in promoting morale and welfare at Navy installations.

#### **56. ESTABLISHMENT OF AN ON-BASE CREDIT UNION OFFICE**

a. DoD personnel seeking to establish a new full-service credit union must submit a proposal to the installation commander for review. In addition to the information stated in [Paragraph 43](#) above, the proposal must include a request for the establishment of a field of membership that includes all personnel at the installation. Upon concurrence by the installation commander, the proposal should be forwarded through its echelon of command and the FEC to COMNAVFACENGCOM. COMNAVFACENGCOM will obtain additional approvals of CNIC or Commandant of the Marine Corps as appropriate, and the Assistant Secretary of the Navy (Financial Management and Comptroller) (ASN) (FM&C) or designee.

b. The ASN (FM&C) or designee should:

(1) Obtain a list of credit unions that could establish eligibility to serve the installation's military members and civilian employees from the National Credit Union Administration (NCUA) Regional Office that has geographic jurisdiction, and the applicable state regulatory agency.

(2) Prepare and send formal solicitation letters to eligible credit unions informing them of an opportunity to establish a branch office at the installation.

(3) Establish the criteria for selection of a specific credit union, in coordination with the installation commander in accordance with [Paragraph 44](#). Proposals should be evaluated and a selection made based upon the factors and weights developed for the solicitation.

c. Upon approval by the ASN (FM&C) or designee, the NCUA or applicable state regulatory agency should be notified and requested to establish or amend the selected credit union's charter to include the new location.

d. No commitment may be made to a credit union regarding its proposal until the appropriate regulatory agency has approved the requested charter change.

## **57. TERMINATIONS**

a. Voluntary Credit Union Terminations. When a credit union plans to end operations on Navy property, it will be required to notify the installation commander 180 days before the closing date. This notification should precede the public announcement of the planned closure.

### **19-48**

b. Termination for Cause. If, after discussions with credit union officials, the installation commander determines that the operating policies of the credit union are inconsistent with [reference \(m\)](#), a recommendation for termination of logistical support and space arrangements may be made through the ASN (FM&C) or designee. The credit union can be removed from the installation only with approval of the ASN (FM&C) or designee after coordination with the Under Secretary of Defense (Comptroller) through the Director, DFAS, and the appropriate state regulatory agency.

c. Termination in the Interest of National Defense. At the option of the Government, leases may be terminated in the event of national emergency, or as a result of installation deactivation, closing, or other disposal action.

d. Terminations Resulting From Merger, Acquisition, or Change of Control. When any of the above conditions result in violation of any of the terms and conditions of the existing OA, the ASN (FM&C) or designee should terminate the OA with the credit union. When any of the above or other conditions do not violate the OA, the ASN (FM&C) will initiate a novation action of the OA identifying a change in control.

e. Termination of Lease. The lessee must give written notice 180 days prior to a voluntary termination of the lease. Upon termination, the Government has the option to cause the title to all structures and improvements to be conveyed to the United States without reimbursement, or to require the lessee to remove the improvements and restore the land to its original condition.

## **58. USE OF SPACE FOR CREDIT UNIONS**

a. Criteria for Use of Space in Government-Owned Real Property.

(1) Criteria governing the assignment of space and construction of new space for credit unions are stated in [reference \(t\)](#).

(2) A credit union may be furnished space on a DoD installation at one or more locations for periods not exceeding five years, except where the credit union uses its own funds to improve existing Government space. The cumulative total of space furnished will be subject to the limitations of [reference \(t\)](#).

(a) The furnishing of space (including ATM placement) is governed by the Federal Credit Union Act ([12 U.S.C § 1770](#)). The granting of no-cost office space to a credit union for a period not to exceed five years is limited to credit unions having at least 95 percent of its membership to be served in the allocated space composed of individuals who are, or

**19-49**

were military personnel or Federal employees, or members of their families at the time of their admission into the credit union. This statement must be prepared on the credit union's letterhead and signed by the chairman of the board of directors or the president. A certification will also be required whenever there is a merger, takeover, or significant change in the field of membership. This certification will serve as justification and documentation for the continued rendering of free Government space, including space renovated with credit union funds. This statement must be updated every five years and upon renewal of each no-cost permit or license. (See Appendix E of [reference \(m\)](#) for a sample format for this statement).

(b) Credit unions that fail to meet the 95 percent criterion must be charged fair market rent. Except where more than one credit union exists on an installation prior to June 9, 2000, credit unions rendering less than full service or not serving all assigned DoD personnel are not authorized to receive no-cost Government space.

(c) When a credit union that meets the 95 percent criterion uses its own funds to expand, modify, or renovate Government-owned space, it may be granted a no-cost permit or license for a period commensurate with the extent of the improvements, but not to exceed 25 years. The permit or license should be effective until the agreed date of expiration or until the credit union ceases to satisfy the 95 percent criterion. In that event, the no-cost permit will be cancelled in favor of a lease immediately negotiated at fair market value. If desired by the credit union, the permit or license may extend through the period identified in the original permit or license, but not to exceed 25 years.

(d) Similarly, a credit union not meeting the 95 percent criterion that uses its own funds to expand, modify, or renovate Government-owned space, may be granted a lease at fair market value for a term not exceeding 25 years subject to periodic review every five years to assess changes in fair market value. The duration of this lease should be commensurate with the extent of the improvements.

(e) All space assigned by GSA, whether leased or in a Federal building, is reimbursable to GSA at the standard level user charge. Consequently, GSA should charge the

benefiting Navy component for any space assigned for credit union operations. That space is subject to the space criteria stated in reference (t).

**59. LOGISTICAL SUPPORT.** When available, custodial and janitorial services, including garbage disposal and outdoor maintenance (such as grass cutting and snow removal), heating and air conditioning, utilities, fixtures, and maintenance, should be supplied without cost to credit unions occupying no-cost office

**19-50**

space in Government buildings. With the exception of intra-station telephone service, credit unions should be required to pay for all communications services including telephone lines, long-distance data services, and internet connections. Credit unions should also pay for space alterations. Credit unions that fail to meet the 95 percent membership criterion must reimburse the Government for all logistical support.

a. Leases executed prior to the issuance of [reference \(m\)](#) in September 2000, may not be altered solely as a result of the provisions of [reference \(m\)](#) unless a lessee specifically requests a re-negotiation under those provisions. No lease may be negotiated or re-negotiated, or may any rights be waived or surrendered, without compensation to the Government.

b. When a credit union participates in the construction of a shopping mall complex, the lease should only cover the land where the branch or facility is physically located.

**60. ADMINISTRATIVE FEES.** All administrative fees associated with the initiation, modification, or renewal of an outgrant must be borne by the installation, provided the credit union meets the 95 percent membership criterion requirement for no-cost space, and that the fees are associated with the no-cost space.

**61. LAND LEASES.** Credit unions entering into a land lease to construct a building on Navy property must do so in accordance with [Paragraph 48](#).

**62. CONSTRUCTION.** Credit unions constructing a building on Navy property should do so in accordance with [Paragraph 49](#).

**63. ATMs.** Credit unions offering ATM service should do so in accordance with [Paragraph 53](#).

**64. IN-STORE BANKING.** In-store banking services may be rendered in accordance with [Paragraph 52](#), except that:

a. Credit unions interested in submitting proposals to offer requested in-store banking services must submit a statement from the NCUA or applicable state regulatory agency certifying the credit union's authority to offer the requested financial services to the commissary, Military Exchange, or other on-base facilities.

b. The space granted to a credit union selected to offer in-store banking services should be done through a no-cost

license in accordance with the Federal Credit Union Act ([12 U.S.C § 1770](#), as amended).

## **65. OPERATING AGREEMENTS (OA)**

19-51

a. Before operation of an on-base banking office or credit union begins, a written Operating Agreement (OA) and the appropriate real estate outgrant (license, permit, or lease) should be negotiated directly between the installation commander (including the FEC as appropriate) and officials of the designated financial institution. Thereafter, the OA should be jointly reviewed by the installation commander and the financial institution at least every five years. The OA will define the basic relationship between the on-base financial institution and the installation commander and identify mutual support activities such as hours of operation, service fees, and security. One copy of the OA must be sent through command channels to the ASN (FM&C) or designee. A copy of the OA will be maintained by the installation commander and the on-base financial institution. A sample OA is contained in Appendix A.

b. Approved expansion of services will be documented as an amendment to the existing OA. The amendment to the OA and any required lease (including changes to an existing lease) must be in place prior to the initiation of new financial services or offices.

## **SECTION IX - MOBILE SERVICE ANTENNA LEASING GUIDANCE**

### **66. POLICY GUIDANCE**

This section presents guidance on telecommunications policy in accordance with references (aa),(e),(f), and (u) for issuing outgrants to companies wishing to lease Navy property for installation of Mobile Service Antennas (MSA). The standard outleasing procedures of this Chapter 19 also apply to MSA leases. All outlease requests for MSAs should be coordinated with the Joint Spectrum Center (JSC) and the Space and Naval Warfare Systems Command (SPAWAR) for electromagnetic evaluation prior to lease award as a part of the normal site approval process. JSC and SPAWAR will determine the number and type of electromagnetic tests required for each outlease request. The lessee is responsible for payment of all costs for these tests.

### **67. IMPLEMENTATION**

a. Real Estate Agreement: A lease is the appropriate instrument to be used when outleasing real property for the construction or installation of MSAs on Navy property.

(1) Lease terms may be up to five (5) years for existing structures, and up to twenty (20) years for construction of MSA tower(s); however,



(2) Leases with terms over twenty (20) years require approval of the Assistant Secretary of the Navy (ASN)(EI&E) per reference (aa).

**19-52**

(3) Leases with an estimated consideration in excess of \$750, 000 require congressional notification in accordance with references (b) and (o).

(4) An easement or an appropriate lease provision may be necessary for ingress/egress, utilities, and any other related items necessary in conjunction with the construction, installation, operation, and maintenance of MSAs.

**b. Initial Contact and Handling Request**

(1) A written request for the use of Navy property to mount or construct MSAs must be submitted to the FECs for action.

(2) Requests will only be considered from duly authorized providers licensed by the Federal Communications Commission (FCC). The prospective lessee will submit the original copy of its license and/or its proposed operators FCC license for the type(s) of proposed telecommunications equipment to be mounted on the MSA to the RECO for verification prior to lease award. Any changes in the operators of the equipment after lease award must also be approved by the RECO, and the new operators must present the original copy of their FCC licenses to the RECO for verification.

(3) Telephone inquiries for the availability or practicality of mounting an MSA at a particular site(s) must be followed up in writing by the potential applicant.

(4) Refer inquires to local General Services Administration (GSA) representatives for action if the activity is housed in GSA controlled space.

(5) Antenna requests in the National Capital Region must comply with the "[National Capital Planning Commission's Guidelines and Submission Requirements for Antennas on Federal Property in the National Capital Region](#)," last amended August 2, 2001.

(6) Once a request is received and the Installation Commanding Officer has concurred in writing that the site may be available, the FEC will order an advertisement in the local paper(s) or the Federal Business Opportunities Website.

(7) No later than 60 days after receipt of a request, a preliminary decision on the acceptability of a proposed site(s) should be rendered. If an applicant is denied, the FEC will inform the applicant in writing and state the reason(s) for the denial.

(8) If a denial is based on the non-availability of a particular site, the installation commanding officer may identify an alternate site.

(9) The installation commanding officer may identify site(s) available for outlease and request that a solicitation be prepared by the FEC to identify acceptable lessee(s).

#### **68. AVAILABILITY OF SITE(S)**

a. A site(s) will be identified and approved by the installation commanding officer. The commanding officer shall retain discretion to reject inappropriate siting requests to ensure adequate protection of Navy property and the timely removal of equipment and structures at the end of the lease term. The solicitation and lease should reflect the commanding officer's control and discretion.

(1) The number of site(s) per installation should be limited.

(2) The installation commanding officer will determine whether the construction or installation of MSA antenna(s) on the proposed site(s) will interfere with current or future installation operations. The siting of MSAs will not be given priority over other authorized uses of Navy property.

(3) Unless the property proposed for siting an MSA meets any of the exceptions to the suitability criteria for homeless use set forth in 41 C.F.R. § 102-75.1165, it must be reported to the Department of Housing and Urban Development in accordance with [reference \(p\)](#).

#### b. Priority of Siting

(1) First priority will be given to existing structures such as water tower(s) and building(s).

(2) Second priority will be given to property where an MSA can be erected. Leases for tower(s) should accommodate additional carriers to be covered by a sublease.

(3) The FEC must approve all subleases and indicate approval by modification. The modification will state, in part, that the lease is modified to allow the sublease and will include the name of the sublessee. It will also include a rental adjustment to account for the new rent.

(4) The lease will allow for the Government to be appropriately compensated for subleases. The compensation will be based on 50 percent of the actual lease consideration between the prime lessee and the sublessee or up to 50 percent of the Government's Fair Market Rental Appraisal of sublessee rent, whichever is higher.

c. Establishing Fair Market Value: The FEC should charge fair market value for siting MSAs on Government property.

#### **19-54**

(1) The FEC will establish a minimum rental value for each potential site.



(2) Leases will be awarded by competitive means, unless it is determined that all potential applicants can be accommodated.

(3) Leases will be subject to continued site availability. The FEC will coordinate the site equipment with the installation commanding officer to accommodate the maximum number of potential carriers using approved site(s) for the greatest economic return.

**69. LAND HELD IN TRUST AND NATIVE AMERICAN TRIBES**

Property held by the United States in trust for individuals or Native American tribal governments will not be available for leasing.

**70. LESSEE'S PROCESS AND MANAGEMENT COSTS**

The lessee will be responsible for payment of all costs in connection with the processing and management of the lease. These costs include, but are not limited to, appraisals; electromagnetic testing by the JSC and SPAWARS; charges associated with processing and documentation to comply with the National Environmental Policy Act (NEPA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), Environmental Baseline Surveys (EBS), Finding of Suitability to Lease (FOSL), and any other appropriate requirements.

**71. (RESERVED)**

**72. SPECIFIC TERMS, CONDITIONS, AND LIMITATIONS OF THE LEASE**

a. Services and Utilities. The lessee will contract in the lessee's own name and pay for all services and utilities it requires. In the event it is not practical for the lessee to contract for those services and utilities directly, and the Government is able to provide them, the lessee will then be required to reimburse the Government for those utilities and services in accordance with General Provisions of the Lease.

b. Use of Property. The leased premises will be used solely for the installation, operation, maintenance, removal, and, with DON's prior approval, replacement of antenna(s) and communications equipment in conjunction with the lessee's primary business of mobile communications service. The lessee will be responsible for all labor, materials, equipment, and supplies and associated costs used in conjunction with the construction, installation, operation, maintenance, and removal of antenna(s) and communications equipment.

19-55

c. Property Condition

(1) The lessee must understand that the leased premises is offered on an "as is, where is" basis, without representation or warranty on the part of the Government. The lessee should

inspect the property with a RECO or RECO's designee to determine the condition of the leased premises prior to taking possession.

(2) The lessee cannot make alterations, improvements, or additions to the leased premises without obtaining the prior written authorization from the RECO.

(3) The lessee cannot erect any cards, signs, or billboards containing advertising.

(4) All equipment installed on the leased premises that is visible from the exterior of a building must be painted or camouflaged to completely blend with the background of equipment, structures, or fixtures already in place, to the satisfaction of the Government. Whip antennas mounted on the exterior of a building may not exceed twelve (12) feet in height. Panel-type antennas mounted on the exterior of the building may not exceed four (4) feet in width or length

(5) If the leased premises are considered historical, the lessee must comply with the National Historic Preservation Act as well as any state or local historic codes dealing with, but not limited to, installation of communications equipment.

#### d. Radio Frequency Interference (RFI)

(1) The lessee will ensure that the use of the leased premises does not interfere with existing operations on or immediately around the site, and that the creation of radio frequency interference (RFI) will be avoided.

(2) If the lessee creates RFI with the installation of antennas, it will have 48 hours to cure the problem. If the lessee cannot correct the RFI within 48 hours of receiving notice of the RFI, the lease will be terminated immediately by the Government.

(3) Within 48 hours of receiving notice of an RFI problem, the lessee must notify the Government in writing if there are any extenuating circumstances that prevent curing the problem within the 48 hour timeframe.

(4) In consideration of the circumstances, the lessee may then be granted an extension of time to cure the problem. The RECO will ascertain the facts, determine the extent of the delay, and grant an extension in writing when justified. The RECO will seek the concurrence of the installation Commanding Officer.

#### 19-56

#### e. Coordination and Connections for Antenna(s) and Related Equipment

(1) Installation of any antenna(s), pole(s), tower(s), cabling, and related equipment, will be done in accordance with existing Federal, state, and local codes, including the National Electrical Code and other codes directly related to the

installation and maintenance of communications equipment. If codes differ, the most stringent code should be selected.

(2) All work must be performed by personnel who are bonded and licensed tradespersons.

(3) The lessee will coordinate installation of all electrical connections that tie into building systems with the Installation's Public Works Officer and any other entities that may have equipment and connections on site that would be affected.

(4) The lessee will not make, or cause to be made, any penetrations or alterations to the roof or any part of any structures or buildings on the leased premises without the prior written approval of the RECO.

(5) In the event structure(s) or building(s) of the leased premises are damaged directly or indirectly in connection with the lessee's improvements during construction, operation, maintenance, or removal of the improvements, due to an act or omission of the lessee, sub-lessees, agents, contractors or employees, the lessee will be solely responsible for all costs and expenses to repair the damage and return the structure(s) or building(s) to the same condition they were in prior to the occurrence of the damage.

(6) The RECO and the lessee will conduct an inspection of the leased premises before and after any construction, installation, or dismantling of MSAs, to determine the condition of the site.

(7) The Government will have the right to review and approve all technical drawings and any specifications for the construction, installation, operation, or maintenance of antenna(s)/tower(s), as well as reviewing specifications for frequency output. The review does not shift the responsibility to the Government or relinquish the lessee from any damage claims that may arise during the construction, installation, operation, maintenance, or removal, of the MSAs.

(8) The lessee must acknowledge that the Government has the right to review, approve, and if necessary, stop work at any time.

(9) All land leases may include a requirement that the site be fenced to prohibit unauthorized access, and that all

**19-57**

maintenance within the fenced area be performed by the lessee. The RECO will approve all landscaping and camouflaging plans.

(10) The Government has the right to require the lessee to supply appropriate safety equipment such as beacons, enclosures, lightning deterrents, and other safety procedures prior to any construction. The lessee will remain solely responsible for all safety practices during construction, installation, operation, maintenance, or removal, at the site(s).

f. Removal and Restoration of the Premises

Upon termination or expiration of the lease, it will be the Government's option to cause title to all improvements to be vested in The United States, or to require the lessee to remove the improvements and restore the leased premises to its original condition, at no cost to the Government.

**SECTION X - DISTRIBUTION OF DOCUMENTS/AVAILABILITY OF FORMS**

**73. DISTRIBUTION**

Executed outleases, their amendments, and notices of termination issued by the Government, will be distributed as follows:

- |     |                       |  |
|-----|-----------------------|--|
| (1) | Signed document       | Lessee   |
| (2) | Signed document       | FEC  |
| (3) | Conformed copy        | Mission Component<br>Command/Region<br>(Except Commander,<br>U.S. Atlantic Fleet   |
| (4) | Conformed copy        | Installation   |
| (5) | Conformed copy        | Appropriate FEC<br>finance office  |
| (6) | Conformed copy (only) | Assistant Secretary<br>of the Navy for banking<br>activities) (Financial<br>Management and<br>Comptroller, Office of<br>Financial Management<br>Operations (ASN)(FMCFMO) |

**74. AVAILABILITY OF FORMS**

--Department of the Navy General Purpose Out-Lease Table of Contents (NAVFAC (11011/43 (08/04))..... \*

-- Department of The Navy General Purpose Lease For Telecommunication Systems..... \*

--Department of the Navy Lease for Agricultural or Grazing Purposes (NAVFAC 11011/22 (Rev7-75) + NAVFAC Southwest Lease)..... \*

--Agricultural and Grazing Lease Deposit Instructions for Collections Relative to Leases of Navy Lands.....\*

--Agricultural and Grazing Lease Deposit Instructions for Collections Relative to Leases of Marine Corps Lands.....\*

--Program Requirements Report Format.....\*

--Project Information Format.....\*

--Instructions for Preparing Agricultural Outlease Funded Project Information Sheet.....\*

Title 10 Report Preparation Guideline for Outleases.....\*

--Department of the Navy General Purpose Outlease (NAVFAC (11011/43 (08/04))..... \*

--Department of the Navy Lease for Agricultural or Grazing Purposes (NAVFAC 11011/22 (Rev 7-75))..... \*

--Standard Insurance Coverage - Commercial General Liability

**DEPARTMENT OF THE NAVY  
GENERAL PURPOSE OUTLEASE  
TABLE OF CONTENTS**

All correspondence in connection with  
this contract should include reference  
to (Contract No.) \_\_\_\_\_  
Installation/UIC \_\_\_\_\_

<b><u>PARAGRAPH</u></b>	<b><u>PAGE</u></b>
PREAMBLE.....	
1. LEASED PREMISES.....	
2. TERM.....	
3. CONSIDERATION.....	
4. USE OF LEASED PREMISES.....	
5. ASSIGNMENT AND SUBLEASING.....	
6. JOINT INSPECTION AND INVENTORY REPORT (NON-ENVIRONMENTAL).....	
7. ENVIRONMENTAL CONDITION OF PROPERTY.....	
8. IMPROVEMENTS AND RESTORATION.....	
9. ACCESS BY GOVERNMENT.....	
10. UTILITIES AND SERVICES.....	
11. NONINTERFERENCE WITH GOVERNMENT OPERATIONS.....	
12. PROTECTION AND MAINTENANCE OF LEASED PREMISES.....	
13. ENVIRONMENTAL PROTECTION PROVISIONS.....	
14. TERMINATION.....	
15. INDEMNIFICATION.....	
16. INSURANCE.....	
17. LABOR PROVISIONS.....	
18. NOTICES .....	
19. AUDIT.....	
20. INTEREST.....	
21. AGREEMENT.....	
22. FAILURE TO INSIST ON COMPLIANCE.....	
23. DISPUTES.....	
24. COVENANT AGAINST CONTINGENT FEES.....	
25. LIENS.....	
26. TAXES.....	
27. SUBJECT TO EXISTING AND FUTURE EASEMENTS.....	
28. INGRESS, EGRESS, PARKING AND SECURITY.....	
29. ADMINISTRATION.....	
30. DAMAGE TO THE LEASED PREMISES.....	
31. APPLICABLES RULES AND REGULATIONS.....	
32. CONTRACTORS AND AGENTS FOR TENANT .....	
33. SURRENDER.....	
34. RECORDING.....	
35. FEDERAL FUNDS.....	
36. HEADINGS.....	
37. ATTACHMENTS.....	

**BETWEEN  
THE UNITED STATES OF AMERICA  
AND**

-----  
(NAME OF TENANT)

THIS LEASE, executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Navy ( "**Government**" ), and \_\_\_\_\_ ( "**Tenant**" ). (Government and Tenant may sometimes jointly be referred to as the "Parties.")

**WITNESSETH:**

**WHEREAS**, the Leased Premises, as defined below, covered by this Lease is under the control of the Secretary of the Navy (the "Navy"); and

**WHEREAS**, the Leased Premises is not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. § 102); and

**WHEREAS**, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. § 2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease, will promote the national defense or serve the public interest.

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions in this Lease, Government and Tenant agree as follows:

**1. LEASED PREMISES.** Government leases, rents, and demises to Tenant, and Tenant hires and rents from Government, the Leased Premises, as more particularly described and/or depicted in **Attachment A to this Lease** (the "Leased Premises"), together with all improvements and all related Personal Property as described and/or listed in **Attachment A**, and with all rights of access to the Leased Premises for ingress, egress, parking, and utilities as provided under Paragraphs 10 and 29 below.

**2. TERM.** The term of this Lease shall begin on \_\_\_\_\_, 20\_\_ and end on \_\_\_\_\_ 20\_\_, unless sooner terminated under Paragraph 14.

**3. CONSIDERATION.**

**3. Cash.** Tenant shall pay rent in the amount of \$\_\_\_\_\_ per \_\_\_\_\_, payable in advance on the first day of each \_\_\_\_\_ at the rate of \$\_\_\_\_\_ per \_\_\_\_\_ by valid check or money order and made payable to "Treasurer of the United States," citing the Contract Number. Tenant assumes the risk of using the U.S. Postal Service or other delivery service. The check must be delivered to the following address:

\_\_\_\_\_.

**[OPTIONAL In-Kind Consideration. Note:** In lieu of cash payment, the use of In-Kind Consideration shall be pursued whenever practicable and shall be equal to an amount that is not less than the Fair Market Value of the Leased Premises as determined by the Deputy Assistant Secretary of the Navy (Installations and Facilities) (DASN) (I&F) or designee. Allowable types of In-Kind Consideration pursuant to 10 U.S.C §2667 include, (1) the alteration, repair, or improvement of the Leased Premises as part or all of the payment of the consideration for the Lease; (2) maintenance, protection, repair, alteration, improvement, or restoration (including environmental restoration) of facilities under the control of the Navy; (3) construction of new facilities; (4) providing facilities; (5) provision or payment of utility services; (6) provision of real property maintenance services; and (6) providing other services relating to activities that will occur on the Leased Premises that the Assistant Secretary of the Navy (Energy, Installations and Environment) (ASN) (EI&E) considers appropriate. Sample language is included below for illustration purposes only. Site-specific language should be developed by the FEC for each actual lease situation with advice of FEC Counsel.

**3.1. In Kind.** In lieu of paying rent either totally or partially in cash, Tenant may pay rent to Government by in-kind performance and in accordance with this Paragraph 3. The annual rental value for the Leased Premises, how it will be recognized in the event that performance extends into the next lease year, the form of in-kind payment, and the terms of performance and delivery shall be described on or before \_\_\_\_\_ of each anniversary of the Lease term in a writing that will be attached to this Lease. However, credit for rent will not be recognized for any lease year until performance of a project has been accepted by the designated engineer of Government. Government and

Tenant shall meet on an as-needed basis, but not less than annually from the date of inception of this Lease to review and amend, if necessary, the established list of specific in-kind projects or services that will be performed. For each project or service proposed, an estimated cost to perform the work must be included with the project or service description, which cost will be drawn from an estimate submitted by each of the Parties. The estimated cost shall be broken down by material, subcontract cost, labor, overhead, and general and administrative expense. Projects or services shall be selected by Government and scheduled so that the value of the work to be performed is not less than the rent obligations of Tenant. Authorization to proceed will occur only through written approval from the Government, and that approval shall be made in the form of a written letter by the Real Estate Contracting Officer ("RECO"). A "not to exceed cost ceiling" will be established by the approval letter. The RECO may, upon request, with supporting rationale from Tenant, increase the "not to exceed cost ceiling." That request must be submitted prior to incurring any cost in excess of that amount and sufficiently in advance to allow for review of the requirement, and, in any event, not less than ten (10) days prior to the date authorization is required. If, due to unavoidable time constraints, it is not practicable to comply with the 10-day requirement, Tenant may seek verbal approval from the RECO, pending written confirmation. Tenant shall not be obligated to incur costs in excess of the "not to exceed cost ceiling."

3.1.1. The incurred cost of performing a project or service will be subject to Government audit. Should the audited cost be less than the "not to exceed cost ceiling", Tenant's rent obligation will be credited only for the audited cost.

3.1.2. Nothing in this Lease shall preclude Tenant from contracting with a third party for the work. Tenant shall require any contractor to procure a penal bond in an amount not less than the estimated cost of the work contracted for. Prior to commencing the proposed work, Tenant shall be solely responsible for obtaining any environmental permits required, independent of any existing permits. Copies of all required construction permits shall be delivered to the Government.

3.1.3. Government will retain the right of technical review of any proposed work to be performed or personal property to be delivered. A Government representative may oversee the work solely for the benefit of Government and confirm satisfactory completion to the Commander/Commanding Officer. The RECO must provide a written final acceptance of the work performed in order for Tenant to receive rent reduction credit for the work performance. Title to any improvements constructed or personal property furnished shall vest in Government upon acceptance. Any bills of sale, purchase receipts, written warranties, other indicia or documents of ownership shall be delivered to the Government upon its acceptance of the improvement or personal property. Written warranties shall include, but not be limited to, a warranty that work performed conforms to the contract requirements and is free of any defect in equipment, material, or design or workmanship, and that Tenant or Tenant's contractor will remedy any failure to conform or any defect promptly and at its sole expense. Additionally, any warranty must agree that Tenant or Tenant's contractor shall remedy any damage to Government owned or controlled real or personal property when that damage results from either contractor failure to conform to contract requirements or any defect of equipment, material, workmanship, or design. All warranties shall name Government as an additional beneficiary. Tenant shall enforce all warranties for the benefit of Government if directed by Government.

3.1.4. Upon termination of this Lease for any reason, Tenant shall not be entitled to a refund of its costs paid for a project the performance of which has not been approved by the engineer of Government, and a final accounting will be performed and the balance of any rent accrued and still payable to Government will be due on demand by valid check or money order. Notwithstanding termination, Government reserves the right to have a final accounting performed at any time during the course of the lease term and request that the value of any rent accrued up to that date and not already contractually obligated to any specific project or service to be performed, be paid by valid check or money order to Government on demand. Upon termination, at Government's option, Tenant shall complete any work or service already contracted for, in which event Government will issue a temporary license to Tenant to remain on the Leased Premises, or if otherwise directed by Government, terminate any contract and pay all accrued rent in by valid check or money order.

3.1.5. The terms of consideration shall be re-negotiable prior to the renewal of this Lease.]

#### **4. USE OF LEASED PREMISES.**

4.1. The purpose for which the Leased Premises may be used, in the absence of prior written approval by Government, is for \_\_\_\_\_ and for no other purpose. Tenant understands and acknowledges that this Lease is not, and does not constitute, a commitment by Government with regard to any fee title conveyance of the Leased Premises, in whole or in part, to Tenant or any agency, instrumentality, or affiliate, or to any subtenant.

4.2. Tenant shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration, or repairs of the Leased Premises, without the prior approval of Government and



compliance with section 106 of the National Historic Preservation Act (16 U.S.C. § 470), and the Archeological Resources Protection Act of 1979 (16 U.S.C. §470aa). Buried cultural materials may be present on the Leased Premises. If those materials are encountered, Tenant shall stop work immediately and notify Government. Government has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of any, Government will immediately notify Tenant.

## **5. ASSIGNMENT AND SUBLEASING.**

5.1. Tenant shall neither transfer, assign, nor sublet this Lease or any interest in it, or any property on the Leased Premises, or grant any interest, privilege, or license whatsoever in connection with this Lease without the prior written consent of Government. Consent shall not be unreasonably withheld or delayed.

5.2. Any sublease granted by Tenant shall contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of Government to Tenant or any subtenant, except as specifically stated in this Lease. No sublease shall relieve Tenant of any of its obligations under this Lease. Under any sublease made with or without consent of Government, the subtenant shall be deemed to have assumed all of the obligations of Tenant under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 13 below.

5.3. Tenant shall submit to Government for its prior written consent, a copy of each sublease Tenant proposes to execute. The consent may include a requirement that Tenant renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either Government or Tenant. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the Government.

## **6. JOINT INSPECTION AND INVENTORY REPORT (NON-ENVIRONMENTAL).**

6.1. Prior to use and occupancy of the Leased Premises by Tenant or any subtenant, a Joint Inspection and Inventory Report (JIIR) will be conducted by representatives of Government and Tenant and a complete inventory of Government real and personal property shall be made. The JIIR shall describe the condition of the Leased Premises and will note any deficiencies found to exist. Prior to execution, the report shall be attached to and made a part of the Lease as **ATTACHMENT B**. (Note: A JIIR is not required when outleasing vacant land for construction of a new facility.)

6.2. Each building or facility contained in the JIIR shall be identified by building number or facility number and signed and dated by Government and Tenant. All personal property in a building, unless specifically exempted by the terms and conditions of this Lease, shall remain with the building.

6.3. The Leased Premises shall be delivered to Tenant on an "As Is, Where Is" basis, and, as such, Government makes no warranty to its usability generally or its fitness for any particular purpose. Any safety or health hazards identified and listed in the JIIR shall be corrected at Tenant's expense prior to use and occupancy of the related portion of the Leased Premises. The safety or health hazards to be corrected by Tenant shall be limited to those identified in the JIIR.

6.4. In the event this Lease is terminated and the Parties have not agreed to enter into a new lease, or conveyance of title to the Leased Premises, or a Lease In Furtherance of Conveyance, Tenant shall return the Leased Premises to Government in the same condition in which it was received, reasonable wear and tear, damage by insurable events, and Acts of God excepted. Tenant may, at its expense and with prior written approval of Government, (a) replace any personal property with personal property of like kind and utility, (b) replace any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete, or non-functioning personal property, in accordance with applicable laws and regulations. Government shall not unreasonably withhold or delay granting its approval to Tenant's request for those actions.

**7. ENVIRONMENTAL CONDITION OF PROPERTY.** An Environmental Condition of Property (ECP) is attached to and made a part of this Lease as **Attachment C** either at the time this Lease is executed, or within a reasonable time after the term begins, depending on the time needed by Government to complete the report, and in the latter event, the report will speak from the date the term of this Lease begins. The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by Government and sets forth the basis for the Government's determination that the Leased Premises are suitable for leasing. Tenant understands that whenever this Lease ends, Government may conduct an inspection of the Leased Premises to determine if any material deviation from the initial environmental condition has occurred, and if a material deviation has occurred, Tenant will remain liable for resulting loss or damage, notwithstanding the ending of this Lease. Tenant and each subtenant are made aware of the notifications contained in the ECP and shall comply with all restrictions in it as well as the following:

AS APPLICABLE:

7.x. UXO. Unexploded Ordnance and other Munitions and Explosives of Concern (UXO) may be present at this site. Unless otherwise explicitly stated in this paragraph, Tenant shall not conduct or permit any subtenant(s) to conduct any subsurface excavation, digging, drilling or other disturbance of the surface at any time without the prior written approval of the Government. Any excavation, digging, drilling, or other disturbance of the surface shall be done in compliance with all applicable Federal, state, and local laws and regulations and with Department of Defense and Department of the Navy safety policies, including those pertaining to explosives safety. Tenant acknowledges that land underlying and adjacent to the Leased Premises may contain UXO. If, after receipt of written approval by Government, Tenant undertakes any subsurface excavation, digging, drilling, or other disturbance of the surface, it shall immediately halt work and notify Government of any buried debris, or foreign, potentially hazardous material encountered during this work

7.x. Lead-Based Paint. Government is not responsible for any removal or containment of lead-based paint (LBP), identified in the ECP. If Tenant, subtenant or other authorized occupant of the Leased Premises intends to make any improvements or repairs that require LBP removal, an appropriate LBP disposal plan ensuring compliance with all applicable Federal, state, and local laws and regulations must be incorporated into the plans and specifications and submitted to Government. The LBP disposal plan will identify the proposed disposal site, or in the event that the site has not been identified, will stipulate for disposal at a licensed facility authorized to receive it.

[Others, as needed]

**8. IMPROVEMENTS AND RESTORATION**

8.1. Tenant, or any subtenant, shall not construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (collectively, the "Improvements"), including those that may adversely affect human health or the environment, without the prior written consent of Government. That consent shall not be unreasonably withheld or delayed. Further, that consent may involve a requirement to furnish Government with a payment and performance bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of Government. For any Improvements in the proximity of any known Navy Environmental Restoration Program ("ERP") site, that consent may also include a requirement for the written approval of Government's Remedial Project Manager in addition to approval by the RECO. The Improvements shall be done in a workmanlike manner and be subject to the requirements of all state and local building codes, as applicable. Tenant shall give Government prior written notification and a full plan and description of the proposed Improvements, including any other information on the proposed work requested by Government. Except as otherwise stated in this Lease or in Government's written approval, upon expiration or earlier termination of this Lease, Government shall have the option to cause title to all Improvements to be vested in the United States, or to require Tenant to remove the Improvements and restore the Leased Premises to the condition that existed when the term of this Lease began, or to a condition that is acceptable to Government. If requested by Government, Tenant agrees to deliver a quitclaim deed to evidence or perfect the transfer of title to the Improvements to the United States for nominal consideration.

[OPTIONAL, if required by the Installation or by a negotiated agreement with an occupant such as a financial institution] If title to the Improvements becomes vested in the United States, arrangements may be made for continued occupancy by Tenant for the purpose of continuing banking services via a mutually acceptable provision in this Lease that will include payment by Tenant of fair rental value of land and Improvements, and for payment of all utilities, communications, and support services provided through Navy infrastructure.

**9. ACCESS BY GOVERNMENT**. In addition to access required under Paragraph 13, at all reasonable times throughout the term of this Lease, Government shall be allowed access to the Leased Premises for any purpose upon reasonable notice to Tenant or subtenant. Government normally will give Tenant or any subtenant 24-hour's prior notice of its intention to enter the Leased Premises, unless it reasonably determines the entry is an emergency required for safety, health, environmental, operations or security purposes, in which event no notice shall be required. Tenant or subtenant shall have no claim on account of any entries against Government or any Government officer, agent, employee or contractor, provided, however, that nothing in this Lease shall be deemed to prejudice the rights of Tenant or any subtenant under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act. All necessary keys to the buildings and Leased Premises occupied by Tenant or any subtenant shall be made available to Government upon request.

**10. UTILITIES AND SERVICES**. Tenant and any subtenant shall be responsible for obtaining utilities and services for the Leased Premises. In the event that Tenant shall request and Government shall furnish Tenant with any utilities and services maintained by Government, Tenant shall pay Government the agreed charges as additional rent under this Lease. Those charges and the method of payment shall be determined by Government or the

appropriate supplier of the service, in accordance with applicable laws and regulations, on the basis that Government or the appropriate supplier may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Tenant. It is expressly agreed and understood that Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the Leased Premises. Tenant shall have the right, subject to Paragraph 8, to install utilities, or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, that may be necessary for the operation of Tenant's equipment.

**11. NON INTERFERENCE WITH GOVERNMENT OPERATIONS.** Tenant or any subtenant shall not conduct operations or activities, or make any alterations, that would interfere with or otherwise restrict Government operations, environmental clean-up, or restoration actions by Government, U. S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by those entities shall take priority over Tenant's or any subtenant's use of the Leased Premises in the event of any conflict. However, Government will take reasonable steps to prevent interference with Tenant's or the subtenant's use of the Leased Premises.

**12. PROTECTION AND MAINTENANCE OF LEASED PREMISES.**

12.1. Tenant shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises in at least as good condition as when Tenant received it as reflected in the JIR, normal wear and tear, damage by insurable events, and Acts of God excepted. Tenant's responsibilities shall include, but not be limited to, removal of trash, litter, broken glass, and other hazards or obstructions from the Leased Premises that are generated by Tenant, its agents, contractors, or employees. Tenant shall ensure that the Leased Premises is maintained free of any noxious or nuisance-causing condition. Tenant is responsible for the maintenance and repair of all buildings or structures built or placed on the Leased Premises by Tenant.

12.2. Exterior Utility Systems. Tenant is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment that solely support Tenant's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than Tenant. These systems include but are not limited to heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, and similar items.

12.3. Refuse Removal. Debris, trash, and other undesirable materials shall be promptly removed from the Leased Premises, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At completion of the Lease term, Tenant shall remove all containers, equipment not belong to Government, and other undesirable materials, and leave the Lease Premises in an acceptably clean condition.

12.4. Security Protection. Tenant shall keep the Leased Premises secure and safe. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of Government property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-exclusive legislative jurisdiction areas) and to Government as property owner.

12.5. Tenant shall ensure that only trained, experienced, and qualified persons perform the maintenance and protection services specified in this Paragraph.

**13. ENVIRONMENTAL PROTECTION PROVISIONS.**

13.1. Compliance with Law. Tenant shall comply, at its sole cost and expense, with the Federal, state, and local laws, regulations, and standards that are or may become applicable to Tenant's activities on the Leased Premises.

13.2. Permits. Tenant shall be solely responsible for obtaining at its cost and expense any environmental permits required for its operations under this Lease, independent of any existing permits.

13.3. Indemnification. **TENANT SHALL, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, INDEMNIFY AND HOLD HARMLESS GOVERNMENT FROM, AND DEFEND GOVERNMENT AGAINST, ANY DAMAGES, COSTS, EXPENSES, LIABILITIES, FINES, OR PENALTIES RESULTING FROM RELEASES, DISCHARGES, EMISSIONS, SPILLS, STORAGE, TREATMENT, DISPOSAL, OR ANY OTHER ACTS OR OMISSIONS BY TENANT, ITS OFFICERS, AGENTS, EMPLOYEES, OR CONTRACTORS, OR LICENSEES, OR THE INVITEES OF ANY OF THEM, GIVING RISE TO GOVERNMENT LIABILITY, CIVIL OR CRIMINAL, OR RESPONSIBILITY UNDER FEDERAL, STATE, OR LOCAL ENVIRONMENTAL LAWS.** This Paragraph shall survive the termination of this Lease,

and Tenant's obligations under this Paragraph shall apply whenever Government incurs costs or liabilities for Tenant's actions of the types described in this Paragraph 13.

13.4. Inspection. 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 Government is responsible for enforcing them. Those inspections may be made without prejudice to the right of duly constituted enforcement officials to make them. Government normally will give Tenant 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. Tenant shall have no claim on account of any entries against The United States or any related officer, agent, employee, or contractor.

13.5. Asbestos. Except as provided in Paragraph 13.6, Government is not responsible for any abatement, removal, or containment of asbestos. If Tenant intends to make any Improvements that require the abatement, removal, or containment of asbestos, an appropriate asbestos management plan must be incorporated in the alterations plan to be submitted to the Commander/Commanding Officer under Paragraph 8. The asbestos management plan will identify the proposed disposal site for the asbestos.

13.6. Abatement of Asbestos. Government shall be responsible for the removal or containment of asbestos or asbestos-containing material (collectively, "ACM") existing in the Leased Premises on the term beginning date as identified in the ECP attached to this Lease when that ACM is damaged or deteriorated to the extent that, through normal use, it is a source of airborne fibers in quantities that pose a threat to human health ("damaged or deteriorated ACM"). Government agrees to abate all that existing damaged or deteriorated ACM as stated in this Paragraph 13.6. Government may choose the most economical means of abating damaged or deteriorated ACM, which may include removal or containment, or a combination of removal and containment. The foregoing Government obligation does not apply to ACM that is not damaged or deteriorated at the time Tenant takes possession of the Leased Premises and that may become damaged or deteriorated by Tenant's activities. ACM that during the period of this Lease becomes damaged or deteriorated through the passage of time, or as a consequence of Tenant's activities under this Lease, including but not limited to any emergency, shall be abated by Tenant at its sole cost and expense. Notwithstanding Paragraph 13.5, in an emergency, Tenant shall notify Government as soon as practicable of its emergency ACM responses. Tenant shall be responsible for monitoring the condition of existing ACM on the Leased Premises for deterioration or damage and accomplishing repairs pursuant to this Lease.

13.7. Environmental Liability of Tenant. Notwithstanding any other provision of this Lease, Tenant does not assume any liability or responsibility for environmental impacts and damage caused by Government's use of toxic or hazardous wastes, substances, or materials on any portion of the installation, including the Leased Premises. Tenant has no obligation under this Lease to undertake the defense of any claim or action, whether in existence now or brought in the future, solely arising out of the use or release of any toxic or hazardous wastes, substances, or materials on or from any part of the installation, including the Leased Premises, which occurred prior to the first day of Tenant's occupation or use of each portion of, or any building, facility, or other improvement on, the Leased Premises under any instrument entered into between the Parties, or the term beginning date, whichever is earlier. Further, Tenant has no obligation under this Lease to undertake environmental response, remediation, or cleanup relating to that use or release.

13.7.1. For the purposes of this Paragraph, "defense" or "environmental response, remediation, or cleanup" include liability and responsibility for the costs of damage, penalties, legal, and investigative services relating to such use or release. "Occupation or use" shall mean any activity or presence (including preparation and construction) in or upon such portion of, or such building, facility, or other improvement on, the Leased Premises.

13.7.2. This Paragraph 13.7 does not relieve Tenant of any obligation or liability it might have or acquire with regard to third parties or regulatory authorities by operation of law.

13.7.3. This Paragraph 13.7 shall survive the expiration or termination of this Lease.

13.8. No Liability for Interference. Tenant expressly acknowledges that it fully understands that some or all of the response actions to be undertaken with regard to the Federal Facilities Agreement (FFA), if applicable, or the ERP, may impact Tenant's quiet use and enjoyment of the Leased Premises. Tenant agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Tenant should implementation of the FFA, if applicable, or the ERP, or other hazardous waste cleanup requirements, whether imposed by law, regulatory agencies, or the Navy or the Department of Defense, interfere with Tenant's use of the Leased Premises. Tenant shall have no claim against The United States or any of its officers, agents, employees, or contractors on account of any interference, whether due to entry, performance of remedial or removal actions, or exercise of any right with regard to the FFA, if applicable, or the ERP, or under this Lease or otherwise.

13.9. Response or Remedial Actions. Tenant agrees to comply with the provisions of any health or safety plan in effect under the ERP or any hazardous substance remediation or response agreement with environmental regulatory authorities during the course of any 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 Tenant. Tenant and any approved subtenants or assignees, and any licensees, or invitees of it or them, shall have no claim on account of entries against The United States or any of its officers, agents, employees, contractors, or subcontractors.

13.10. Storage of Hazardous Wastes. Tenant must comply with all applicable Federal, state, and local laws, regulations, and other requirements relating to occupational safety and health, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. Tenant shall not treat, store, transport, or dispose of hazardous waste unless Tenant is in possession of any required permit issued to it under the Resource Conservation and Recovery Act, as amended (RCRA). Tenant shall not treat, store, transport, or dispose of any hazardous waste under, pursuant to, or in reliance upon any permit issued to Government. Tenant shall be liable for the cost of proper disposal of any hazardous waste generated by its approved subtenants in the event of failure of the subtenants to dispose properly of those wastes.

13.11. Environmental Records. Tenant must maintain and make available to Government all records, inspection logs, and manifests that track the generation, handling, storage, treatment, and disposal of hazardous waste, as well as all other records required by applicable laws and requirements. Government reserves the right to inspect the Leased Premises and Tenant's records for compliance with Federal, state, local laws, regulations, and other requirements relating to the generation, handling, storage, treatment, and disposal of hazardous waste, as well as to the discharge or release of hazardous substances. Violations will be reported by Government to appropriate regulatory agencies, as required by applicable law. Tenant shall be liable for the payment of any fines and penalties that may accrue as a result of the actions of Tenant.

13.12. Spill Plans. If hazardous waste, fuel, chemicals, or other regulated hazardous substances will be present on the Leased Premises, Tenant shall prepare a completed and approved plan prior to commencement of operations on the Leased Premises for responding to hazardous waste, fuel, and other chemical spills. The plan shall comply with all applicable requirements and shall be updated from time to time as may be required to comply with changes in site conditions or applicable requirements, and where required, shall be approved by all agencies having regulatory jurisdiction over the plan. The plan shall be independent of Navy spill prevention and response plans. Tenant shall not rely on use of the installation's personnel or equipment in execution of its plan. Tenant shall file a copy of the approved plan and approved amendments thereto with the Commander/Commanding Officer within fifteen (15) days of approval. Notwithstanding the foregoing, should Government provide any personnel or equipment, whether for initial fire response or spill containment or otherwise on request of Tenant, or because Tenant was not, in the sole opinion of Government, conducting timely cleanup actions, Tenant agrees to reimburse Government for its costs in accordance with all applicable laws and regulations.

13.13. RCRA Compliance. Tenant shall comply with the hazardous waste permit requirements under the RCRA or its state equivalent and any other applicable laws, rules, and regulations. Tenant must provide at its own expense hazardous waste storage facilities that comply with all laws and regulations that it may need for storage. Government hazardous waste storage facilities will not be available to Tenant. Any violation of the requirements of this Paragraph shall be deemed a material breach of this Lease.

13.14. Accumulation Points. Navy accumulation points for hazardous and other wastes shall not be used by Tenant, and Tenant shall not permit its hazardous waste to be commingled with hazardous waste of the Navy.

13.15. Discharge of Fill. Tenant shall not discharge, or allow the discharge of, any dredged or fill material into any waters or wetlands on the Leased Premises except in compliance with the express written consent of the Commander/Commanding Officer.

13.16. Pesticides. Prior to the storage, mixing, or application of any pesticide, as that term is defined under the Federal Insecticide, Fungicide, and Rodenticide Act, Tenant shall prepare a plan for storage, mixing, and application of pesticides (Pesticide Management Plan). The Pesticide Management Plan shall be sufficient to meet all applicable Federal, state, and local pesticide requirements. Tenant shall store, mix, and apply all pesticides within the Leased Premises only in strict compliance with the Pesticide Management Plan. The pesticides will only be applied by a licensed applicator.

13.17. National Pollutant Discharge Elimination System (NPDES) Permit. Tenant shall comply with all requirements of the Federal Water Pollution Control Act, as amended, the NPDES, and any applicable State or local requirements. If Tenant discharges wastewater to a publicly owned treatment works, Tenant must submit an application for its discharge prior to the start of this Lease. Tenant shall be responsible for meeting all applicable

wastewater discharge permit standards. Tenant shall not discharge wastewater under the authority of any NPDES permit, pretreatment permit, or any other permit issued to the installation. Tenant shall make no use of any septic tank installed on the installation without the prior written consent of Government.

13.18. Radioactive Materials. Tenant must notify Government of its intent to possess, store, or use any licensed or licensable source or byproduct materials, as those terms are defined under the Atomic Energy Act, as amended, and its implementing regulations; of Tenant's intent to possess, use, or store radium; and of Tenant's intent to possess or use any equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulations, at least sixty (60) days prior to the entry of such materials or equipment upon the installation. Upon notification, Government may impose requirements, including prohibition of possession, use, or storage, that are deemed necessary to adequately protect health and the human environment. Thereafter, Tenant must notify Government of the presence of all licensed or licensable source or byproduct materials, of the presence of all radium, and of the presence of all equipment producing ionizing radiation and subject to specific licensing requirements or other individual regulation; provided, however, that Tenant need not make either of the above notifications to Government with regard to source and byproduct material that is exempt from regulation under the Atomic Energy Act. Tenant shall not, under any circumstances, use, own, possess, or allow the presence of special nuclear material on the Leased Premises.

13.19. Improvements and Environmental Cleanup. Tenant further agrees that it shall give Government prior written notice accompanied by a detailed written description of all proposals for any Improvements that may impede or impair any activities under the ERP, or the FFA if applicable, or that will be undertaken in certain areas of the Leased Premises identified as "Areas of Special Notice" on Attachment \_\_\_ to this Lease. These Areas of Special Notice consist of either "Operable Units" (as defined in the National Contingency Plan) or other areas of concern because of the potential for environmental contamination and include buffer areas as shown on Attachment \_\_\_. The notice and accompanying written description of those proposals shall be delivered to Government sixty (60) days in advance of the commencement of any Improvements. In addition, Improvements shall not commence until Tenant has complied with the provisions of Paragraph 8. The detailed written description must include the effect that planned Improvements may have on site soil and groundwater conditions and the cleanup efforts contemplated under the ERP and the FFA, if applicable. Notwithstanding the preceding three sentences, Tenant shall be under no obligation to give advance written notice of any Improvements that will be undertaken totally within any structure located on the Leased Premises, provided that the work will not impede or impair any activities under the ERP or the FFA, if applicable. However, any work below the floor of any structure within any Area of Special Notice that will involve excavating in and/or disturbing concrete flooring, soil and/or groundwater, or will impede or impair any activities under the ERP or the FFA, if applicable, will be subject to the sixty (60) day notice requirement imposed by this Paragraph 13.19.

13.20. FFA [IF APPLICABLE]. Government acknowledges that the installation has been identified as a National Priorities List Site under CERCLA. Tenant acknowledges that Government has delivered to it a copy of the FFA entered into by EPA, the state, and the Navy, and will deliver to Tenant a copy of any amendments to it. Tenant agrees that should any conflict arise between the terms of such agreement as it presently exists or may be amended ("FFA," "Interagency Agreement" or "IAG") and the provisions of this Lease, the terms of the FFA will take precedence. Tenant further agrees that notwithstanding any other provision of this Lease, Government assumes no liability to Tenant should implementation of the FFA interfere with Tenant's use of the Leased Premises. Tenant shall have no claim on account of any interference against The United States or any of its officers, agent, employees, or contractors, other than for abatement of rent.

13.21. Environmental Access. Government, EPA, and the state and their respective officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to Tenant to enter upon the Leased Premises for the purposes enumerated in this subparagraph, and for other purposes consistent with any provision of the FFA, if applicable:

13.21.1. To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the ERP or the FFA, if applicable;

13.21.2. To inspect field activities of Government and its contractors and subcontractors in implementing the ERP or the FFA, if applicable;

13.21.3. To conduct any test or survey required by the EPA or the state relating to the implementation of the FFA, if applicable, or environmental conditions at the Leased Premises or to verify any data submitted to the EPA or state by Government relating to those conditions;

13.21.4. To conduct, operate, maintain, or undertake any other response or remedial action as required or necessary under the ERP or the FFA, if applicable, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

13.21.5. To monitor any environmental restrictive use covenants and the effectiveness of any other land use or institutional control established by the Navy on the Leased Premises, either by itself, by its contractor, by any public entity, including the state, or by a private entity registered in the state to monitor environmental covenants.

#### **14. TERMINATION.**

14.1. Termination by Government. Government shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by Tenant of any of the terms and conditions of this Lease (upon \_\_\_ days notice to Tenant—OPTIONAL): (**NOTE:** Determined on a case-by-case basis up to 90 days at Navy discretion, but 180 days' notice is required under DoD Financial Management Regulation if this Lease is made to a bank or credit union).

14.2. National Emergency. In the event of a national emergency declared by the president or the congress, Government may terminate this Lease immediately, without notice to Tenant.

14.3 Breach of Terms By Tenant. In the event of breach by Tenant of any of the terms, conditions, or obligations of this Lease, Government shall have the right to terminate for breach or offer a period for cure. Unless Government determines that immediate notice of termination, or a shorter period of time for cure, is required for safety, environmental, operational, or security purposes, Tenant shall be afforded thirty (30) calendar days from the receipt of Government's notice of intent to terminate to complete the performance of the obligation or otherwise cure the breach and avoid notice of termination of this Lease. Government may grant a reasonable extension of time to complete the cure. In the event that Government shall elect to terminate this Lease on account of the breach by Tenant Government will issue a notice of termination, and Government shall be entitled to recover, and Tenant shall pay to Government:

14.3.1. The reasonable costs incurred in resuming possession of the Leased Premises;

14.3.2. The reasonable costs incurred in performing any outstanding obligation on the part of Tenant existing prior to or upon termination ;

14.3.3.) An amount equal to the aggregate of any maintenance obligations, and charges assumed under this Lease and not paid or satisfied, with amounts being due and payable at the time when those obligations and charges would have accrued or become due and payable if this Lease had not been terminated, provided, however, that charges denominated as "rent" under Paragraph 3 shall not accrue beyond 60 days after the later of (a) the date the Leased Premises are vacated by Tenant and restored to their original condition, or (b) the date of issuance of notice of termination.

14.3.4. In the event that a notice of termination for breach is disputed and it is later determined that Tenant was not in breach or that the breach was excusable, the notice of termination shall be effective as a notice of termination under Paragraph 14.1 and the rights and obligations of the parties shall be the same as if the termination had been issued upon any required notice in accordance with Paragraph 14.1.

14.4. Sale or Transfer of the Property. If Government elects to sell or transfer title to the Leased Premises during the term of this Lease, Government may terminate this Lease upon ninety (90) days' written notice to Tenant, except if Tenant is bank or credit union, in which event Government will give 180 days' written notice.

14.5. Federal Requirement. In the event all or any part of the Leased Premises is required for Federal use, or if Tenant's use of it is not consistent with Federal program purposes, Government may terminate the Lease, or any needed part of the Leased Premises, if it is practical to terminate a part, upon ninety (90) days' written notice to Tenant.

14.6. Termination by Tenant. Tenant may terminate this Lease at any time upon sixty (60) days written notice to the RECO.

#### **15. INDEMNIFICATION.**

15.1. **Tenant shall indemnify and save Government harmless from, and shall defend Government against, and shall pay, all costs (including the costs of experts and investigators), expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability, and causes of action of every nature arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by Tenant, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands, and causes of action of every nature that may be made upon, sustained, or incurred by Government by reason of any breach, violation, omission, or non-performance of any term, covenant, or condition of this**

**Lease on the part of Tenant, its employees, servants, agents, guests, invitees, or contractors. This indemnification also applies to claims arising out of the furnishing of any utilities or services by Government or any interruption or failure occasioned by the negligence or lack of diligence of Tenant or its respective officers, agents, servants, or employees. However, this indemnity shall not extend to damages due to the sole fault of Government or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.**

15.2. Tenant releases the Government and its employees from death or injury to persons caused by water, ice, snow, sleet, frost, steam, hail, wind, cold, dampness, electricity, rust, falling plaster or other materials, fire, explosion, sewer or sewage, gas, vapors, odors, aircraft noise, toxic or hazardous wastes, substances, or materials, the bursting or leaking of pipes or plumbing, or faulty wiring, or by any equipment or fixtures, or any act of God, or objects of any nature moved or propelled by water, ice, snow, sleet, steam, hail, or wind, at the Leased Premises, unless caused by the willful act or gross negligence of the Government.

## **16. INSURANCE.**

16.1. Tenant shall, without prejudice to any other rights of Government, bear all risk of loss or damage or destruction to the Leased Premises, including any buildings, improvements, fixtures, or other property on it, arising from any causes whatsoever, with or without fault by Government. During the entire period this Lease shall be in effect, Tenant, at no expense to Government, agrees to carry and maintain in effect at all times during the term of this Lease the following insurance coverages:

16.1.1. Property insurance coverage against loss or damage by perils covered by Insurance Services Office ("ISO") special cause of loss form or its equivalent in an amount not less than One Hundred Percent (100%) of the full replacement cost of the buildings, building improvements, improvements to the land, fixtures, and personal property on the Leased Premises. The policies of insurance carried in accordance with this condition shall contain a "Replacement Cost Endorsement." The full replacement cost shall be determined every five years, except in the event of substantial changes or alterations to the Leased Premises undertaken by Tenant as permitted under the provisions of this Lease.

16.1.2. If the Leased Premises are located in a state, or an area of a state, which is prone to suffer property loss and damage from earthquake, flood, windstorm, or rainstorm, and if required by Government, a special risks or perils endorsement from a commercial insurer or from a state or Federal program, in amounts and with limitations and deductibles satisfactory to Government.

16.1.3. Commercial general liability insurance using the most recent occurrence form or its equivalent, covering bodily injury, premises, operations, products, completed operations, and independent contractors and for the contractual liability assumed by Tenant under Paragraph 15, and shall afford immediate protection at the time that the term of this Lease begins, and at all times during the term of this Lease, with single limit bodily injury coverage of \$\_\_ million each occurrence, with single-limit property damage in the amount of \$\_\_ each occurrence, and with single-limit fire/legal liability coverage in the amount of \$\_\_ million each occurrence. The value of the structure for fire coverage will be determined every five years.

16.1.4. If Tenant owns or leases business vehicles that will be operating on, to, or from the Leased Premises or military land, those vehicles must be registered and insured in accordance with installation requirements

16.1.5. If and to the extent required by law, workers' compensation and employer's liability or similar insurance in form and amounts required by law.

16.1.6. If there is an airport operator on the Leased Premises, airport operator's liability insurance, including, but not limited to, insurance against contractual liability assumed under this Lease by Tenant, regarding claims or causes of action arising in connection with use of the Leased Premises and its improvements as an airfield or airport, affording protection with limits of liability of \$\_\_ million.

16.2. During the entire period this Lease shall be in effect, Tenant shall either carry and maintain the insurance required below at its expense, or require any contractor performing work on the Leased Premises to carry and maintain the following at no expense to Government:

16.2.1. The property insurance coverage required under subparagraph 16.1 above, which shall include the general property form that provides coverage in connection with any construction or work permitted under this Lease.

16.2.2. Fire and any other applicable insurance provided for in this Paragraph 16, which, if not then



covered under the provisions of existing policies, shall be covered by special endorsement related to any Improvements (as defined in Paragraph 8), including all materials and equipment incorporated in, on, or about the Leased Premises (including excavations, foundations, and footings) under an ISO special cause-of-loss, completed value, builder's risk form or its equivalent; and

16.2.3. Workers' compensation for Tenant and any contractor of Tenant.

16.3. All policies of insurance that this Lease requires Tenant or any contractor to purchase and maintain, or cause to be purchased and maintained under this Paragraph, shall be underwritten by insurers authorized to underwrite insurance in the state where the Leased Premises are located, and that have a rating of at least B+ by the most recent edition of *Best's Key Rating Guide*. In all policies, Government shall be named as additional insured and loss payee for its interest in, but not limited to, the Leased Premises and any personal property included with the Leased Premises (under ISO forms CG 2011 and CG 2028 or their equivalents). Government shall appear in all policies as "The United States of America, c/o (FEC Commander/address), and payments for losses shall be made to "Treasurer of the United States." All policies shall state (a) that no cancellation, reduction in amount, or material change in coverage shall be effective until at least sixty (60) days after receipt by Government of written notice; (b) that the insurer shall have no right of subrogation against Government; and (c) shall be reasonably satisfactory to Government in all other respects, including, without limitation, the amounts of coverages and deductibles from time to time. In no circumstances will Tenant be entitled to assign to any third party rights of action that Tenant may have against Government. Notwithstanding the foregoing, any cancellation of insurance coverage based on nonpayment of the premium shall be effective only upon thirty (30) days' written notice to Government. Tenant understands and agrees that cancellation of any insurance coverage required to be carried and maintained by it or contractor under this Paragraph 16 will constitute a failure to comply with the terms of this Lease, and Government shall have the right to terminate this Lease upon receipt of any cancellation notice, but only if Tenant fails to cure noncompliance to the extent allowed under Paragraph 14.

16.4. Tenant shall deliver, or cause to be delivered upon execution of this Lease and PRIOR TO ENTRY on or occupancy of the Leased Premises or the commencement of any Improvements (and thereafter not less than thirty (30) days prior to the expiration date of each policy furnished under this Paragraph 16), to Government a certificate or certificates of insurance evidencing the coverages and deductibles required by this Paragraph 16.

16.5. In the event that any item or part of the Leased Premises shall be damaged or destroyed, the risk of which is assumed by Tenant under Paragraph 16.1, Tenant shall promptly give notice to Government. Tenant shall, as soon as practicable after the casualty, restore damaged or destroyed property as nearly as possible to the condition that existed immediately prior to the loss or damage, subject to Paragraphs 8 and 34. All repair and restoration work under this Paragraph shall comply with the provisions of this Lease, including any notice and approval requirements.

16.6. Notwithstanding any other provision of this Lease, Tenant may, with the prior consent of the RECO, self-insure any risk for which insurance coverage is required under this Lease; provided, however, that if Tenant's statutory limits of liability or other impediments to the assumption of liability are less than the limits of insurance required in this Lease, Tenant shall obtain commercial coverage that is sufficient in amount and nature to satisfy the insurance requirements of this Lease when added to any self-insurance. In order to obtain the consent of Government to self-insure, Tenant shall deliver to Government a writing setting forth the limitations and impediments, if any, to which Tenant's self-insurance is subject, Tenant's source of funds to pay any claim from any risk for which insurance is required under this Lease (including its most recent audited financial statement), and any other information that Government may require to assess Tenant's request. If commercial insurance is required for any purpose, the provisions of Paragraph 16.1.3 shall apply; however, the total amount of commercial insurance and self-insurance shall meet the dollar limitations contained in this Paragraph 16.

**16.7. If Government at any time believes that the limits or extent of coverage or deductibles for any of the insurance required in this Lease are insufficient, it may determine the proper and reasonable limits and extent of coverage and deductibles and deliver notice of that coverage or deductibles to Tenant. Tenant shall thereafter carry insurance with the limits and extent of coverage and deductibles as determined by Government until further change.**

## **17. LABOR PROVISIONS.**

17.1. Equal Opportunity. During the term of this Lease, Tenant and each subtenant agree as follows with regard to all employees located at, or involved with, the Leased Premises:

17.1.1. Tenant and each subtenant shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. Tenant and each subtenant

shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. That action shall include, but not be limited to, employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. Tenant and each subtenant agree to post in conspicuous places available to employees and applicants for employment notices furnished by Government containing the provisions of this nondiscrimination clause.

17.1.2. Tenant and each subtenant shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of Tenant and each subtenant, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

17.1.3. Tenant and each subtenant shall send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding a notice to be provided by Government, advising the labor union or worker's representative of commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

17.1.4. Tenant and each subtenant shall comply with all provisions of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967 (the "Executive Order"), and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

17.1.5. Tenant and each subtenant shall furnish all information and reports required by the Executive Order, and by the rules, regulations, and orders of the Secretary of Labor or pursuant to it, and will permit access to its books, records, and accounts by Government and the Secretary of Labor for purposes of ascertaining compliance with those rules, regulations, and orders.

17.1.6. In the event of Tenant's or any subtenant's noncompliance with this Equal Opportunity clause or with any of the applicable rules, regulations, or orders, this Lease or any sublease may be canceled, terminated, or suspended in whole or in part and Tenant or any subtenant may be declared ineligible for further Government contracts in accordance with procedures authorized in the Executive Order, and other sanctions may be imposed and remedies invoked, all as contained in the Executive Order, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

17.1.7. Tenant shall include the provisions in Paragraph 17.1 in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued under section 204 of the Executive Order, so that those provisions will be binding upon each subtenant. Tenant will take whatever action against any subtenant that Government may direct as a means of enforcing those provisions, including sanctions for noncompliance. However, in the event Tenant becomes involved in, or is threatened with, litigation with a subtenant as a result of the direction by Government, Tenant may request Government to join the litigation to protect the interests of Government.

17.2. Contract Working Hours and Safety Standards Act (40 U.S.C. §§ 327-330) (the "Act"). This Lease and each sublease, to the extent that it is a contract of a character specified in the Act and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §§ 35-45) or the Davis-Bacon Act (40 U.S.C. §§ 3141-3148), is subject to the following provisions and exceptions of the Act and to all other sections and exceptions of that law as they apply to employment at the Leased Premises:

17.2.1. Tenant and each subtenant shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours on work subject to the contents provisions of the Act unless the laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for those excess hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of affording fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

17.2.2. In the event of any violation of the preceding sub-paragraph, Tenant or subtenant shall be liable to any affected employee for any amounts due, and to Government for liquidated damages. The liquidated damages shall be computed for each individual laborer or mechanic employed in violation of Paragraph 17.2.1 above, in the sum of \$200 for each calendar day on which the employee was required or permitted to be employed in excess of the standard workweek of 40 hours without payment of the required overtime wages.

17.3. Convict Labor. In connection with the performance of work required by this Lease or any sublease, Tenant or any subtenant agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

**17.4 Davis-Bacon Act. All construction workers, laborers, and mechanics employed by Tenant or Tenant's contractor(s), and each of its subcontractors and sub-subcontractors, who perform work under**

Paragraph 8, or in-kind work under Paragraph 3.1, are covered by the Davis-Bacon Act, as amended, 40 U.S.C. §§ 3141-3148, and the implementing regulation at, 29 C.F.R. pt. 5, (together, the "Davis-Bacon Act"), and shall be paid wages and rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act. To the extent that there is not a prevailing wage for a particular labor category and the Davis-Bacon Act permits a negotiated wage to be paid, the negotiated wage may be paid. Tenant shall cause its general contractor(s) to comply and assure compliance by its subcontractors and sub-subcontractors.

**18. NOTICES.** Notices shall be sufficient under this Lease if made in writing and submitted in the case of Tenant to:

\_\_\_\_\_ street  
address, telephone, and point of contact for Tenant

\_\_\_\_\_ title, address, and Fax number for Government

Those persons shall serve as the representatives of the Parties and the points of contact during the term of this Lease. Any notice shall be deemed to have been given, unless delivered personally, when deposited in the U.S. mail, postage pre-paid, certified mail, return receipt requested and addressed as set forth above or to another address that Tenant or Government shall have stated to the other by like notice, or upon confirmation of receipt if sent by telefacsimile on a regular business day and addressed as set forth above, or within twenty-four (24) hours, or the next business day if sent by a recognized overnight delivery service.

**19. AUDIT.** This Lease and any sublease shall be subject to audit by any cognizant Government agency. Tenant and each subtenant shall make available to those agencies for use in those audits all records that it maintains that are related this Lease or any sublease and copies of all reports required to be filed under this Lease.

**20. INTEREST.** Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by Tenant to Government under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury under the Debt Collection Act of 1982( 31 U.S.C. § 3717). Amounts shall be due upon the earliest of (a) the date fixed by this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by Government to Tenant of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this Lease allows for revision of prices, the date of written notice to Tenant stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

**21. AGREEMENT.** This Lease shall not be modified except in a single writing that is signed by both Tenant and Government. No oral statements or representation made by, or for, on behalf of either Tenant or Government shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment to it , or any other agreement between Government and Tenant, the provisions of this Lease shall take precedence.

**22. FAILURE TO INSIST ON COMPLIANCE.** The failure of Government to insist in any one or more instances upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of Government's right to the future performance of any of those terms, covenants, or conditions and Tenant's obligations for their future performance shall continue in full force and effect.

**23. DISPUTES.**

23.1. This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. §§ 7101-7112)(the " Disputes Act").

23.2. Except as provided in the Disputes Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Disputes Act.

23.3. "Claim", as used in this clause, means a written demand or written assertion by Tenant or Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or 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 includes the relief sought by the claimant. However, a written demand or written assertion by Tenant seeking the payment of money exceeding \$100,000 is not a claim under the Disputes Act until certified as required by Paragraph 23.4.2. A voucher, invoice, or other routine request for payment that is not in dispute is not a claim under the Disputes Act. The request may be converted to a claim under the Disputes Act by complying with the submission and certification requirements of this clause, if it is disputed either for liability or amount or is not acted upon in a reasonable time.

23.4.1. A claim by Tenant shall be made in writing and submitted within six (6) years after accrual of the claim to Government (or specify to whom the claim should be sent), for a written decision. A claim by Government against Tenant shall be subject to a written decision by Government (specify who will make the decision).

23.4.2. Tenant shall deliver the certification stated in Paragraph 23.4.2.2.2 when submitting any claim:

23.4.2.1. Exceeding \$100,000; or

23.4.2.2. Regardless of the amount claimed, when using:

23.4.2.2.1. Arbitration conducted pursuant to 5 U.S.C. §§ 575-580; or

23.4.2.2.2. Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

"I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of Tenant's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which Tenant believes the Government is liable; and that I am duly authorized to certify the claim on behalf of Tenant."

23.4.3. The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

23.4.4. The certification may be executed by any person duly authorized to bind Tenant for the claim.

23.5. For Tenant claims of \$100,000 or less, the \_\_\_\_\_ must, if requested in writing by Tenant, render a decision within sixty (60) days of the request. For Tenant-certified claims over \$100,000, the \_\_\_\_\_ must, within sixty (60) days decide the claim or notify Tenant of the date by which the decision will be made.

23.5.1. The decision of the \_\_\_\_\_ shall be final unless Tenant appeals or files a suit as outlined in the Disputes Act.

23.6. At the time a claim by Tenant is submitted to the (specify), or a claim by Government is presented to Tenant, the Parties may agree to use alternative means of dispute resolution. When using arbitration conducted under 5 U.S.C. §§ 575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 23.4.2.2.2. and executed in accordance with Paragraph 23.4.4.

23.7. Government shall pay interest on the amount found due and unpaid by it from (1) the date the (specify) 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. With regard to claims having defective certifications, as defined in the Federal Acquisition Regulation (48 C.F.R. § 33.201), interest shall be paid from the date that the (specify) initially receives the claim. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as stated in the Disputes Act, which is applicable to the period during which the (specify) receives the claim and then at the rate applicable for each six (6) month period as fixed by the Secretary of the Treasury during the pendency of the claim.

23.8. Notwithstanding anything in this Paragraph, Tenant shall proceed diligently with the performance of this Lease pending final resolution of any request for relief, claim, appeal, or action arising under this Lease, and comply with any decision of the \_\_\_\_\_.

**24. COVENANT AGAINST CONTINGENT FEES.** Tenant warrants that no person or agency has been employed or retained to solicit or obtain this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or bona fide established commercial agencies maintained by Tenant for the purpose of obtaining business. For breach or violation of this warranty, Government shall have the right to annul this Lease without liability or in its discretion to require Tenant to pay, in addition to the rent or consideration, the full amount of the commission, percentage, brokerage, or contingent fee.

**25. LIENS.** Tenant and each subtenant shall promptly discharge, or cause to be discharged, a valid lien, right *in rem*, claim, or demand of any kind, except one in favor of Government that at any time may arise or exist regarding the Leased Premises or materials or equipment furnished to it, or work done on it, or to any part of it, by Tenant's or any subtenant's use of the Leased Premises. If the lien, right, claim, or demand shall not be promptly discharged by Tenant or any subtenant, or should a petition be filed by or against Tenant or any subtenant in bankruptcy, or should Tenant or any subtenant file for liquidation or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, Government reserves the right to take immediate possession without any liability to Tenant or any subtenant. Tenant and any subtenant shall be responsible for any costs incurred by Government in obtaining clear title to its property due to their acts or omissions clouding the title.

**26. TAXES.** Tenant shall pay to the proper authority when and as the same become due and payable all taxes, assessments, and similar charges that, at any time during the term of this Lease may be imposed on the Leased Premises. 10 U.S.C. § 2667(f) contains the consent of Congress to the taxation of Tenant's interest in the Leased Premises, whether or not the Leased Premises are in an area of exclusive Federal jurisdiction. Should Congress consent to taxation of Government's interest in the Leased Premises, this Lease will be renegotiated.

**27. SUBJECT TO EXISTING AND FUTURE EASEMENTS.** This Lease, and each sublease, is subject to all outstanding easements and rights in the nature of an easement (collectively, "easements") for the location of any type of facility over, across, in, and upon all or any part of the Leased Premises, and to the right of Government to grant additional easements over, across, in and upon the Leased Premises for the public interest. However, Government shall coordinate with Tenant to minimize any impact to Tenant's operations, and any additional easement shall be conditioned on the assumption by its grantee of liability to Tenant for damages that Tenant shall suffer for property destroyed or rendered unusable on account of the grantee's exercise of its easement rights. There is hereby reserved to the holders of outstanding easements or which may be granted later, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the easement area, and to any Federal, state, or local official engaged in the official inspection of that work, reasonable rights of ingress and egress over the Leased Premises that may be necessary for the performance of their duties with regard to those facilities, subject to Paragraph 9.

**28. INGRESS, EGRESS, PARKING AND SECURITY.**

28.1. Tenant and any subtenants, and their employees, vendors, and invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, Tenant and subtenants, and their employees, vendors, and invitees, agree to adhere to all base rules and regulations regarding installation security, ingress, egress, safety and sanitation that may be prescribed from time to time by the Commander/Commanding Officer. Tenant and any subtenant and their employees, vendors, and business invitees, shall coordinate parking with the appropriate office of the installation. Tenant and its invitees and contractors agree to absorb all costs, including time and expense, associated with gaining access to the installation under the RAPIDGATE or similar program.

28.2. Installation Security. The Leased Premises is located on a secure Navy installation and Tenant and any subtenant(s) are required to comply with all applicable security rules, regulations, and procedures issued by the installation Commander/Commanding Officer. All employees of Tenant or subtenant(s) that are required by the installation to do so, shall obtain a security clearance to access the Leased Premises. Failure to obtain the required security clearance shall result in denial of access to the Leased Premises of Tenant's or subtenant's employees. **Tenant and any subtenant(s) agree(s) to hold harmless Government from any liability of any nature for financial or other losses incurred by Tenant or any subtenants(s) by reason of Tenant's or any subtenant's employees failure to obtain security clearance for access to the Leased Premises.** The prior sentence shall survive the termination of this Lease.

**29. ADMINISTRATION.** Except as otherwise stated in this Lease, the RECO shall have complete charge of the administration of this Lease, including granting any consents and approvals hereunder it, and shall exercise full supervision and general direction insofar as the interests of Government are affected.

**30. DAMAGE TO THE LEASED PREMISES.** In the event all or any part of the Leased Premises is damaged either directly or indirectly as a result of Tenant's use or occupancy, whether during the construction, operation, maintenance, or replacement, or removal of improvements or otherwise, due to acts or omissions of Tenant, its agents, contractors, or employees, Tenant shall, upon demand, either compensate Government for the loss or damage, or rebuild, replace, or repair the item or items of the Leased Premises or facilities so lost or damaged, as Government may elect.

**31. APPLICABLE RULES AND REGULATIONS.**

31.1. Tenant and any subtenant shall comply with all Federal, state, and local laws, regulations, ordinances and restrictions that are applicable, or may become applicable, to Tenant's or subtenant's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. Tenant and any subtenant is responsible for obtaining and paying for permits required for its operations under this Lease.

31.2. Further, all activities authorized under this Lease shall be subject to rules, regulations, and procedures regarding installation security, supervision, or otherwise, that may, from time to time, be prescribed by the installation Commander/Commanding Officer.

**32. SUBCONTRACTORS AND AGENTS FOR TENANT.** All Work involving Tenant facilities must be performed by skilled tradesmen who are accomplished at their craft and bonded against loss due to damages resulting directly or indirectly from work performed.

**33. SURRENDER.** Upon the expiration of this Lease or its prior termination, and subject to the election of Government under Paragraph 8, Tenant shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender possession to Government. However, in the event Government shall terminate this Lease upon less than thirty (30) days notice, Tenant shall be allowed a reasonable period of time, as determined by the RECO, but in no event less than thirty (30) days from receipt of notice of termination, in which to remove all of personal property from, and terminate its operations on, the Leased Premises. During the period prior to surrender, all obligations assumed by Tenant under this Lease shall remain in full force and effect; provided, however, that if Government shall in its sole discretion, determine that any action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent, if any, or maximum amount to be expended between the date of termination of this Lease and the date of final surrender of the Leased Premises. Government may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination as abandoned upon an additional ninety (90) days notice.

**34. RECORDING.** If a statutory short form or memorandum of this Lease is required to be recorded, Tenant shall cause it to be prepared and recorded at its expense. In no event shall Tenant cause this entire Lease to be recorded, and a recordation of this entire Lease by Tenant shall constitute a breach of this Lease.

**35. FEDERAL FUNDS.** This Lease does not obligate any appropriated funds.

**36. HEADINGS.** The headings of paragraphs in this Lease are used solely for ease of reference. They may not be used to construe the meaning of all or any part of a paragraph.

**37. ATTACHMENTS.** Attachments to this Lease are set forth below:

- A. The Leased Premises
- B. Joint Inspection and Inventory Report
- C. Environmental Condition of Property Document
- D. Hazardous Materials List
- E. Other

*IN WITNESS WHEREOF*, the Parties have, on the respective dates set forth below, duly executed this Lease as of the day and year first above written.

(UNLESS THIS LEASE IS BEING USED AS SECURITY FOR FINANCING, IT SHOULD NOT BE ACKNOWLEDGED, BUT EVEN IN THAT EVENT, **ONLY** THE JURISDICTIONAL FORM OF SHORT FORM OR MEMORANDUM OF LEASE SHOULD BE PREPARED AND ACKNOWLEDGED FOR RECORDING. THE ENTIRE LEASE SHOULD **NEVER** BE RECORDED.)

**GOVERNMENT**

The United States of America  
By the Secretary of the Navy

Date: \_\_\_\_\_

By \_\_\_\_\_  
(typed name and title)  
Real Estate Contracting Officer

**TENANT**

Date: \_\_\_\_\_

(CHOICE OF EXECUTION BLOCKS FOR TENANT)

**Individual**

\_\_\_\_\_ (seal)\*  
Mary E. Jones

\*Not all states require this word. In older eastern states, the word signifies that one's signature is her/his "seal," in effect replacing the old English actual wax seal (ring impressed into wax) that all landowners had and placed on a document to evidence their execution. Thus the phrase "signed, sealed, and delivered."

An individual does not sign legal documents using a registered fictitious name, such as "Francis J. Clifford, dba Cloverleaf Equipment," but simply as "Francis Clifford." The purpose of the registration is to let those who do business with Cloverleaf Equipment know that it is only a trade name and behind it is the individual, who is the legally responsible party. In other words, it authorizes an individual, or other legal entity, to carry on business under that name, to place the name on signs, advertising material, checks, letterhead, etc. Professional designations are never used in legal documents for identity or signature, hence, not Dr. Melissa Jones, or Melissa Jones, M.D., but simply Melissa Jones.

**Corporation** (Large Private)

Intel Corporation

By: \_\_\_\_\_  
James E. Jones  
Vice President of Real Estate

Attest: \_\_\_\_\_  
Bonita L. Longo  
Assistant Secretary

The attestation is usually the corporate secretary or assistant secretary. The officer's title performing corporate secretarial duties may be different in a few states.

**FOR A CORPORATION, CERTIFICATION BY SECRETARY OR ASSISTANT SECRETARY (OR SIMILAR OFFICE)**

I certify that the person who signed this Lease on behalf of Tenant was then the duly elected or appointed officer indicated, and this Lease was duly signed for and on behalf of Tenant by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

**Corporation** (Small Private)

Looney Laka-Hai'a, Inc.

By: \_\_\_\_\_  
Suzie K. Clotama  
Sole Officer and Stockholder

**General Partnership**

Has two or more partners. Unless the partnership agreement specifies otherwise, the partners are jointly and severally liable (one can be held liable for the acts of the other partners) for the acts and obligations of the partnership.

At least TWO partners must sign docs **unless a fully executed copy of the partnership agreement is presented indicating that only one partner can bind the partnership.**

Arndt Developers,  
a Maryland General Partnership

By: \_\_\_\_\_  
Mary Arndt  
General Partner

\* A general partnership can also have as its general partner a corporation, another general partnership, a limited partnership, or a limited liability company. (Limited partnerships execute documents through their general partner.)

Arndt Developers,  
a Maryland General Partnership,  
by Cloverleaf, Inc., a Georgia corporation,  
its General Partner

By: \_\_\_\_\_  
Stephen Matteo  
President (i.e., president of Cloverleaf, Inc.)

Attest: \_\_\_\_\_  
Arne T. Blowhard  
Secretary

Arndt Developers,  
a Maryland General Partnership  
by Johnson Limited Partnership,  
its General Partner

By: \_\_\_\_\_  
Johnson J. Johnson  
General Partner

### **Limited Partnership**

Has a least one, and most frequently only one, general partner, and one or more limited partners. (The general partner may also be a corporation, another general partnership, or a limited liability company.) The general partner is liable for the acts and obligations of the limited partnership, but the limited partners are not.

If there is more than one individual general partner, both must sign.

If there is only one individual general partner, he/she must present an affidavit stating that he/she is the sole general partner authorized to bind the partnership. (An affidavit is notarized.)

If the general partner is a corporation, another general partnership, or a limited liability company, then follow the requirement for signatures for that entity.

Investment Associates  
A Maryland Limited Partnership

By: \_\_\_\_\_  
Audrey A. Askew, General Partner

January Investors  
A Texas Limited Partnership  
By Tulsa Dealers, Inc.  
An Oklahoma Corporation  
Its General Partner

By: \_\_\_\_\_  
Margaret M. Meade  
President (i.e., president of the corporation, Tulsa Dealers, Inc.)

Attest: \_\_\_\_\_  
Thomas T. Tucker  
Secretary



## **Limited Liability Company**

A hybrid legal entity having characteristics of both a corporation and a partnership. Like a corporation, the members enjoy protection against personal liability, while at the same time being owners free of the legalities (including taxation) involving stock holders. The LLC follows the terms of an operating agreement. Most commonly, a “managing member” is appointed to run the daily affairs, but only the operating agreement states who can usually bind the LLC.

The managing member must present an affidavit that he/she alone is authorized to bind the LLC. If there are co-managing members, all must sign the documents and the affidavit

Matteo-Clifford Company, LL.C.\*  
a Virginia Limited Liability Company

By: \_\_\_\_\_  
Stephen Matteo  
Managing Member

\* Be careful to note whether periods are used with the letters in that state.

## **CONCURRENCE**

---

**COMMANDING OFFICER**  
**(STATION NAME)**

DEPARTMENT OF THE NAVY  
GENERAL PURPOSE LEASE FOR TELECOMMUNICATION SYSTEMS  
TABLE OF CONTENTS

All correspondence in connection with  
this contract should include reference  
to (Contract No.) \_\_\_\_\_,  
Installation Name \_\_\_\_\_,  
UIC \_\_\_\_\_.

<u>PARAGRAPH</u>	<u>PAGE</u>
PREAMBLE.....	3
1. LEASED PREMISES.....	4
2. USE OF LEASED PREMISES.....	4
3. TERM.....	4
4. CONSIDERATION.....	5
5. RESERVATION OF GOVERNMENT SPACE ON TOWER.....	5
6. DEMOLITION AND REMOVAL OF EXISTING GOVERNMENT TOWER.....	5
7. ASSIGNMENTS AND SUBLEASING.....	5
8. INSURANCE.....	7
9. RESTORATION BOND OR SECURITY.....	8
10. TOWER SPECIFICATIONS AND DRAWINGS.....	8
11. JOINT INSPECTION AND INVENTORY REPORT (NON-ENVIRONMENTAL).....	8
12. ENVIRONMENTAL CONDITION OF PROPERTY.....	9
13. ALTERATIONS/RESTORATION.....	9
14. ACCESS BY GOVERNMENT.....	10
15. UTILITIES AND SERVICES.....	10
16. NONINTERFERENCE WITH GOVERNMENT OPERATIONS.....	11
17. PROTECTION AND MAINTENANCE OF LEASED PREMISES.....	11
18. ENVIRONMENTAL PROTECTION PROVISIONS.....	12
19. TERMINATION.....	14
20. INDEMNIFICATION.....	15
21. LABOR PROVISIONS.....	15
22. SUBMISSION OF NOTICES.....	17
23. AUDIT.....	18
24. INTEREST.....	18
25. AGREEMENT.....	18
26. FAILURE TO INSIST ON COMPLIANCE.....	19
27. DISPUTES.....	19

**GENERAL PURPOSE LEASE FOR TELECOMMUNICATION SYSTEMS**  
**TABLE OF CONTENTS (CONTINUED)**

All correspondence in connection with  
this contract should include reference  
to (Contract No.) \_\_\_\_\_,  
Installation Name \_\_\_\_\_,  
UIC \_\_\_\_\_.

<u>PARAGRAPH</u>	<u>PAGE</u>
28. COVENANT AGAINST CONTINGENT FEES.....	20
29. LIENS.....	21
30. TAXES.....	21
31. SUBJECT TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY.....	21
32. INGRESS, EGRESS, PARKING AND SECURITY.....	21
33. ADMINISTRATION.....	22
34. DAMAGE TO THE LEASED PREMISES.....	22
35. APPLICABLE RULES AND REGULATIONS.....	22
36. SUBCONTRACTORS AND AGENTS FOR LESSEE.....	23
37. SURRENDER.....	23
38. PROPERTY CONDITION.....	23
39. FREQUENCY INTERFERENCE (RFI).....	24
40. COORDINATION AND CONNECTIONS FOR ANTENNA(S) AND RELATED EQUIPMENT.....	24
41. REMOVAL AND RESTORATION OF THE PREMISES.....	25
42. COMPLIANCE.....	26
43. ADDITIONAL COMPENSATION.....	26
44. EQUIPMENT.....	26
45. SECURITY CLEARANCES.....	26

Attachments

- Attachment A - Leased Premises Description
- Attachment B - Tower Site Plan and SPAWAR Approval
- Attachment C - Joint Inspection and Inventory Report
- Attachment D - Environmental Condition of Property
- Attachment E - Hazardous Materials List

**DEPARTMENT OF THE NAVY  
GENERAL PURPOSE LEASE FOR TELECOMMUNICATION SYSTEMS**

All correspondence in connection with  
this contract should include reference  
to (Contract No.) \_\_\_\_\_,  
Installation Name \_\_\_\_\_,  
UIC \_\_\_\_\_.

**LEASE  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND**

---

THIS LEASE, executed this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by and between THE UNITED STATES OF AMERICA, acting by and through the Secretary of the Navy (the “GOVERNMENT”), and, \_\_\_\_\_ (the “LESSEE”).

**W I T N E S S E T H:**

**WHEREAS**, the Leased Premises covered by this Lease are under the control of the Department of the Navy; and

**WHEREAS**, the Leased Premises are not excess property as defined in section 3 of the Federal Property and Administrative Services Act of 1949, as amended, (40 U.S.C. §102); and

**WHEREAS**, the Secretary of the Navy, pursuant to the provisions of 10 U.S.C. §2667, has determined that the proposed use of the Leased Premises, subject to the terms and conditions of this Lease, will promote the national defense or be in the public interest.

**NOW THEREFORE**, in consideration of the terms, covenants, and conditions hereinafter set forth, GOVERNMENT and LESSEE hereby agree as follows:

**1. LEASED PREMISES.** GOVERNMENT does hereby lease, rent, and demise to LESSEE, and LESSEE does hereby hire and rent from the GOVERNMENT the Leased Premises, as more particularly described in **Attachment A** (The Leased Premises), attached hereto and made a part hereof, together with all improvements and all related Personal Property as described in **Attachment A**, and with all rights of access to the Leased Premises for ingress, egress, parking, and utilities as provided in accordance with Paragraphs 14 and 32 below.

**2. USE OF LEASED PREMISES.**

**A.** The Leased Premises will be used solely for the construction, installation, operation, maintenance, replacement, and removal of a tower, antenna(s), and communications equipment in conjunction with the LESSEE’s and/or SUBLESSEE’s primary business of mobile communications service, with no continuous occupancy by employees. The tower will accommodate lines and antennas of the LESSEE, reserved space for the GOVERNMENT, and at least three other subtenants. The LESSEE shall be responsible for all labor, materials, equipment and supplies and associated costs used in conjunction with the construction, installation, operation, and maintenance of the tower, antenna(s) and communications equipment. The LESSEE is required to complete the construction of the tower and install at least one active antenna within \_\_\_\_ calendar days of the Notice to Proceed upon execution of the Lease. The LESSEE is required to ensure that the tower has at least one active antenna during the entire term of the Lease. The LESSEE understands and acknowledges that this Lease is not and does not constitute a commitment by the GOVERNMENT with regard to any fee title conveyance of the Leased Premises, in whole or in part, to LESSEE or any agency or instrumentality thereof, or to any SUBLESSEE.

**B.** LESSEE shall not undertake any activity that may affect a historic or archeological property, including excavation, construction, alteration or repairs of the Leased Premises, without the approval of the GOVERNMENT and compliance with Section 106 of the National Historic Preservation Act, 16 U.S.C. §470, and the Archeological Resources Protection Act of 1979, 16 U.S.C. §470aa. Buried cultural materials may be present on the Leased Premises. If such materials are encountered, LESSEE shall stop work immediately and notify the GOVERNMENT.

The GOVERNMENT has no knowledge of any historical or archeological property on the Leased Premises; in the event that it becomes aware of such property, the GOVERNMENT will immediately notify the LESSEE.

3. **TERM.** The term of this Lease shall be for a period beginning on \_\_\_\_\_, 20\_\_ and ending on \_\_\_\_\_ 20\_\_, unless sooner terminated in accordance with the provisions of Paragraph 19, Termination.

The LESSEE may extend the term of this Lease for three (3) additional periods of five (5) years each by delivery to the GOVERNMENT of a written notice of its intention to extend no later than ninety (90) days prior to the expiration of the then current term; provided, no extension shall be granted which creates a total term in excess of twenty (20) years.

4. **CONSIDERATION.**

A. **Cash.** Beginning on the date that this Lease commences, LESSEE shall pay rent in the amount of:

<u>Term</u>	<u>Rent Rate Per Year</u>
Year 1	\$
Year 2	\$
Year 3	\$
Year 4	\$
Year 5	\$

Rent shall be paid annually in advance by check made payable to the United States Treasury, citing the Contract Number. The check shall be delivered to the following address:

Rent for each succeeding five (5) year period, shall be adjusted as based upon the GOVERNMENT's fair market rental value appraisal for the Leased Premises. The cost of the appraisal for each succeeding (5) year period shall be paid for by the LESSEE.

(In-Kind Consideration language from General Purpose Outlease may be used.)

B. **Reservation of Government Space on Tower.** See Paragraph 5 below. (May be removed if not applicable.)

C. **Demolition and Removal of Existing Government Tower.** See Paragraph 6 below. (May be removed if not applicable.)

D. **Portion of Proceeds from Sublease(s).** In accordance with Paragraph 7.G. below, the LESSEE will be required to pay a portion of proceeds from any subleased space. These proceeds shall be incorporated as part of the cash rent described in Paragraph 4.A. above.

5. **RESERVATION OF GOVERNMENT SPACE ON TOWER.** As part of consideration for the Lease, the tower to be constructed on the Leased Premises will include reserved space for use by the GOVERNMENT. GOVERNMENT reserved space will include (language may be revised as necessary) 20 linear feet of the tower height starting from 25 feet from the top of the tower. The LESSEE shall also reserve for location of GOVERNMENT equipment no more than (language may be revised as necessary) 15 feet x 15 feet of ground space on the Leased Premises to be located at a reasonable location from the tower. (May be removed if not applicable.)

6. **DEMOLITION AND REMOVAL OF EXISTING GOVERNMENT TOWER.** As part of consideration for the Lease, the LESSEE shall demolish and remove the existing GOVERNMENT tower located adjacent to the Leased Premises, and move any GOVERNMENT equipment on the existing GOVERNMENT tower to the new tower to be built as part of this Lease. The existing GOVERNMENT tower shall/shall not be demolished and removed before the new tower is ready for use. The LESSEE shall dispose of the GOVERNMENT tower at no cost to the GOVERNMENT. The GOVERNMENT shall approve the method of disposal before the tower is taken down. The demolition/removal and placement of GOVERNMENT equipment on the new tower will be subject to GOVERNMENT inspections, including a final inspection by the GOVERNMENT. (May be removed if not applicable.)

7. **ASSIGNMENTS AND SUBLEASING.**

A. LESSEE shall neither transfer, assign, or sublet this Lease or any interest therein or any property on the Leased Premises, or grant any interest, privilege or license whatsoever in connection with this Lease without the prior written consent of the GOVERNMENT. Such consent shall not be unreasonably withheld or delayed.

**B.** Any sublease granted by LESSEE shall contain a copy of this Lease as an attachment and be consistent with the terms and conditions of this Lease and shall terminate immediately upon the expiration or any earlier termination of this Lease, without any liability on the part of the GOVERNMENT to LESSEE or any SUBLESSEE, except as specifically provided in this Lease. No sublease shall relieve LESSEE of any of its obligations hereunder. Under any sublease made with or without consent of the GOVERNMENT, the SUBLESSEE shall be deemed to have assumed all of the obligations of the LESSEE under this Lease. Every sublease shall be subject to, and shall be deemed to contain, the Environmental Protection provisions set forth in Paragraph 18 below.

**C.** LESSEE shall submit to the GOVERNMENT for its prior written consent, a copy of each sublease LESSEE proposes to execute. Such consent may include a requirement that LESSEE renegotiate the sublease to conform to the provisions of this Lease. Consent to the sublease shall not be taken or construed to diminish or enlarge any of the rights or obligations of either of the parties to this Lease. Should a conflict arise between the provisions of this Lease and a provision of the sublease, the provisions of this Lease shall take precedence. Upon its execution, a copy of each sublease shall be immediately furnished to the GOVERNMENT.

**D.** All requests for subleases will require review by the appropriate GOVERNMENT agencies. Any costs associated with the modification of the Lease, including but not limited to studies and environmental reviews, will be at no cost to the GOVERNMENT.

**E.** Subleases may be authorized only by written modification to the Lease. Request for modification will include a copy of the draft sublease or contract between the LESSEE and the proposed additional carrier, detailed information on equipment and operation requirements, and written verification that the proposed additional carrier is duly authorized to operate Telecommunication Equipment by the Federal Communication Commission.

**F.** The sublease or contract will include a provision that upon expiration or earlier termination of this Lease, the GOVERNMENT is under no obligation to grant access to the Leased Premises to any additional carrier except for timely removal of equipment. Provision will also include a statement that the GOVERNMENT will not be required to compensate such additional carrier for any loss incurred as a result of expiration or termination of the Lease. Whenever a provision of this Lease imposes a requirement or limitation on the LESSEE in its use of the Leased Premises, that provision shall be understood to impose the identical requirement or limitation on the SUBLESSEE.

**G.** It is the intent of the GOVERNMENT that the tower to be constructed will be available for sublease to other carriers. The tower will require space to accommodate at least three tenants in addition to space for the LESSEE and space for the GOVERNMENT. At a minimum, the portion of the tower below the Government Reserved Space identified in Paragraph 5 above shall be reserved and available for use by subtenants. Alternatively, the upper portion of the tower may be reserved for subtenants to substitute a portion of the lower tower. (The two preceding sentences should be removed if Paragraph 5 was deleted.) All subleases to allow for additional carriers will be subject to all terms and conditions of the Lease, including all necessary technical studies and approvals. Any sublease will not be considered approved until appropriately reviewed and authorized by modification to the original Lease. The subtenant/LESSEE will be responsible for submitting technical drawings, specifications, site surveys, and frequency information to the GOVERNMENT for review and approval. The rent adjustment to be paid to the GOVERNMENT for any additional carrier will be based on 50 percent of the actual Lease consideration between the LESSEE and the additional carrier, including any charges applicable to utilities between the LESSEE and the subtenant, or 50 percent of the GOVERNMENT's Estimate of Fair Market Rental Value for such subtenant, whichever is higher. Any sublease must include rent to be paid by the subtenant at fair and reasonable current market prices. All requests from potential subtenants shall be processed by the LESSEE with due diligence. The LESSEE shall be responsible to notify the GOVERNMENT of any requests for subleasing on the tower. The unwillingness of the LESSEE to sublease as unilaterally determined by the GOVERNMENT or to provide due diligence to sublease requests may constitute grounds for termination of the Lease.

## **8. INSURANCE.**

**A.** At the commencement of this Lease, the LESSEE shall obtain, from a reputable insurance company or companies satisfactory to the GOVERNMENT, comprehensive general liability insurance. The insurance shall provide an amount not less than a minimum combined single limit of **\$2,000,000 per Occurrence** 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 or related to the presence or operations of the LESSEE, its employees, agents or contractors under this Lease. The LESSEE shall require the insurance company or companies to furnish the GOVERNMENT with a certified copy of the policy or policies, or certificates of insurance evidencing the purchase of such insurance. Each policy of insurance required under this Paragraph shall contain an endorsement reading as follows:

**“The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy.”**

**B.** All insurance required of the LESSEE hereunder shall be in such form, for such periods of time and with such insurers as the GOVERNMENT may require or approve. All policies or certificates issued by the respective insurers for public liability and property insurance shall name the United States of America as an additional insured, shall provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the LESSEE or the GOVERNMENT or any other person, shall provide that no cancellation, reduction in amount or any material change in coverage thereof shall be effective until at least thirty (30) calendar days after receipt by the GOVERNMENT of written notice thereof.

**C.** If and to the extent required by law, the LESSEE shall provide workman's compensation or similar insurance in such forms and amounts required by law.

**D.** During the entire period the Lease shall be in effect, LESSEE shall require its contractors or SUBLESSEES or any contractor performing work at LESSEE's or SUBLESSEE's request on the Leased Premises to carry and maintain the insurance required below:

(1) **Comprehensive general liability insurance in the amount of \$1,000,000 per Occurrence.**

(2) Workman's compensation or similar insurance in the form and amount required by law.

(3) In no event, however, shall the amount of such bodily injury or death liability be less than \$100,000 per person/\$300,000 per accident, or the amount of such property damage liability be less than \$50,000 per accident.

**E.** The LESSEE and SUBLESSEES shall deliver or cause to be delivered promptly to the Real Estate RECO a certificate of insurance or a certified copy of each renewal policy evidencing the insurance required by this Lease and shall also deliver no later than thirty (30) calendar days prior to expiration of any such policy, a certificate of insurance evidencing each renewal policy covering the same risks.

**9. RESTORATION BOND OR SECURITY.** To secure the faithful performance of its obligations hereunder, LESSEE may be required to provide the GOVERNMENT with either: (a) Collateral security in the form of cash or negotiable Government Bonds, or (b) a Performance Bond issued by a corporate surety and satisfactory to the GOVERNMENT in all respects, in the amount of \$100,000. If the GOVERNMENT shall at any time determine that an increase in the amount of security is necessary to make same commensurate with LESSEE's obligations hereunder, LESSEE shall furnish such additional security promptly upon request.

**10. TOWER SPECIFICATIONS AND DRAWINGS.** The following include more specific details and are attached and made a part hereof:

**Attachment B – Tower Site Plan – SPAWAR Approval.**

**11. JOINT INSPECTION AND INVENTORY REPORT (NON-ENVIRONMENTAL).**

**A.** Prior to use and occupancy of the Leased Premises by the LESSEE or any SUBLESSEE, a Joint Inspection and Inventory Report (JIIR) thereof will be conducted by representatives of the GOVERNMENT and the LESSEE and a complete inventory of GOVERNMENT real and personal property located thereon shall be made. The JIIR shall describe the condition of the Leased Premises and will note any deficiencies found to exist. The report shall be attached to the Lease and made a part thereof as **Attachment C**. (Note: A JIIR is not required when outleasing vacant land for construction of a tower.)

**B.** Each inventory contained in the JIIR shall be identified by building number or facility number and signed and dated by the parties to this Lease. All personal property in a building, unless specifically exempted by the terms and conditions of this Lease, shall remain with the building.

**C.** The Leased Premises shall be delivered to the LESSEE on an "As Is, Where Is" basis, and, as such, GOVERNMENT makes no warranty relative to the Leased Premises as to its usability generally or as to its fitness for any particular purpose. Any safety and/or health hazards identified and listed as such in the JIIR shall be corrected at the LESSEE's expense prior to use and occupancy of the related portion of the Leased Premises. Such safety and/or health hazards shall be limited to those identified in the JIIR.

**D.** In the event this Lease is terminated and the parties have not agreed to enter into a new Lease, or another agreement, LESSEE shall return the Leased Premises to the GOVERNMENT in the same condition in which it was received, reasonable wear and tear and Acts of God excepted. LESSEE may, at its expense and with prior written approval of the GOVERNMENT, (a) replace any personal property with personal property of like kind and utility, (b) replace any personal property in a good and workmanlike manner, and (c) dispose of any worn out, obsolete or

non-functioning personal property, in accordance with applicable laws and regulations. GOVERNMENT shall not unreasonably withhold or delay granting its approval to LESSEE's request for such actions.

**12. ENVIRONMENTAL CONDITION OF PROPERTY.** An Environmental Condition of Property (ECP) is attached to this Lease and made a part hereof as **Attachment D**. The ECP sets forth the existing environmental conditions of the Leased Premises as represented by a survey conducted by the GOVERNMENT and sets forth the basis for the GOVERNMENT's determination that the Leased Premises are suitable for leasing. LESSEE and each SUBLESSEE are hereby made aware of the notifications contained in the ECP and shall comply with all restrictions set forth therein.

**13. ALTERATIONS/RESTORATION.**

A. LESSEE, or any SUBLESSEE, shall not construct or make any substantial construction, alterations, additions, modifications, excavations, betterments, or improvements to, installations upon, or otherwise modify or alter the Leased Premises in any way (hereinafter called "work"), including those that may adversely affect human health or the environment, without the prior written consent of the GOVERNMENT. Such consent shall not be unreasonably withheld, however, such consent may involve a requirement to provide the GOVERNMENT with a performance and payment bond satisfactory to it in all respects and other requirements deemed necessary to protect the interests of the GOVERNMENT. For such work in the proximity of any known installation restoration site (IRP), such consent may also include a requirement for the written approval of the GOVERNMENT's Remedial Project Manager in addition to approval by the Real Estate RECO. All such work shall be done in a workmanlike manner and be subject to all applicable construction and environmental laws, regulations, and permit requirements. LESSEE shall provide GOVERNMENT with prior written notification and a full description of the proposed work including any other information on the proposed work on the Leased Premises requested by GOVERNMENT. Except as provided herein or provided in the GOVERNMENT's written approval, all such approved work affixed to the Leased Premises shall, upon expiration or termination of the Lease, become the property of the GOVERNMENT. Upon termination of the Lease or by revocation or surrender of any sublease, to the extent directed by the GOVERNMENT, LESSEE or SUBLESSEE shall either:

(1) Promptly remove all alterations, additions, betterments, and improvements made or installed without the consent of the GOVERNMENT or which were previously noted by the GOVERNMENT to be removed, and restore the Leased Premises, to the same or as good condition as existed on the date of entry under this Lease as shown in **Attachment C** hereof; subject to reasonable wear and tear and loss or damages for which the LESSEE is not responsible hereunder; or

(2) Abandon such work in place, at which time title to said work shall vest in the GOVERNMENT; provided, in either event all personal property and trade fixtures of LESSEE or any third party may be removed and LESSEE or such third party shall repair any damages to the Leased Premises resulting from such removal.

**14. ACCESS BY GOVERNMENT.** In addition to access required under Paragraph 18 below, the GOVERNMENT shall have access to the Leased Premises at all times, 24 hours per day, without notice to the LESSEE for any purpose. Access will be made available to the GOVERNMENT by way of a double lock to any fenced-in area or building. At least one set of keys or code combination lock must be given to the local GOVERNMENT representative of the Lease. LESSEE or SUBLESSEE shall have no claim on account of any entries against the GOVERNMENT or any GOVERNMENT officer, agent, employee or contractor, provided, however, that nothing herein shall be deemed to prejudice the rights of the LESSEE or any SUBLESSEE under any contract, other agreement or law including, but not limited to the Federal Tort Claims Act, as to the GOVERNMENT.

**15. UTILITIES AND SERVICES.**

A. Provision to the Leased Premises of any utilities such as gas, water, steam, sewer, telephone, trash removal, etc., shall be the responsibility of the LESSEE and any SUBLESSEE. In the event that the LESSEE shall request and the GOVERNMENT shall furnish LESSEE with any utilities and services maintained by the GOVERNMENT that LESSEE may require in connection with its use of the Leased Premises, LESSEE shall pay the GOVERNMENT the agreed charges therefore in addition to the consideration rent required under this Lease. Such charges and the method of payment thereof shall be determined by GOVERNMENT or the appropriate supplier of such service, in accordance with applicable laws and regulations, on such basis as the GOVERNMENT or appropriate supplier of such service may establish, and may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of the LESSEE. It is expressly agreed and understood that the GOVERNMENT in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to the LESSEE. LESSEE shall have the right, subject to Paragraph 13 above, to install such utilities or make improvements to existing utilities on the Leased Premises, including but without limitation, the installation of emergency power generators, as may be necessary for the operation of LESSEE's equipment.



**B.** The LESSEE will contract in the LESSEE's own name and pay for all services and utilities required by the LESSEE. In the event it is not practical for the LESSEE to contract for such services and utilities directly, and the GOVERNMENT is able to provide such utilities, the LESSEE will then be required to reimburse the GOVERNMENT for such utilities and services in accordance with the Lease. Any utilities furnished by the GOVERNMENT shall be separately metered and paid for by the LESSEE, including any utilities used by subtenants. Utilities to be used for any GOVERNMENT antennas shall be connected directly to the GOVERNMENT utility lines. Utility service, both electric and telephone, must be provided to the Leased Premises by the LESSEE sufficient to handle usage by the GOVERNMENT and at least three subtenants.

**C.** The LESSEE may contract with private utility providers at no cost to the GOVERNMENT. LESSEE will acquire all necessary approvals, easements, and permits prior to any construction of utilities in, on, under, over, or around GOVERNMENT-owned property. LESSEE will provide all proposed utility plans and drawings to the GOVERNMENT for approval prior to any construction or installation of utilities.

**16. NONINTERFERENCE WITH GOVERNMENT OPERATIONS.** LESSEE or any SUBLESSEE shall not conduct operations, nor make any alterations, that would interfere with or otherwise restrict GOVERNMENT operations, environmental clean-up or restoration actions by the GOVERNMENT, U.S. Environmental Protection Agency (EPA), state environmental regulators, or their contractors. Cleanup, restoration, or testing activities for environmental purposes by these parties shall take priority over LESSEE's or any SUBLESSEE's use of the Leased Premises in the event of any conflict. However, the GOVERNMENT will take reasonable steps to prevent interference with the LESSEE's or the SUBLESSEE's use of the Leased Premises.

**17. PROTECTION AND MAINTENANCE OF LEASED PREMISES.**

**A.** LESSEE shall, at its own expense, protect, preserve, maintain, and repair the Leased Premises such that it will be kept at all times in at least as good condition as when the LESSEE received it as reflected in the JIIR, attached hereto and made a part hereof as **Attachment C**, normal wear and tear and Acts of God excepted. LESSEE's responsibilities shall include, but not be limited to, removal of trash, litter, broken glass and other hazards/obstructions from the Leased Premises that are generated by LESSEE, its agents, contractors or employees. LESSEE shall ensure the Leased Premises is maintained free of any noxious or nuisance-causing condition. LESSEE is responsible for the maintenance and repair of all buildings or structures built on the Leased Premises by LESSEE.

**B. Exterior Utility Systems.** The LESSEE is responsible for the repair and maintenance of all exterior utility distribution lines, connections, and equipment that solely supports LESSEE's facilities. This responsibility extends from the facilities leased to the point of connection with the utility system that serves users other than the LESSEE. These systems include but are not limited to: heating plants, steam lines, traps, high voltage transformers, substations, power distribution lines (overhead and underground), poles, towers, gas mains, water and sewage mains, water tanks, fire protection systems, hydrants, lift stations, manholes, isolation valves, meters, storm water systems, catch basins, telephone distribution lines and equipment, etc.

**C. Refuse Removal.** Debris, trash and other undesirable materials shall be promptly removed from the Leased Premises, and the Leased Premises shall be kept reasonably clean and free of undesirable materials at all times. At completion of the Lease, the Leased Premises shall be left without containers, LESSEE's equipment, and other undesirable materials, and in an acceptably clean condition.

**D. Security Protection.** LESSEE shall provide security to assure security and safety of the Leased Premises. Any crimes or other offenses, including traffic offenses and crimes and offenses involving damage to or theft of GOVERNMENT property, shall be reported to the appropriate state or local municipal authorities for investigation and disposition (in non-Exclusive Legislative Jurisdiction areas) and to the GOVERNMENT as property owner.

**18. ENVIRONMENTAL PROTECTION PROVISIONS.**

**A.** LESSEE, any SUBLESSEE and contractors shall comply with the applicable Federal, state and local laws, regulations and standards that are, or may become, applicable to LESSEE's activities on the Leased Premises.

**B.** LESSEE and any SUBLESSEE shall be solely responsible for obtaining, at its own cost and expense, any applicable environmental permits required for its operations under the Lease, independent of any existing permits held by the GOVERNMENT. Any and all environmental permits required by the LESSEE or any SUBLESSEE for its operations on the Leased Premises shall be subject to prior concurrence by the GOVERNMENT. Copies of all permits obtained shall be provided to the GOVERNMENT.

**C.** 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 LESSEE

shall have no claim on account of any entries against the United States or any officer, agent, employee or contractor thereof.

**D.** The GOVERNMENT, its officers, agents, employees, contractors, and subcontractors have the right, upon reasonable notice to LESSEE and any SUBLESSEE, to enter upon the Leased Premises for the purposes enumerated below and for such other purposes consistent with needs associated with execution of the GOVERNMENT's Installation Restoration Program (IRP):

(1) To conduct investigations and surveys, including, where necessary, drilling, soil and water sampling, test pitting, testing soil borings, and other activities related to the IRP;

(2) To inspect field activities of the GOVERNMENT and its contractors and subcontractors in implementing the IRP;

(3) To conduct any test or survey required by the EPA or state or otherwise relating to the implementation of the IRP or other assessment of environmental conditions on the Leased Premises or to verify any data submitted to the EPA or state relating to such program or conditions;

(4) To construct, operate, maintain, or undertake any other response or remedial action as required or necessary under the IRP, including, but not limited to, monitoring wells, pumping wells, and treatment facilities.

**E.** The LESSEE agrees to comply with the provisions of any GOVERNMENT health or safety plan in effect under the IRP during the course of any 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 and any SUBLESSEE. The LESSEE and any SUBLESSEES, assignees, licensees, or invitees shall have no claim on account of such entries against the GOVERNMENT 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. Nothing herein shall obligate the GOVERNMENT to compensate LESSEE or any third person for any lost profits, lost opportunities, wages or operating expenses or any other costs incurred as a result of LESSEE's compliance with this provision.

**F.** The LESSEE shall strictly comply with all applicable hazardous waste management and permitting requirements under the Resource Conservation and Recovery Act (RCRA) and/or its applicable state equivalent. Except as specifically authorized by the GOVERNMENT in writing, the LESSEE must provide at its own expense all necessary hazardous waste management facilities in compliance with applicable laws and regulations. Any existing GOVERNMENT hazardous waste management facilities will not be made available to the LESSEE or any SUBLESSEE. Any GOVERNMENT accumulation points for either hazardous or non-hazardous wastes will not be used by the LESSEE nor will the LESSEE or any SUBLESSEE permit its hazardous wastes to be commingled with hazardous waste of the GOVERNMENT. Any violation of the requirements of this condition may, depending upon their severity and at the discretion of the GOVERNMENT, be deemed a material breach of this Lease.

**G.** The LESSEE shall have a GOVERNMENT-approved plan for responding to wastewater, hazardous waste, fuel, or toxic chemical spills prior to commencement of operations on the Leased Premises. Such plan shall be independent of any existing GOVERNMENT plan for the installation and, unless expressly agreed to by the GOVERNMENT otherwise, shall not rely on use of installation personnel or equipment for necessary fire response and/or spill containment. Should the GOVERNMENT provide fire response and/or spill containment services upon request of the LESSEE, or because LESSEE was not, in the opinion of the Real Estate RECO, conducting timely cleanup actions, the LESSEE shall reimburse the GOVERNMENT for the full cost of such services.

**H.** The LESSEE shall not conduct or permit any SUBLESSEE(s) to conduct any subsurface excavation, digging, drilling or other disturbance of the surface without the prior written approval of any applicable dig permit authority and the GOVERNMENT. If, after receipt of such written approval, the LESSEE shall immediately notify the GOVERNMENT should any buried debris, or foreign, potentially hazardous material be encountered during this work.

**I.** The LESSEE shall indemnify and defend the GOVERNMENT against, and hold the GOVERNMENT harmless from, any costs, expenses, liabilities, fines, or penalties resulting from discharges, emissions, spills, storage, or disposal, arising from the LESSEE's occupancy, use, or operations, or any other action by the LESSEE or any SUBLESSEE giving rise to GOVERNMENT liability, civil or criminal, or responsibility under Federal, state, or local environmental laws. This provision shall survive the expiration or termination of this Lease, and the LESSEE's obligations hereunder shall apply whenever the GOVERNMENT incurs costs or liabilities for the LESSEE's or any SUBLESSEE's actions.

**J.** The LESSEE and any SUBLESSEE shall deliver prior written notification to the GOVERNMENT of any articles, tools, equipment, or devices brought on-site that contain radioactive material. Examples of potential radiological sources include radium-containing dials, gauges, and illuminators; tritium in illuminators and exit signs; thorium in optical lenses or welding consumables; abrasive blasting material; or any radioactive source used for calibration, medical diagnosis or therapy, or industrial radiography. The LESSEE is responsible for removal of any such potential radiological sources upon termination of the Lease.

**K. Storage, treatment, or disposal of toxic or hazardous materials on the Leased Premises is prohibited except as authorized by the GOVERNMENT in accordance with 10 U.S.C. § 2692. Any hazardous materials that the GOVERNMENT authorizes to store, treat, or dispose of in connection with the use of the Leased Premises shall be identified on the Hazardous Materials List, attached as **Attachment E**.**

## **19. TERMINATION**

**A. Termination by GOVERNMENT**. The GOVERNMENT shall have the right to terminate this Lease in whole or in part, without liability, and regardless of any lack of breach by LESSEE of any of the terms and conditions of this Lease immediately without prior notice to the LESSEE. Termination of the Lease for any reason shall be made without cost to the GOVERNMENT.

**B. Breach of Terms by LESSEE**. In the event of breach by LESSEE of any of the terms, conditions, or obligations hereof, the LESSEE shall be afforded thirty (30) calendar days from the receipt of GOVERNMENT's notice of intent to terminate, to complete the performance of the obligation or otherwise cure the subject breach and avoid termination of this Lease, unless GOVERNMENT determines that a shorter period of time is required for safety, environmental, operational or security purposes. The GOVERNMENT may grant a reasonable extension of time to complete the cure. In the event that the GOVERNMENT shall elect to terminate this Lease on account of the breach by the LESSEE of any of the terms and conditions, the GOVERNMENT shall be entitled to recover and the LESSEE shall pay to the GOVERNMENT:

- (1) The reasonable costs incurred in resuming possession of the Leased Premises;
- (2) The costs incurred in performing any obligation on the part of the LESSEE to be performed hereunder;
- (3) An amount equal to the aggregate of any maintenance obligations, and charges assumed hereunder and not paid or satisfied, such amounts shall be due and payable at the time when such obligations and charges would have accrued or become due and payable under this Lease.

**C. Termination by LESSEE**. LESSEE may terminate this Lease at any time upon ninety (90) days written notice to the Real Estate RECO.

**D. Title to Improvements**. Upon termination or expiration of the Lease, it will be the GOVERNMENT's option to cause title to all improvements, including the tower and any installed utility lines, to be vested in the United States of America at no cost to the GOVERNMENT, or require the LESSEE to remove the improvements and restore the Leased Premises to its original condition at no cost to the GOVERNMENT. In the event of termination for any reason not involving a breach by the LESSEE of the terms and conditions of the Lease, the GOVERNMENT shall make an equitable adjustment of any advance rentals paid by the LESSEE hereunder.

**20. INDEMNIFICATION**. LESSEE shall indemnify, defend and save GOVERNMENT harmless and shall pay all costs, expenses, and reasonable attorney's fees for all trial and appellate levels and post-judgment proceedings in connection with any fines, suits, actions, damages, liability and causes of action of every nature whatsoever arising or growing out of, or in any manner connected with, the occupation or use of the Leased Premises by LESSEE, its employees, servants, agents, guests, invitees, and contractors. This includes, but is not limited to, any fines, claims, demands and causes of action of every nature whatsoever that may be made upon, sustained or incurred by the GOVERNMENT by reason of any breach, violation, omission or non-performance of any term, covenant or condition hereof on the part of the LESSEE, its employees, servants, agents, guests, invitees, or contractors. This indemnification also applies to claims arising out of the furnishings of any utilities or services by the GOVERNMENT or any interruption therein or failure thereof, occasioned by the negligence or lack of diligence of LESSEE or its respective officers, agents, servants or employees. However, this indemnity shall not extend to damages due to the sole fault of the GOVERNMENT or its employees, agents, servants, guests, invitees or contractors. This covenant shall survive the termination of this Lease.

## **21. LABOR PROVISIONS**

**A. Equal Opportunity**. During the term of this Lease, LESSEE and each SUBLESSEE agree as follows with regard to all employees located at, or involved with, the Leased Premises:

- (1) LESSEE and each SUBLESSEE shall not discriminate against any employee or applicant for employment because of race, color, age, marital status, handicap, religion, sex, or national origin. LESSEE and each SUBLESSEE shall take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, age, marital status, handicap, religion, sex, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer, retention or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, selection for training, including apprenticeship. LESSEE and each SUBLESSEE agree to post in conspicuous places available to

employees and applicants for employment, notices to be provided by the GOVERNMENT setting forth the provisions of this nondiscrimination clause.

(2) LESSEE and each SUBLESSEE shall, in all solicitations or advertisements for employees placed at the Leased Premises by or on behalf of LESSEE and each SUBLESSEE, state that all qualified applicants will receive consideration for employment without regard to age, marital status, handicap, race, color, religion, sex, or national origin.

(3) LESSEE and each SUBLESSEE shall send to each labor union or representative of workers for the Leased Premises with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by GOVERNMENT, advising the labor union or worker's representative of commitments under this Equal Opportunity Clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(4) LESSEE and each SUBLESSEE shall comply with all provisions of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor as it relates to the Leased Premises.

(5) LESSEE and each SUBLESSEE shall furnish all information and reports required by Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to its books, records, and accounts by GOVERNMENT and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

(6) In the event of LESSEE's or any SUBLESSEE's noncompliance with the Equal Opportunity Clause or with any of said rules, regulations, or orders, this Lease or such sublease may be canceled, terminated, or suspended in whole or in part and LESSEE or such SUBLESSEE may be declared ineligible for further GOVERNMENT contracts in accordance with procedures authorized in Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The LESSEE shall include the above provisions in every sublease unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Exec. Order No. 11,246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each SUBLESSEE. LESSEE will take such action with respect to any SUBLESSEE as GOVERNMENT may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event LESSEE becomes involved in, or is threatened with, litigation with SUBLESSEE as a result of such direction by GOVERNMENT, LESSEE may request the GOVERNMENT to enter into such litigation to protect the interests of the GOVERNMENT.

**B. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-330).** This Lease and each sublease, to the extent that it is a contract of a character specified in the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. §35-45), is subject to the following provisions and exceptions of said Contract Work Hours and Safety Standards Act and to all other provisions and exceptions of said law as they apply to employment at the Leased Premises:

(1) LESSEE and each SUBLESSEE shall not require or permit any laborer or mechanic in any workweek in which he/she is employed on any work on the Leased Premises to work in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours and Safety Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his/her basic rate of pay for all such hours worked in excess of 40 hours in such workweek. The "basic rate of pay", as used in this clause, shall be the amount paid per hour, exclusive of the employer's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(2) In the event of any violation of the provision of the preceding sub-paragraph, LESSEE or SUBLESSEE shall be liable to any affected employee for any amounts due, and to the GOVERNMENT for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of Paragraph 21.B.1 above, in the sum of \$10.00 for each calendar day on which such employee was required or permitted to be employed on such work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the preceding sub-paragraph.

**C. Convict Labor.** In connection with the performance of work required by this Lease or any sublease, LESSEE or such SUBLESSEE agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

**22. SUBMISSION OF NOTICES.** Notices shall be sufficient under this Lease if made in writing and submitted in the case of LESSEE to:

and in the case of the GOVERNMENT to:

The above-named individuals shall be the representatives of the parties and the points of contact during the period of the Lease. Such notice shall be deemed to have been given unless delivered personally, when deposited in the U.S. mail, postage pre-paid, certified mail, return receipt requested and addressed as set forth above or to such other address as either party shall have provided to the other by like notice, or upon confirmation of receipt if sent by facsimile on a regular business day and addressed as set forth above, or within twenty-four (24) hours, or the next business day if sent by an overnight delivery service such as Federal Express.

**23. AUDIT.** This Lease and any sublease shall be subject to audit by cognizant GOVERNMENT agencies. LESSEE and each SUBLESSEE shall make available to those agencies for use in connection with audits all records that it maintains regarding this Lease or any sublease and copies of all reports required to be filed by law, regulation, and this Lease.

**24. INTEREST.** Notwithstanding any other provision of this Lease, unless paid within thirty (30) calendar days, all amounts that become payable by LESSEE to GOVERNMENT under this Lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due. The rate of interest will be the Current Value of Funds Rate published by the Secretary of the Treasury pursuant to 31 U.S.C. §3717 (Debt Collection Act of 1982). Amounts shall be due upon the earliest of (a) the date fixed pursuant to this Lease, (b) the date of the first written demand for payment, consistent with this Lease, including demand consequent upon default termination, (c) the date of transmittal by GOVERNMENT to LESSEE of a proposed supplemental agreement to confirm completed negotiations fixing the amount, or (d) if this Lease provides for revision of prices, the date of written notice to LESSEE stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease supplement.

**25. AGREEMENT.** This Lease shall not be modified unless in writing and signed by both parties. No oral statements or representation made by, for, or on behalf of either party shall be a part of this Lease. Should conflict arise between the provisions of this Lease and any attachment hereto, or any other agreement between GOVERNMENT and LESSEE, the provisions of this Lease shall take precedence.

**26. FAILURE TO INSIST ON COMPLIANCE.** The failure of GOVERNMENT to insist, in any one or more instances, upon performance of any of the terms, covenants, or conditions of this Lease shall not be construed as a waiver or relinquishment of GOVERNMENT's right to the future performance of any such terms, covenants, or conditions and LESSEE's obligations in respect to such future performance shall continue in full force and effect.

**27. DISPUTES.**

**A.** This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. §601-613), the "Act".

**B.** Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

**C.** "Claim", as used in this clause, means a written demand or written assertion by the LESSEE or the GOVERNMENT seeking, as a matter of right, the payment of money in a sum certain, the adjustment or 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 claimant. 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 27.D.(2) below. A voucher, invoice, or other routine request for 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 complying with the submission and certification requirements of this clause, if either liability or amount is disputed or is not acted upon in a reasonable time.

**D. (1)** A claim by the LESSEE shall be made in writing and submitted within six (6) years after accrual of the claim to the GOVERNMENT, for a written decision. A claim by the GOVERNMENT against the LESSEE shall be subject to a written decision by the GOVERNMENT.

(2) LESSEE shall provide the certification stated below, when submitting any claim:

(a) Exceeding \$100,000; or

(b) Regardless of the amount claimed, when using:

(i) Arbitration conducted pursuant to 5 U.S.C. §575-580; or

(ii) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

"I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of LESSEE's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which the LESSEE believes the GOVERNMENT is liable; and that I am duly authorized to certify the claim on behalf of the LESSEE."

(3) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

(4) The certification may be executed by any person duly authorized to bind the LESSEE with respect to the claim.

**E.** For LESSEE claims of \$100,000 or less, the GOVERNMENT must, if requested in writing by the LESSEE, render a decision within sixty (60) days of the request. For LESSEE-certified claims over \$100,000, the GOVERNMENT must, within sixty (60) days decide the claim or notify the LESSEE of the date by which the decision will be made.

(1) The decision of the GOVERNMENT 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 GOVERNMENT, 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 arbitration conducted pursuant to 5 U.S.C. §575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in Paragraph 27.D(2) above and executed in accordance with Paragraph 27.D(4) above.

**G.** The GOVERNMENT shall pay interest on the amount found due and unpaid by the GOVERNMENT from (1) the date the GOVERNMENT 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. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the GOVERNMENT initially receives the claim. 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 GOVERNMENT receives the claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

**H.** Notwithstanding anything herein to the contrary, 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 GOVERNMENT.

**28. COVENANT AGAINST CONTINGENT FEES.** LESSEE warrants that no person or 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 agencies maintained by LESSEE for the purpose of securing business. For breach or violation of this warranty, GOVERNMENT shall have the right to annul this Lease without liability or in its discretion to require LESSEE to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

**29. LIENS.** LESSEE and each SUBLESSEE shall promptly discharge or cause to be discharged valid lien, right in rem, claim, or demand of any kind, except one in favor of GOVERNMENT, which at any time may purport to exist with respect to the Leased Premises or materials or equipment furnished thereof, or any part thereof, due to the LESSEE's or such SUBLESSEE's use of the Leased Premises, and if the same shall not be promptly discharged by LESSEE or such SUBLESSEE, or should LESSEE or any SUBLESSEE be declared bankrupt or make an assignment on behalf of creditors, or should the leasehold estate be taken by execution, GOVERNMENT reserves the right to take immediate possession without any liability to LESSEE or any SUBLESSEE. LESSEE and any SUBLESSEE shall be responsible for any costs incurred by GOVERNMENT in securing clear title to its property due to their acts or omissions clouding the title.

**30. TAXES.** LESSEE shall pay to the proper authority, when and as the same become due and payable, all taxes, assessments, and similar charges that, at any time during the term of this Lease may be imposed with respect to its interest in the Leased Premises. 10 U.S.C. §2667 (f) contains the consent of Congress to the taxation of LESSEE's interest in the Leased Premises, whether or not the Leased Premises are in an area of exclusive Federal jurisdiction.

Should Congress consent to taxation of GOVERNMENT's interest in the Leased Premises, this Lease will be renegotiated.

**31. SUBJECT TO EXISTING AND FUTURE EASEMENTS.** This Lease, and each sublease, is subject to all outstanding easements and rights in the nature of an easement (collectively, "easements") for location of any type of facility over, across, in, and upon the Leased Premises, and to the right of GOVERNMENT to grant additional easements over, across, in, and upon the Leased Premises as it shall be deemed to be in the public interest; provided that (i) the GOVERNMENT coordinates the grants with the LESSEE to minimize any impact to the LESSEE's operations, and (ii) additional easements shall be conditioned on the assumption by the grantee of liability to LESSEE for any damages that LESSEE may suffer for property destroyed or rendered unusable on account of the grantee's exercise of its rights. There is hereby reserved to the holders of those easements that are presently outstanding or which may later be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities on the easement area, and to any Federal, state, or local official engaged in the official inspection of the easements, reasonable rights of ingress and egress over the Leased Premises that may be necessary for the performance of their duties with regard to those facilities subject to Paragraph 14 above.

**32. INGRESS, EGRESS, PARKING AND SECURITY.**

A. LESSEE and any SUBLESSEES, and their employees, vendors, and business invitees will be granted reasonable access to the Leased Premises under this Lease. As a condition, LESSEE and SUBLESSEE, and their employees, vendors, and business invitees agree to adhere to all rules and regulations regarding security, ingress, egress, safety and sanitation as may be prescribed from time to time by the Installation Commanding Officer or similar authority. LESSEE and any SUBLESSEE and their employees, vendors, and business invitees shall coordinate parking with the appropriate office of the Installation.

B. Installation Security. The Leased Premises is located on a secure Navy Installation and the LESSEE and any SUBLESSEE(s) is required to comply with all applicable security rules, regulations, and procedures issued by the Installation Commanding Officer. Any and all employees of the LESSEE or SUBLESSEE(s) that are required by the Installation to do so, shall obtain a security clearance to access the Leased Premises. Failure to obtain the required security clearance shall result in denial of access to the Leased Premises of the LESSEE's or SUBLESSEE's employees. LESSEE and any SUBLESSEE(s) agree to hold harmless the GOVERNMENT from any liability of any nature for financial or other losses incurred by the LESSEE or any SUBLESSEE(s) by reason of LESSEE's or any SUBLESSEE's employees' failure to obtain security clearance for access to the Leased Premises.

**33. ADMINISTRATION.** Except as otherwise provided for under the Lease, the Real Estate RECO shall have complete charge of the administration of this Lease, including granting any consents and/or approvals hereunder, and shall exercise full supervision and general direction thereof insofar as the interests of GOVERNMENT are affected.

**34. DAMAGE TO THE LEASED PREMISES.** In the event the Leased Premises or any portion of the Leased Premises is damaged either directly or indirectly as a result of LESSEE's use or occupancy of the Leased Premises, whether during the construction, installation, operation, maintenance, or replacement or removal of improvements or otherwise, due to acts or omissions of LESSEE, its agents, contractors or employees, LESSEE shall, upon demand, either compensate the GOVERNMENT for such loss or damage, or rebuild, replace or repair the item or items of the Leased Premises or facilities so lost or damaged, as the GOVERNMENT may elect.

**35. APPLICABLE RULES AND REGULATIONS.**

A. LESSEE and any SUBLESSEE shall comply with all Federal, State, and local laws, regulations, and standards that are applicable or may become applicable to LESSEE's or SUBLESSEE's activities on the Leased Premises. This includes, but is not limited to, laws and regulations concerning the environment, construction of facilities, health, safety, food service, water supply, sanitation, and any licenses and permits to conduct business. LESSEE and any SUBLESSEE are responsible for obtaining and paying for permits required for its operations under the Lease.

B. Further, all activities authorized hereunder shall be subject to such rules, regulations, and procedures regarding Station security, supervision or otherwise, as may, from time to time, be prescribed by the Installation Commanding Officer.

**36. SUBCONTRACTORS AND AGENTS FOR LESSEE.** All work involving LESSEE's facilities must be performed by skilled tradesmen who are accomplished at their craft and bonded against loss due to damages resulting directly or indirectly from work performed.

**37. SURRENDER.** Upon the expiration of this Lease or its prior termination, LESSEE shall quietly and peacefully remove itself and its personal property from the Leased Premises and surrender the possession thereof to GOVERNMENT; provided, in the event GOVERNMENT shall terminate this Lease upon less than thirty (30) days notice, LESSEE shall be allowed a reasonable period of time, as determined by the Real Estate RECO, but in no

event to be less than thirty (30) days from receipt of notice of termination, in which to remove all of its personal property from and terminate its operations on the Leased Premises. During such period prior to surrender, all obligations assumed by LESSEE under this Lease shall remain in full force and effect; provided, however, that if the GOVERNMENT shall in its sole discretion, determine that such action is equitable under the circumstances, it may suspend, in whole or in part, any further accruals of rent if any, or maximum amount to be expended between the date of termination of the Lease and the date of final surrender of the Leased Premises. GOVERNMENT may, in its discretion, declare any personal property that has not been removed from the Leased Premises upon termination provided for above, as abandoned personal property upon an additional ninety (90) days notice.

### **38. PROPERTY CONDITION.**

**A.** The LESSEE understands that the Leased Premises is offered on as “as is, where is” basis, without representation or warranty on the part of the GOVERNMENT. The LESSEE shall inspect the property with a Real Estate RECO or Real Estate RECO’s designee to determine the condition of the Leased Premises. The LESSEE shall acknowledge the condition of the premises leased on an “as is, where is” basis.

**B.** The LESSEE shall make no alterations, improvements or additions to the Leased Premises without obtaining written authorization from the Real Estate RECO.

**C.** The LESSEE shall not allow any form of advertisement to be placed on the Leased Premises or on any LESSEE-owned attachments thereto. Such prohibited use may be in the form of, but not limited to cards, signs, or billboards.

**D.** All equipment installed on the Leased Premises that is visible from the exterior of a building must be painted or camouflaged to completely blend with the background of equipment, structures or fixtures already in place, to the satisfaction of the GOVERNMENT. Whip antennas mounted on the exterior of a building may not exceed twelve (12) feet in height. Panel-type antennas mounted on the exterior of the building may not exceed four (4) feet in width or length.

**E.** If the Leased Premises is considered historical, the LESSEE shall comply with the National Historic Preservation Act as well as any State or local historic codes dealing with, but not limited to, installation of communications equipment.

### **39. FREQUENCY INTERFERENCE (RFI).**

**A.** The LESSEE shall ensure that the use of the Leased Premises does not interfere with existing operations on or immediately around the site, and the creation of Radio Frequency Interference (RFI) will be avoided.

**B.** If the LESSEE creates RFI with the installation of antennas, the LESSEE shall have 48 hours to cure the problem. If the LESSEE cannot correct the RFI within 48 hours of receiving notice of the RFI, the Lease shall be terminated immediately by the GOVERNMENT.

**C.** Within 48 hours of receiving notice of an RFI problem, the LESSEE shall notify the GOVERNMENT in writing if there are any extenuating circumstances that prevent curing the problem within the 48 hour timeframe.

**D.** In consideration of the circumstances, the LESSEE may then be granted an extension of time to cure the problem. The Real Estate RECO shall ascertain the facts, determine the extent of the delay, and grant an extension in writing when justified. The Real Estate RECO will seek the concurrence of the Installation Commanding Officer.

### **40. COORDINATION AND CONNECTIONS FOR ANTENNA(S) AND RELATED EQUIPMENT.**

**A.** Installation of any antenna(s), pole(s), tower(s), cabling and related equipment, shall be done in accordance with existing Federal, State, and local codes, including the National Electrical Code and other codes directly related to the installation and maintenance of communications equipment. If codes differ, the most stringent code will prevail.

**B.** All work shall be performed by personnel who are bonded and licensed tradespersons.

**C.** The LESSEE shall coordinate installation of all electrical connections that tie into building systems with the Installation’s Public Works Officer and any other entities that may have equipment and connections on site that would be affected.

**D.** The LESSEE shall not make or cause to be made any penetrations or alterations to the roof or any part of any structures or buildings on the Leased Premises without the written approval of the Real Estate RECO. The LESSEE shall not install any additional mobile service antennas on the Leased Premises or tower without written approval of the Real Estate RECO. Any requests for any additions to any equipment, site, tower, or utilities must be made in writing to the Real Estate RECO.



**E.** In the event structure(s) or building(s) of the Leased Premises are damaged directly or indirectly in connection with the LESSEE's improvements during construction, operation, maintenance, or removal of the improvements, due to an act or omission of the LESSEE, SUBLESSEES, assigns, agents, contractors, or employees, the LESSEE shall be solely responsible for all costs and expenses to repair such damage and return the structure(s) or building(s) to the same condition they were in prior to the occurrence of the damage.

**F.** The Real Estate RECO and the LESSEE will conduct an inspection of the Leased Premises before and after any construction, installation, or dismantling of mobile service antennas, to determine the condition of the site.

**G.** The GOVERNMENT shall have the right to review and approve all technical drawings and any specifications for the construction, installation, operation, or maintenance of antenna(s)/tower(s), as well as reviewing specifications for frequency output. Such review does not shift the responsibility to the GOVERNMENT or relinquish the LESSEE from any damage claims that may arise during the construction, installation, operation, maintenance, or removal, of the mobile service antennas.

**H.** The LESSEE acknowledges that the GOVERNMENT has the right to review and approve work at any time.

**I.** The LESSEE may be required to fence the perimeter of the Leased Premises at its own expense to prevent unauthorized access to the site. All maintenance within the fenced area shall be performed by the LESSEE. This will include cutting of grass. The LESSEE's grass cutting schedule may be required to correspond with the GOVERNMENT's schedule for adjacent property. The Real Estate RECO must approve any required landscaping or camouflaging plan.

**J.** Towers installed near Air Fields may require additional lighting in accordance with Federal Aviation Administration guidelines. The LESSEE will be responsible for complying with such requirements. Any fines assessed for non-compliance will be the LESSEE's responsibility.

**K.** The GOVERNMENT has the right to require the LESSEE to provide appropriate safety equipment such as beacons, enclosures, lighting deterrents, and other safety procedures prior to any construction. The LESSEE will remain solely responsible for all safety practices during construction, installation, operation, maintenance, or removal, at the Leased Premises.

**L.** The tower will have a red strobe light at the top that will be of such quality and intensity that it will not blind or interfere with night flying operations and will not interfere with pilots wearing night vision goggles. The tower will have one red medium to low intensity light to be placed on one leg.

**M.** The tower height shall not exceed \_\_\_\_\_ feet.

**N.** The tower must be able to support the LESSEE's equipment, at least three subtenants' equipment, plus any GOVERNMENT equipment that may be required. Typical equipment that the tower must be able to accommodate includes whip antennas, dishes and the like typical of the telecommunication industry. The tower shall be built at current wind loading regulations for \_\_\_\_\_ County plus 5%. The tower must be able to allow future upgrades should this be needed due to changes in industry requirements, i.e. construction of a lattice tower. Any upgrades to the tower to bring it in compliance with current industry standards shall be the responsibility of the LESSEE at its cost.

**41. REMOVAL AND RESTORATION OF THE PREMISES.** Upon termination or expiration of the Lease, it will be the GOVERNMENT's option to cause title to all improvements to be vested in the United States of America or to require the LESSEE to remove the improvements and restore the Leased Premises to its original condition, at no cost to the GOVERNMENT.

**42. COMPLIANCE.** Should any restriction on the equipment to be installed under this Lease be found applicable by a competent regulatory entity, the LESSEE will be responsible for full compliance and for the payment of any application or review fees as well as any penalties for noncompliance associated therewith.

**43. ADDITIONAL COMPENSATION.** The LESSEE shall be responsible for reimbursement to the GOVERNMENT of all costs in connection with the processing of the Lease. These costs will be assessed on a per-site, per-lease basis.

**44. EQUIPMENT.** Any and all expenses, of whatever nature, in connection with this Lease or the equipment to be installed shall be borne by the LESSEE, including removal and replacement, if required of any or all of LESSEE's communications transmitting equipment located on the Leased Premises.

**45. SECURITY CLEARANCES.** LESSEE's personnel, representatives, and/or agents may be subject to security inspections and may be required to obtain applicable security clearances.

***IN WITNESS WHEREOF***, the parties hereto have, on the respective dates set forth below duly executed this Lease as of the day and year first above written.

**WITNESSES:**

**THE UNITED STATES OF AMERICA**, acting by and through the Department of the Navy

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
Real Estate RECO

\_\_\_\_\_  
(Print Name)

Date: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name)

**WITNESSES:**

**LESSEE**

(Enter name of organization, individual, etc.)

\_\_\_\_\_  
(Signature)

By: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

Name: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

Title: \_\_\_\_\_

\_\_\_\_\_  
(Print Name)

Date: \_\_\_\_\_

**FOR CORPORATE COMPANY, CERTIFICATION BY SECRETARY OR ASSISTANT SECRETARY OF THE CORPORATION**

I certify that the person who signed this Lease on behalf of the Company, was then the Officer indicated, and this Lease was duly signed for and on behalf of the said corporation by authority of its governing body and is within the scope of its corporate powers.

(CORPORATE SEAL)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

BY: \_\_\_\_\_

<b>Name and Address of Installation</b>	<b>Local GOVERNMENT Representative/Title &amp; Address</b>

<b>Address of LESSEE Legal Address:</b>	<b>Real Estate RECO</b>

**DEPARTMENT OF THE NAVY  
LEASE FOR AGRICULTURAL  
OR GRAZING PURPOSES**

FILE NO:  
CONTRACT NUMBER:

**LEASE BETWEEN**

(HEREINAFTER CALLED "LESSEE") AND THE UNITED STATES OF AMERICA HEREINAFTER CALLED THE "GOVERNMENT",

**THE GOVERNMENT HEREBY LEASES TO LESSEE THE PROPERTY DESCRIBED BELOW UNDER THE TERMS, CONDITIONS, GENERAL PROVISIONS AND SPECIAL PROVISIONS SET FORTH ON THIS PAGE AND SUBSEQUENT PAGES OF THIS LEASE FORM.**

**1. LEASED PROPERTY:** ALL THAT PORTION OF THE NAVAL ACTIVITY IDENTIFIED IN ARTICLE 9, WHICH PORTION IS HEREINAFTER CALLED THE "PREMISES" AND DESCRIBED AS FOLLOWS:

**2. TERM:** THE TERM OF THIS LEASE SHALL BEGIN ON \_\_\_\_\_ AND END ON \_\_\_\_\_ UNLESS SOONER TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE 10H HEREOF.

LESSEE MAY EXTEND THE TERM OF THIS LEASE FOR \_\_\_\_\_ ADDITIONAL PERIODS OF ONE (1) YEAR EACH BY DELIVERY TO THE LOCAL GOVERNMENT REPRESENTATIVE OF WRITTEN NOTICE OF ITS INTENTION TO EXTEND NO LATER THAN NINETY (90) DAYS PRIOR TO THE EXPIRATION OF THE THEN CURRENT TERM; *PROVIDED*, NO EXTENSION SHALL BE GRANTED WHICH CREATES A TOTAL TERM IN EXCESS OF TEN (10) YEARS.

**3. RENT:** LESSEE SHALL PAY THE GOVERNMENT ANNUAL RENTAL OF \$ \_\_\_\_\_, PAYABLE \_\_\_\_\_ IN ADVANCE AT THE RATE OF \$ \_\_\_\_\_ PER \_\_\_\_\_, IN CONFORMITY WITH THE PROVISIONS OF ARTICLE 10W HEREOF.

**4. USE:** THE \_\_\_\_\_ ACRES SHALL BE USED SOLELY FOR \_\_\_\_\_.

**5. PERFORMANCE BOND OR SECURITY:** TO SECURE THE FAITHFUL PERFORMANCE OF ITS OBLIGATIONS HEREUNDER LESSEE SHALL PROVIDE THE GOVERNMENT WITH EITHER: (a) COLLATERAL SECURITY IN THE FORM OF CASH OR NEGOTIABLE GOVERNMENT BONDS, OR (b) A PERFORMANCE BOND ISSUED BY A CORPORATE SURETY AND SATISFACTORY TO THE GOVERNMENT IN ALL RESPECTS, IN THE AMOUNT OF \$ \_\_\_\_\_

**6. EXECUTION BY LESSEE**

NAME OF LESSEE \_\_\_\_\_

BY \_\_\_\_\_

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(WITNESS)

\_\_\_\_\_  
(TITLE)

\_\_\_\_\_  
(DATE)

**7. CERTIFICATION BY SECRETARY OR ASSISTANT SECRETARY OF CORPORATE LESSEE**

I CERTIFY THAT THE PERSON WHO SIGNED THIS LEASE ON BEHALF OF LESSEE WAS THEN THE OFFICER INDICATED AND THIS AGREEMENT WAS DULY SIGNED FOR AND ON BEHALF OF SAID CORPORATION BY AUTHORITY OF ITS GOVERNING BODY AND IS WITHIN THE SCOPE OF ITS CORPORATE POWERS.

(CORPORATE  
\_\_\_\_\_  
SEAL)

\_\_\_\_\_  
(SIGNATURE)

\_\_\_\_\_  
(TITLE)

**8. EXECUTION FOR AND ON BEHALF OF THE GOVERNMENT  
THE UNITED STATES OF AMERICA**

BY \_\_\_\_\_

\_\_\_\_\_  
(CONTRACTING OFFICER)

\_\_\_\_\_  
(DATE)

\_\_\_\_\_  
(WITNESS)

**9. NAVY IDENTIFICATION DATA**

NAME AND ADDRESS OF NAVAL ACTIVITY

ADDRESS OF LESSEE

LOCAL GOVERNMENT REPRESENTATIVE/  
TITLE AND ADDRESS

## 10. GENERAL PROVISIONS

### A. REPRESENTATIONS

LESSEE has examined, knows and accepts the condition and state of repair of the Premises and all appurtenances thereto and acknowledges that the Government has made no representation concerning such condition and state of repair, nor any agreement or promise to alter, improve, adapt, repair or keep in repair such Premises and appurtenances, or any item thereof, which has not been fully set forth on this lease which contains all the agreements made and entered into between Lessee and the Government.

### B. PROHIBITION OF FEDERAL SUBSIDY PARTICIPATION

Notwithstanding the uses permitted to it in Article 4 of this lease, Lessee shall at no time during the term of this lease, or any extension thereof, use the Premises or its interest therein in any manner which shall constitute direct participation in any subsidy program of the Federal Government relative to either the use or abstention from use of the Premises.

### C. SUBJECTION TO GOVERNMENT SOIL & WATER CONSERVATION PLAN

During the term of this lease the Lessee shall apply the conservation measures and use the Premises in accordance with the conservation plan attached hereto and made a part hereof. Lessee shall in no manner substantially change the contour or condition of the land constituting any part of the Premises except for such changes as shall be reasonably required to effect soil and water conservation measures. (Soil and Water Conservation Plan is attached as Exhibit “\_\_\_”)

### D. INSTALLATIONS AND REMOVALS

Subject to the prior written approval of the Government, Lessee shall have the right to erect, at its own expense, such temporary structures on the Premises as may be necessary or incidental to its use thereof under this lease. All such structures shall remain the property of Lessee and Lessee shall remove same from the Premises prior to the expiration of the term of this lease, as the same may be extended, or the earlier termination thereof; *Provided*, in the event the Government shall

terminate this lease upon less than thirty (30) days notice Lessee shall have thirty (30) days from receipt of notice of termination to accomplish such removal. All property not so removed shall be deemed abandoned by Lessee and may be used or disposed of by the Government in any manner whatsoever without any liability to account to Lessee therefor, but such abandonment shall in no way reduce any obligation of Lessee hereunder to restore the Premises.

### E. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS-OF-WAY

This lease is subject to all outstanding easements and rights of way for location of any type of facility over, across, in and upon the Premises, or any portion thereof, and to the right of the Government to grant such additional easements and rights of way over, across, in and upon the Premises as it shall determine to be in the public interest; *Provided*, that any such additional easement or right-of-way shall be conditioned on the assumption by the Grantee thereof of liability to Lessee for such damages as Lessee shall suffer for crops or property destroyed or property rendered unusable on account of Grantee's exercise of its rights thereunder. There are also reserved to the Government, and its assignees, all mineral rights in the Premises, together with such rights of access and use of the surface as may be necessary for the mining and saving of any mineral deposits located thereon or thereunder. There are hereby reserved to the holders of such easements and rights-of-way as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any Federal, State or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

### F. RESTORATION OF PREMISES

Before the expiration of this lease or the prior termination thereof, Lessee shall, if required to do so by the Government, restore the Premises to the condition existing at the time of its entrance thereon under this lease, or to such improved condition as they may have been placed in by the Government or the Lessee during the term of this lease, reasonable wear and tear and damage by the elements or from other causes over which Lessee had no control

excepted; *Provided*, in the event the Government shall terminate this lease upon less than thirty (30) days notice Lessee shall have thirty (30) days from receipt of notice of termination to accomplish such restoration.

#### G. LIENS

Lessee shall promptly discharge or cause to be discharged any valid lien, *right in rem*, claim or demand of any kind, except one in favor of the Government, which at any time may arise or exist with respect to the Premises or materials or equipment furnished therefor, or any part thereof, and if the same shall not be promptly discharged by Lessee, the Government may discharge, or cause to be discharged, the same at the expense of the Lessee.

#### H. TERMINATION BY GOVERNMENT

The Government shall have the right to terminate this lease, in whole or in part, at any time, without prior notice, and regardless of any lack of breach by Lessee of any of the terms and conditions of this lease. In the event of termination for any reason not involving a breach by Lessee of the terms and conditions of the lease the Government shall make an equitable adjustment of any advance rentals paid by Lessee hereunder and, if the Government's use of the Premises does not require immediate possession thereof, Lessee shall be permitted, within such time as the Local Government Representative shall prescribe, to harvest, gather and remove from the Premises such crops as can be so harvested and removed, but if the Government's requirements necessitate immediate repossession of the Premises, so as to require immediate removal of Lessee's livestock, and/or, to preclude Lessee from such harvesting and removal of any growing or matured crops, Lessee hereby specifically releases, remises, and forever discharges the Government from any and all liability or claims for loss or damage of any nature arising out of such termination and repossession, including, but not limited to, destruction of diminution in value of, or inability to harvest any growing crops, and/or death or diminution of value of any livestock of Lessee.

In the event that the Government shall elect to terminate this lease on account of the breach by the Lessee of any of the terms and conditions hereof no adjustment in advance rentals paid by Lessee shall be made, and the Government shall be entitled to recover and Lessee shall pay to the Government:

(1) The costs incurred in resuming possession of the Premises.

(2) The costs incurred in performing any obligation on the part of Lessee to be performed hereunder.

(3) An amount equal to the aggregate of all rents and charges assumed hereunder and not theretofore paid, less the net rentals, if any, collected by the Government on the reletting of the Premises, which amounts shall be due and payable at the time when the rent reserved under this lease would become due and payable.

The Government may, at its option, attach any livestock or crops of Lessee on the Premises in full or partial satisfaction of Lessee's obligations under this Article.

#### I. SURRENDER

Upon the expiration of this lease or its prior termination, in whole or in part, Lessee shall quietly, and peacefully remove itself and its property from the Premises, or part thereof as to which this lease shall be terminated, and surrender the possession thereof to the Government. Upon failure or neglect of Lessee to so remove, the Government and its officers or agents may enter the Premises and cause the removal of all persons and property therefrom without recourse to any action or proceeding at law or in equity. Lessee hereby expressly waives any provision of law requiring notice to quit possession of the Premises. Such removal shall be at the sole cost and expense of Lessee and Lessee shall indemnify and save and hold harmless the Government, its officer, agents and employees for and from any and all liability or claims for damages of any nature whatsoever which may arise out of or be attributable to such removal.

#### J. DAMAGE TO GOVERNMENT PROPERTY

In the event of the destruction of or damage to any Government property located on or adjacent to the Premises by Lessee, or any of its officers, agents, servants, employees, subtenants, licensee or invitees, Lessee shall promptly repair or replace such property to the satisfaction of the Government, or pay to the Government an amount of money sufficient to compensate it for the loss or damage sustained, as the Government shall elect.

#### K. NON-LIABILITY OF GOVERNMENT

Lessee covenants that it will indemnify and save and hold harmless the Government, its officers, agents and employees for and from any and all liability or claims for loss of or damage to any

property owned by or in the custody of Lessee, its officers, agents, servants, employees, subtenants, licensees or invitees, or for the death of or injury to any of the same which may arise out of or be attributable to the condition, state of repair or Lessee's use and occupancy of the Premises, or the furnishings of any utilities or services (including supply of water from wells or other sources), or any interruption therein or failure thereof, whether or not the same shall be occasioned by the negligence or lack of diligence of Lessee, its officers, agents, servants or employees.

#### L. UTILITIES AND SERVICES

In the event that the Government shall furnish Lessee with any utilities and services maintained by the Government which Lessee may require in connection with its use of the Premises, Lessee shall pay the Government the charges therefor in addition to the cash rent required under this lease. Such charges and the method of payment thereof shall be determined by the Local Government Representative in accordance with applicable laws and regulations, on such basis as the Local Government Representative may establish, which may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Lessee. It is expressly agreed and understood that the Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to Lessee.

#### M. ACCESS

The Government shall have access to the Premises at all reasonable times for any purposes not inconsistent with the quiet use and enjoyment thereof by Lessee, including, but not limited to, the purpose of inspection.

#### N. COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or 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 agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or in its discretion to require Lessee to pay, in addition to the rental or consideration, the full

amount of such commission, percentage, brokerage, or contingent fee.

#### O. STATE AND LOCAL TAXES

In the event that as a result of any future Act of Congress, subjecting Government-owned property to taxation, any taxes, assessments or similar charges are imposed by State or local authorities upon the Premises (other than upon Lessee's possessory interest therein), Lessee shall pay the same when due and payable and this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided for herein, which reduction shall in no event exceed the amount of such taxes, assessments, or similar charges; *Provided*, in event the parties hereto are unable to agree within ninety (90) days from the date of the imposition of such taxes, assessments, or similar charges, upon a rental which in the opinion of the Local Government Representative constitutes a reasonable return to the Government on the Premises, then in such event the Local Government Representative shall have the right to determine the amount of the rental, which determination shall be binding on Lessee, subject to appeal as a dispute in accordance with the provisions of paragraph P of this Article 10.

#### P. DISPUTES

1.1 This lease is subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613) (the Act).

1.2 Except as provided in the Act, all disputes arising under or relating to this lease shall be resolved under this clause.

1.3 "Claim," as used in this clause, means a written demand or written assertion by the Lessee or the Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or 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 claimant. 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 1.4(2) below. A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim under the Act. The submission may be converted to a claim under the Act, by complying

with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

1.4(1) A claim by the Lessee shall be made in writing and submitted to the \_\_\_\_\_, Naval Facilities Engineering Command, for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the \_\_\_\_\_, Naval Facilities Engineering Command.

1.4(2)(a) The Lessee shall provide the certification specified in subparagraph 1.4(2)(c) of this clause when submitting any claim ---

(A) Exceeding \$100,000; or  
(B) Regardless of the amount claimed, when using--

(1) Arbitration conducted pursuant to 5 U.S.C. 575-580; or

(2) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

1.4(2)(b) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.

1.4(2)(c) The certification shall state as follows: "I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Lessee believes the Government liable; and that I am duly authorized to certify the claim on behalf of the Lessee."

1.4(3) The certification may be executed by any person duly authorized to bind the Lessee with respect to the claim.

1.5 For Lessee claim of \$100,000 or less, the \_\_\_\_\_, Naval Facilities Engineering Command, must, if requested in writing by the Lessee, render a decision within sixty (60) days of the request. For Lessee-certified claims over \$100,000, the \_\_\_\_\_, Naval Facilities Engineering Command, must, within sixty (60) days, decide the claim or notify the Lessee of the date by which the decision will be made.

1.6 The \_\_\_\_\_, Naval Facilities Engineering Command, decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

1.7 At the time a claim by the Lessee is submitted to the \_\_\_\_\_, Naval Facilities Engineering Command or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use ADR. When using arbitration conducted pursuant to 5 U.S.C. 575-580, or when using any other ADR technique that the agency elects to handle in accordance with the ADRA, any claim, regardless of amount, shall be accompanied by the certification described in paragraph 1.4(2)(c) of this clause, and executed in accordance with paragraph 1.4(3) of this clause.

1.8 The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the \_\_\_\_\_, Naval Facilities Engineering Command receives the claim (properly certified if required), or (2) the date of payment otherwise would be due, if that date is later, until the date of payment. With regard to claims having defective certifications, as defined in FAR 33.201, interest shall be paid from the date that the \_\_\_\_\_, Naval Facilities Engineering Command initially receives the claim. 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 \_\_\_\_\_, Naval Facilities Engineering Command, 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.

1.9 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 \_\_\_\_\_, Naval Facilities Engineering Command.

#### Q. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress, or Resident Commissioner, shall be admitted to any share of part of this lease, or to any benefit to arise therefrom but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

#### R. LABOR PROVISION



(1) Equal Opportunity

During the term of this lease the Lessee agrees as follows:

(a) The Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. The Lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.

(b) The Lessee will, in all solicitations or advertisements for employees placed by or on behalf of the lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(c) The Lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the Government, advising the labor union or worker's representative of the Lessee's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The Lessee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The Lessee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations and orders.

(f) In the event of the Lessee's noncompliance with the Equal Opportunity clause of this lease or with any of said rules, regulations, or orders, this lease may be canceled, terminated or suspended in whole or in part and the Lessee may be

declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The Lessee will include the provisions of paragraphs (a) through (g) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, so that such provisions will be binding upon each sublessee or vendor. The Lessee will take such action with respect to any sublessee or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the Lessee becomes involved in, or is threatened with, litigation with sublessee or vendor as a result of such direction by the Government, the Lessee may request the United States to enter into such litigation to protect the interests of the United States.

(2) Convict Labor

In connection with the performance of work required by this lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

(3) Contract Work Hours Standards Act (40 U.S. Code 327-330)

This lease, to the extent that it is a contract of a character specified in the Contract Work Hours Standards Act (40 U.S.C. 327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Contract Work Hours Standards Act and to all other provisions and exceptions of said law:

(a) The Lessee shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic

rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the Lessee's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the Lessee shall be liable to any affected employee for any amounts due and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

#### S. NOTICES

No notice, order, direction, determination, requirement, consent, or approval under this lease shall be of any effect unless in writing. All notices required under this lease shall be addressed to Lessee, or to the Local Government Representative, as may be appropriate, at the address thereof specified in Article 9 of this lease or at such other address as may from time to time be agreed upon by the parties hereto.

#### T. FAILURE OF GOVERNMENT TO INSIST ON COMPLIANCE

The failure of the Government to insist, in any one or more instances, upon performances of any of the terms, covenants or conditions of this lease shall not be construed as a waiver or relinquishment of the Government's right to the future performance of any such terms, covenants or conditions and Lessee's obligations in respect to such future performance shall continue in full force and effect.

#### U. ASSIGNMENT OR SUBLETTING

Lessee shall not transfer or assign this lease or any interest therein nor sublet or otherwise make available to any third party or parties any portion of the Premises or rights therein without prior written consent of the Government. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all the obligations of Lessee hereunder, but no assignment shall relieve the assignor of any of Lessee's obligations hereunder except for an extension of the lease term beginning

after such assignment, and then only if the Government shall have consented thereto.

#### V. GOVERNMENT RULES AND REGULATIONS

Lessee shall comply with such rules and regulations regarding station security, ingress, egress, safety and sanitation as may be prescribed, from time to time, by the Local Government Representative, or by the Commanding Officer of the Naval activity of which the Premises forms a part.

#### W. PAYMENTS

All payments to the Government required under this lease shall be made by check or postal money order made payable to the U.S. Treasurer and mailed to \_\_\_\_\_.

#### X. INTEREST

Notwithstanding any other provision of this lease, unless paid within thirty (30) days, all amounts that become payable by the Lessee to the Government under this contract (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date due until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this lease. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this contract; (ii) the date of the first written demand for payment, consistent with this lease, including demand consequent upon default termination; or (iii) the date of transmittal by the Government to the Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount.

## Y. ADMINISTRATION

The local Government Representative specified in Article 9 of this lease shall, under the direction of the \_\_\_\_\_, Naval Facilities Engineering Command, have complete charge of the administration of this lease, and shall exercise full supervision and general direction thereof insofar as the interest of the Department are affected.

## Z. INDEMNIFICATION

The LESSEE agrees that the GOVERNMENT, its officers, agents, and employees shall be released from all liability on all suits, claims, actions, or demands in any way related to or arising under the LESSEE's use of the property. This release includes, but is not limited to, all environmental suits, claims, and enforcement actions, whether arising during the LESSEE's construction on or use of the property, or after such use has ended.

---

## 11. SPECIAL PROVISIONS

The following specified additional provisions, which shall control in the event of any conflict with the General Provisions of Article 10, are hereby incorporated into this lease by attachment hereto.

### A. REIMBURSABLE WORK

If at any time during the lease it is determined that work not identified in the Soil and Water Conservation Plan, as Non-Reimbursable work is necessary, the procedures below will be followed:

The Natural Resource Specialist will prepare a Scope of Work and Government Cost Estimate. Scope of Work will include what work is to be done and identify how or what method should be used to complete the work. It will also include a time schedule in which the work must be completed.

The Natural Resource Specialist will forward the Scope of Work and Government Cost Estimate to the Real Estate RECO.

The Real Estate RECO will forward the Scope of Work to the Lessee and request a cost proposal.

The Lessee will send a cost proposal to the Real Estate RECO. This proposal may be based on Lessee having a third party perform the work. The Lessee may at this time inform the Government that he is incapable of performing the work.

If the Lessee submits a proposal and is acceptable, the Real Estate RECO will either; (1) issue a letter of authorization to proceed, advising a modification to the lease will be forthcoming or (2) forward a modification to the Lessee reflecting changes. Work should not begin until a letter or authorization or a modification has been received.

If the proposal is unacceptable, the Government will negotiate with the Lessee or determine alternative means of completing the required work.

When work is completed, Lessee and Navy Representatives will perform a joint inspection. If work is acceptable and within the time frame allotted, terms of the modification will be activated; i.e., rent reduction granted.

If it is determined during a joint inspection that the work was not completed properly or done within the required time frame, the Navy may, at its option, allow the Lessee additional time, not to exceed 25% of original time allotted, to complete the work or the Navy will have the work completed and charge the Lessee.

### B. ENVIRONMENTAL/INDEMNIFICATION

In accordance with 10 U.S.C. 2692, the Lessee may not allow the treatment, storage or disposal of any Toxic or Hazardous materials on the leased premises. For the purposes of this provision, the terms "storage" and "Toxic or Hazardous Materials" are defined as provided in 48 CFR 252.223-7006.

The Lessee will reimburse the Lessor for all expenditures incurred if the Lessor is required by any regulatory authority or voluntarily chooses to undertake any Remedial Action to address Contamination on the leased premises resulting from the acts or omissions of the Lessee or its contractors. The Lessor shall contact the Lessee before taking any Remedial Action and give the Lessee a reasonable opportunity to undertake such Remedial Action if the Lessor believes that the Lessee has the capability to do so. Notwithstanding the above, the Lessee may immediately take any Remedial Action required of the Lessee by law.

During the term of this Lease, if the Lessee becomes aware that a Release of Toxic or Hazardous Materials has occurred that has resulted in Contamination of the leased premises, the Lessee will provide oral notice to the Lessor within 24 hours of becoming aware of such Contamination, providing all relevant facts and circumstances. The Lessor may request from the Lessee a more detailed written description of these facts and circumstances within a time period specified by the Lessor. The Lessee will promptly take all actions, at its sole expense, as are necessary to comply with all Applicable Environmental Laws relating to such Release, including reporting the occurrence to the appropriate Federal, State, or local regulatory authority or taking required Remedial Action, related to addressing

the Contamination and to minimize the impacts of such Release. The Lessee will provide all information requested by the Lessor regarding such actions.

During the term of this Lease, the Lessee will ensure that all activities conducted by the Lessee or its contractors on the leased premises are carried out in compliance with Applicable Environmental Laws. The Lessee will provide oral notice to the Lessor within 24 hours of receiving any complaint, order, directive, claim, citation, or notice by any Governmental authority or any other person or entity with respect to a violation of Applicable Environmental Laws resulting from the activities of the Lessee or its contractors on the leased premises. The Lessee will promptly take all actions, at its sole expense, as are necessary to comply with all Applicable Environmental Laws as directed by any Federal, State, or local regulatory authority. The Lessor may request a more detailed written description of the events or circumstances leading to this event within a time specified by the Lessor. Without limitation of the foregoing, the Lessor may, but will not be obligated to, enter onto the leased premises and take any Remedial Action as it deems necessary or advisable to address any Contamination of the leased premises by Toxic or Hazardous Materials or to ensure compliance with Applicable Environmental Laws.

At any time, the Lessor or its representatives may conduct inspections on the leased premises to ensure compliance with Applicable Environmental Laws. To assist in this evaluation, the Lessee will provide to the Lessor or the Lessor's representative, any and all books, records, or documents in their possession, or in the possession of their agents or contractors, related to the activities or operations on the leased premises, which the Lessor or its representatives may examine, copy, or make extracts from.

As the Lessor deems appropriate, the Lessor may require that the Lessee, from time to time, promptly conduct such tests and procedures for the purpose of ensuring that the leased premises are in compliance with Applicable Environmental Laws and of having the leased premises certified to the Lessor as such. Such tests and procedures shall be conducted by recognized professionals to be approved by the Lessor and in a manner that is satisfactory to the Lessor. When requesting such tests and procedures, the Lessor will work with the Lessee to establish accepted timeframes, appropriate parties to perform the required activities, and schedules for performance. If an agreement cannot be reached regarding any of the foregoing, the Lessor or its representatives may undertake such tests and procedures, with the Lessee being obligated to reimburse the Lessor for all costs incurred.

For the purposes of this provision, the terms used above are defined as follows:

"Toxic or Hazardous Materials" means any hazardous, harmful, odorous, radioactive, toxic or dangerous waste, substance or material, including, without limitation, asbestos, polychlorinated biphenyls ("PCBs") and petroleum products, and any hazardous or toxic substance, material or waste, or any pollutant or contaminant defined as such in, or for the purposes of, any environmental laws as are now or in the future may be in effect. The Lessee's obligation under this provision shall extend to any and all such Toxic or Hazardous Materials whether or not such substance was defined, recognized, known, or suspected of being hazardous, toxic, dangerous, or wasteful at the time of any act or omission giving rise to the Lessee's obligation.

"Contamination" means a level of Toxic or Hazardous Materials in the air, in or on soil, in the surface water, or in the groundwater that exceeds levels allowed by Applicable Environmental Laws.

"Applicable Environmental Laws" means any Federal, State, or local statute, law, ordinance, rule, regulation, or order (whether voluntary or not) that govern the activities or operations of the leased premises, or the persons carrying out those activities or operations, relating to the environment, natural resources, or human health and safety, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. § 9601 *et seq.*), the Hazardous Material Transportation Act (49 U.S.C. § 1801 *et seq.*), the Resource Conservation and Recovery Act (42 U.S.C. 6901 *et seq.*), the Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*), the Clean Air Act (42 U.S.C. § 7401 *et seq.*), the Toxic Substances Control Act (15 U.S.C. § 2601 *et seq.*), and the Occupational Safety and Health Act (29 U.S.C. § 651 *et seq.*), Superfund Amendments and Reauthorization Act Title III (SARA) Emergency Planning and Community Right-to-Know Act (EPCRA) reporting requirements (40 CFR 355, 40 CFR 370, 40 CFR 372 and 29 CFR 1910.1200), as such laws have been amended or supplemented now or in the future.

“Release” means any release, spill, emission, leaking, pumping, injection, deposit, disposal, leaching, or migration into the environment, whether accidental or otherwise, resulting from the act or omissions of the Lessee, its contractors, or by natural conditions.

“Remedial Action” means any investigation or monitoring of the condition of the leased premises or any cleanup, remedial, removal, or restoration work required or performed on the leased premises because of the presence, suspected presence, release, or suspected release of Toxic or Hazardous Materials.

The Lessor shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the use and occupation of the leased premises by the Lessee, nor for damages to the property or injuries to the person of the Lessor’s officers, agents, servants, or employees, or others who may be on the leased premises at their invitation or the invitation of any one of them arising from or incident to governmental activities except as permitted under the Federal Torts Claim Act, 28 U.S.C. 2671 et seq.

#### C. APPLICABLE STATE AND CITY LAWS, CODES, AND ORDINANCES

The Lessee agrees to comply with all applicable State and City laws, codes and ordinances applicable to use of the leased premises at Lessee’s expense. Lessee further agrees to obtain all necessary permits and related items at Lessee’s expense.

#### D. RESTRICTIONS

The Lessee shall comply with the following restrictions on the use of the leased premises:

No substance shall be released into the air from the leased premises, which could impair visibility including, without limitation, emissions such as steam, dust, and smoke.

No lights shall be constructed, maintained, directed or allowed to shine from the said leased premises, which could interfere with or impair pilot vision. All light emissions must be shielded to prevent them from being used as geographic reference points by aircraft personnel.

No electrical emissions shall be emitted from sources situate on said leased premises which could interfere in any way with aircraft communications systems, ordnance or navigational equipment now in existence or hereinafter invented.

No garbage shall be dumped or placed and no feeding stations or other facilities attractive to birds shall be constructed or maintained on said leased premises. Trash, debris and empty pesticides containers must be removed from Navy lands and properly disposed of each day at the Lessee’s expense.

**Station:**  
**Parcel #:**  
**Contract #:**

**DEPARTMENT OF THE NAVY**  
**LEASE FOR AGRICULTURAL PURPOSES**  
**PART I**

---

LEASE between \_\_\_\_\_ hereinafter called LESSEE, and the United States of America, Department of the Navy, represented by the Commanding Officer, Naval Facilities Engineering Command \_\_\_\_\_, hereinafter called the "GOVERNMENT."

The GOVERNMENT hereby leases to the LESSEE the property described below under the terms and conditions set forth herein, and according to the work called for in the Soil & Water Conservation Plan, attached hereto and made part hereof as Exhibit "\_\_\_."

1 **LEASED PROPERTY:** That portion of \_\_\_\_\_ hereinafter called the STATION, identified as **Parcel** \_\_\_\_\_, and hereinafter called the "Premises, " further described as follows:

Annual Rent: \$\_\_\_\_\_

**In addition to the rent, the LESSEE agrees to pay 100% of the annual irrigation charges allotted to the leased premises by the \_\_\_\_\_.**

2. **TERM:** The term of this Lease shall begin upon signatures of both parties, and end on \_\_\_\_\_, UNLESS sooner terminated in accordance with the General Provisions of this Lease, (General Provisions Paragraphs F and G).

3. **RENT:** At a minimum, each lease year the LESSEE agrees to pay 100% of the irrigation charges allotted to the leased premises by the \_\_\_\_\_, on or before the date the payment is due, usually at the beginning of irrigation season. The LESSEE shall pay the GOVERNMENT in addition to the annual water charges an **annual rental of \$\_\_\_\_\_**. Payable in advance at the rate of \$\_\_\_\_\_ **semi-annually** in conformity with the provisions of Paragraph Y of the Navy General Purpose Lease Part II, General Provisions, subject to any allowance for credit for work approved and performed pursuant to Clause 7 hereof. Rental payments are acknowledged by the GOVERNMENT according to the date that the payment is received.

4. **USE:**

5. **PERFORMANCE BOND OR SECURITY:** To secure the faithful performance of LESSEE's obligations hereunder, LESSEE shall provide the GOVERNMENT with a security deposit in the amount of \$\_\_\_\_\_, in the form of:

- A. Cash or negotiable Government bonds;
- B. Performance Bond issued by a Corporate Surety and satisfactory to the GOVERNMENT in all respects;
- C. Time Certificate of Deposit; or
- D. Letter of credit from a financial institution.

Performance Bond shall be payable to the Treasurer of the United States. If the GOVERNMENT shall at any time determine that an increase in the amount of security is necessary to make same commensurate with LESSEE's obligations hereunder, LESSEE shall furnish additional security promptly upon request.

If LESSEE shall fully and faithfully comply with all the terms and conditions of this Lease, the security deposit shall be returned to the LESSEE upon the expiration or earlier termination of the Lease.

6. **INSURANCE REQUIREMENTS:** Prior to award of the Lease, the LESSEE shall submit a certificate of insurance meeting the following requirements. Public Liability and Property Damage shall meet the following requirements at a minimum:

\$1,000,000 Third Party Property Damage  
\$1,000,000 Third Party Personal Injury Per Person  
\$3,000,000 Third Party Personal Injury Per Accident

The policy/certificate of insurance shall contain an endorsement reading as follows:

- a. Loss, if any under this policy shall be adjusted with (name of LESSEE) and the proceeds, at the election of the GOVERNMENT, shall be payable to (name of LESSEE); any proceeds not paid to (name of LESSEE) shall be payable to the Treasurer of the United States of America.
- b. The insurer waives any right of subrogation against the United States of America which might arise by reason of any payment made under this policy.
- c. The GOVERNMENT shall be given thirty (30) days written notice prior to making any material change in or the cancellation of the policy. Please strike out (and initial) any clauses that state "...failure to make such notice imposes no obligation or liability of any kind upon the company, etc ..."
- d. The United States of America (Department of the Navy) is added as an additional insured in operations of the policyholder at or from the premises leased at \_\_\_\_\_.
- e. This insurance certificate is for use of premises at \_\_\_\_\_, contract number \_\_\_\_\_ for Parcel \_\_\_\_\_.

If, at any time, the GOVERNMENT determines that the insurance maintained by the LESSEE does not in fact adequately protect the GOVERNMENT, LESSEE may be required to carry such other insurance in such form, for such amounts and for such periods of time, and with such insurers as the GOVERNMENT may from time to time require or approve.

7. **CONSERVATION and MAINTENANCE WORK:**

- a. LESSEE **shall, at its own cost and expense**, assume full responsibility for following conservation and maintenance obligations in accordance with the specifications and guidelines set forth in the Soil and Water Conservation Plan of this Lease, attached hereto as Exhibit "\_\_\_" and made a part hereof.
- b. The LESSEE agrees to perform conservation and maintenance work associated with or in addition to the Conservation and Maintenance Obligations prescribed in Clause 7 hereof, as may from time to time be approved or directed by the GOVERNMENT. Upon completion of such work and the acceptance of same by the GOVERNMENT, the LESSEE shall receive payment in full for the "Actual Costs" of work performed or shall receive rent credit in the same amount against rents payable under the terms of this Lease; provided, however, that in no event shall such rent credit exceed the total amount of cash rent called for in the Lease.

(1) "Actual Costs" used herein shall mean the sum of:

(a) direct labor costs plus 10 percent thereof for incidental expenses for general supervision, administration and overhead; and

(b) direct material costs, when LESSEE has incurred such costs directly in the performance of any Conservation and Maintenance Work approved or directed by the Real Estate RECO. When LESSEE contracts with third parties for performance of any item of Conservation and Maintenance Work, "Actual Costs," as used herein, shall mean the amount of such contracts that have been approved in advance by the Real Estate RECO.



(2) Prior to commencement of any Conservation and Maintenance Work for which the LESSEE is to receive credit or payment from the GOVERNMENT, the LESSEE must have a Modification of Contract executed by the Real Estate RECO setting forth terms, conditions and the amount of compensation to be paid upon completion of the work to the satisfaction of the GOVERNMENT. The following procedures apply:

(a) GOVERNMENT provides LESSEE with project specifications and notice to obtain bids.

(b) LESSEE obtains bids from qualified contractors and forwards to the Real Estate RECO. LESSEE may elect to do the work and thereby submit only an itemized bid proposal covering all aspects of the project. In the event the LESSEE elects to do the work his/herself, no other bids are necessary, provided the LESSEE's bid price does not exceed the GOVERNMENT's fair cost estimate. For each project or service provided, an estimated cost to perform the work must be included with the project or service description, the estimated cost shall be broken down by material, subcontract cost, labor, overhead, general expense and administrative expense.

(c) Nothing in this Lease shall preclude the LESSEE from contracting with a third-party contractor for the work. LESSEE shall require any contractor to have a Performance Bond with the penal amount of no less than the estimated cost of the work contracted for. LESSEE shall be solely responsible for obtaining any environmental permits required for the proposed work independent of any existing permits. Copies of all required construction permits shall be provided to the GOVERNMENT prior to execution of work.

(d) GOVERNMENT shall review the bids and if acceptable shall enter into a Modification of Lease with LESSEE authorizing the project. The GOVERNMENT will retain the right to perform a technical review of any proposed work to be performed or personal property to be provided. A GOVERNMENT representative may oversee the work solely of the benefit of the GOVERNMENT and confirm satisfactory completion to the Commanding Officer. **IN NO CASE SHALL LESSEE BEGIN PROJECT WORK PRIOR TO RECEIVING A FULLY EXECUTED MODIFICATION OF LEASE THEREFOR.**

(e) A "not to exceed cost ceiling" will be established in the Modification of Lease. The Real Estate RECO may, upon request, with supporting rationale from the LESSEE, increase the "not to exceed cost ceiling." Such request for an increase in said amount must be submitted prior to incurring any cost in excess of the said amount and sufficiently in advance to provide for review of the requirement and, in any event, not less than ten (10) days prior to the date authorization is required. In the limited circumstances wherein, due to unavoidable time constraints, if it is not practicable to comply with the ten-day requirement, LESSEE may seek verbal approval from the Real Estate RECO, pending written confirmation. The LESSEE shall not be obligated to incur costs in excess of the "not to exceed cost ceiling."

(f) Upon receipt of a fully executed Modification of Contract, LESSEE shall begin work coordinating all details of the work including starting dates and time, and the location of the work with the Station Natural Resources Specialist.

(g) Upon completion of the work, the LESSEE shall submit to the GOVERNMENT an invoice signed by the LESSEE stating the full amount due for the work performed, together with all supporting documents, all bills of sale; receipts for labor and materials used in connection with the project; and in the event the LESSEE performed the work, an itemized bill for all labor and materials.

(h) The incurred cost of performing such project or service will be subject to GOVERNMENT audit and should such audited allowable cost be less than the "not to exceed cost ceiling" amount authorized, then the amount of credit towards rent reduction to LESSEE shall be adjusted to the audited, allowable incurred cost. In the event that the audited, allowable incurred cost of a project or service exceeds the amount authorized (the "not to exceed cost ceiling") a modification to the Lease will need to be made detailing the new "not to exceed cost ceiling." Such excess cost shall be deemed to be additional cost of performing the work through the modification of the Lease and will be credited to rent reduction.

(i) GOVERNMENT shall inspect the work for adherence to specifications and quality of workmanship and will review the receipts and bills of sale for adherence to the previously approved bid estimates. The Real Estate RECO must provide a written final acceptance of the work performed in order for LESSEE to receive rent reduction credit for the work performance. If the project is acceptable, the Real Estate RECO will make arrangements for appropriate rental credit or reimbursement to the LESSEE in accordance with applicable provisions of this Lease.

(j) Any bills of sale, purchase receipts, written warranty agreements and other indicia or documents of ownership shall be provided to the GOVERNMENT upon its acceptance of the improvement or personal property. Written warranties shall include but not be limited to a warranty that work performed conforms to the contract requirements and is free of any defect in equipment, material or design furnished or workmanship performed, and that the LESSEE or LESSEE's contractor will remedy any failure to conform or any defect. Additionally, warranty shall provide that LESSEE or LESSEE's contractor shall remedy any damage to GOVERNMENT owned or controlled real or personal property when that damage results from either contractor failure to conform to contract requirements or any defect of equipment, material, workmanship or design furnished. All warranties shall name the GOVERNMENT as an additional beneficiary. LESSEE shall enforce all warranties for the benefit of the GOVERNMENT if directed by the GOVERNMENT.

(k) Upon termination of this Lease pursuant to Navy General Purpose Lease Part II, General Provisions Paragraphs F and G, herein, a final accounting will be performed and the balance of any rent accrued and still payable to the GOVERNMENT will be due on demand. Notwithstanding termination, the GOVERNMENT reserves the right to have a final accounting at any time during the course of the Lease and request that the value of any rent accrued up to that date and not already contractually obligated to any specific project or service to be performed, be paid in cash to the GOVERNMENT on demand. Upon termination, at GOVERNMENT's option, LESSEE shall complete any work or service already contracted for or if otherwise directed by GOVERNMENT, terminate any contract and pay all accrued rent in cash.

c. All improvements constructed or installed under this clause are the property of the GOVERNMENT and shall remain in place and intact upon the expiration or earlier termination of this Lease. Should the LESSEE fail to perform such work, the GOVERNMENT may arrange for the work to be completed and LESSEE shall be required to reimburse the GOVERNMENT for costs incurred.

8. **GENERAL PROVISIONS:** Department of the Navy General Purpose Lease Part II is attached hereto and its General Provisions are made part hereof. The term "Local GOVERNMENT Representative" as it appears in the Lease is synonymous with "Real Estate RECO."

9. **SPECIAL PROVISIONS:**

a. In accordance with General Provisions, Paragraph V, Government Rules and Regulations, the following additional requirements are prescribed at this time:

(1) Where applicable, the leasehold interest in Government-owned land may be subject to State and local taxation as a possessory interest in tax exempt real property. The amount of assessment to be charged to the LESSEE is determined by the County Assessor. Such taxes are the sole responsibility and liability of the LESSEE.

(2) LESSEE shall not store any property on the Premises that is dangerous to public health or safety or to the environment (toxic or hazardous) without first rendering it innocuous and/or providing adequate safeguards. No property of this type shall be abandoned or destroyed on the Premises. The GOVERNMENT assumes no liability for damage to the property or for personal injuries sustained as a result of removal or use of the property. Furthermore, the GOVERNMENT shall be held harmless from any and all demands, suits, actions and claims arising from any use or disposal.

(3) The LESSEE shall coordinate its activities with the Environmental Department, (\_\_\_\_) \_\_\_\_\_, or his/her designated representative at the Station. The LESSEE shall be available at all times to correct emergency situation with regard to the Lease. The LESSEE shall provide Station Representative with emergency telephone numbers where the LESSEE may be contacted during working and nonworking hours. The LESSEE shall also provide at least one alternative point of contact (name, address, and phone number) that may act on behalf of the LESSEE in emergency situations. The LESSEE or his/her alternate(s) shall be available for contact seven days per week, 24 hours per day and should arrive on Station within two hours for an emergency.

(4) All improvements constructed or installed by the LESSEE, except pumps, holding tanks motors, portable offices, and other portable equipment, whether at LESSEE's expense or reimbursable, become the property of the GOVERNMENT upon expiration or earlier termination of the Lease, without any payment being made by the GOVERNMENT.

(5) Cost Sharing: Cost sharing assistance may be available to the LESSEE under U. S. Department of Agriculture, Agriculture Conservation Program. The LESSEE, however, shall not apply for or accept any federal

cost sharing payment for any soil and water conservation practice required by the Lease that will result in duplicate payment for such practice. Projects completed as partial or entire consideration for the Lease, or for which reimbursement is made by the Navy, are not qualified as cost sharing projects under the Agricultural Conservation Program. Any LESSEE of the Station's agricultural or grazing lands who wish to enter into any U.S. Department of Agriculture, Agriculture Stabilization and Conservation Service (A.S.C.S.) programs or agreements shall do so solely at the discretion of and subject to the USDA-ASCS rules and regulations. The Government, Department of Navy, makes no guarantee to the LESSEE regarding normal crop acreages, allotments for crops, or the status of outleased land as being qualified for ASCS programs.

(6) The placement of any temporary buildings or structures (including trailers) on the leased premises must be coordinated through the Lease Representative and approved by the Station. LESSEES, their agents and employees will not be allowed to live on the premises.

(7) Expansion of existing operation will be subject to the GOVERNMENT's responsibility under the National Environmental Policy Act and Endangered Species Act and require coordination with the Lease Representative and subject to Station approval. If endangered species occur in any proposed expansion site within the Lease holdings, that area will be excluded from the Lease and an acreage and rental reduction modification will be issued as appropriate.

b. ENVIRONMENTAL PROTECTION: Exhibit "B," Environmental Provisions, is attached hereto and made a part hereof.

c. THE FOLLOWING SPECIFIED ADDITIONAL PROVISIONS WHICH SHALL BE CONTROLLING IN THE EVENT OF ANY CONFLICT WITH THE NAVY GENERAL PURPOSE LEASE PART II, GENERAL PROVISIONS OF THIS LEASE:

1. Paragraph B is deleted in it's entirety.

2. Paragraph G, paragraph 2 is added as follows: the LESSEE has the right to terminate this Lease at the end of the first year, or at the end of any succeeding year, by providing the GOVERNMENT at least 180 days written notice.

10. **REPRESENTATIONS:** All terms and conditions with respect to this Lease are expressly contained herein and the LESSEE agrees that no representative or agent of the GOVERNMENT has made any representation or promise with respect thereto not expressly contained herein.

11. **EXECUTION BY LESSEE:**

Lessee: \_\_\_\_\_  
(print)

Tax Identification #: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Telephone: \_\_\_\_\_

\_\_\_\_\_  
Signature of LESSEE

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title of LESSEE

\_\_\_\_\_  
Witness

11(A): For Corporation LESSEE, certification by Secretary or Assistant Secretary of the Corporation:

I certify that the person who signed this Lease on behalf of LESSEE was then the Officer indicated and this agreement was duly signed for and on behalf of said corporation by authority of its governing body and is within the scope of its corporate powers.

(Corporate Seal)

Signature: \_\_\_\_\_

ITS: \_\_\_\_\_

Title: \_\_\_\_\_

**12. EXECUTION BY THE GOVERNMENT:**

THE UNITED STATES OF AMERICA

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Date

Real Estate RECO

Witness: \_\_\_\_\_

\_\_\_\_\_

Date

**13 NAVY IDENTIFICATION DATA:**

\_\_\_\_\_

**13a. NAME AND ADDRESS OF STATION:**

**13b. ADDRESS OF LESSEE:**

**13c. REAL ESTATE CONTACTING OFFICER/TITLE AND ADDRESS:**

## Environmental Requirements.

### Definitions

The following definitions shall apply to the special provisions of this lease agreement:

“Hazardous Material” means any substance:

- i) the presence of which requires investigation or remediation under any applicable federal, state or local statute, regulation, ordinance, order, action, policy or common law; or
- ii) which is or becomes defined as a “hazardous waste,” or hazardous substance,” pollutant or contaminant pursuant to any federal, state or local statute, regulation, rule or ordinance now or hereafter in effect, including the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. § 9601 et seq) and/or the Resource Conservation and Recovery Act (RCRA) (42 U.S.C. § 6901 et. seq); and/or the California Health & Safety Code §§ 25100 et. seq.
- iii) which is toxic, reactive, explosive, corrosive, ignitable, flammable, infectious, radioactive, carcinogenic, or otherwise hazardous and is or becomes regulated by any governmental authority, agency, department, commission, board, agency or instrumentality of the United States, the State of California or any political subdivision thereof; or
- iv) which contains gasoline, diesel fuel or any other petroleum hydrocarbons, polychlorinated biphenyls (PCBs), asbestos, or urea formaldehyde foam insulation.

“Environmental Requirements” mean all applicable present and future statutes, regulations, rules, ordinances, codes, licenses, permits, orders, approvals, plans or authorizations and similar items of all governmental agencies, departments, commissions, boards, bureaus, or instrumentalities of the United States, states and political subdivisions thereof and all applicable judicial, administrative and regulatory decrees, judgments and orders relating to the protection of human health or the environment and occupational safety and public health and safety, including but not limited to those pertaining to reporting, licensing, permitting, investigation and remediation of emissions, discharges, release or threatened releases of Hazardous Materials, chemical substances, pollutants, contaminants or hazardous or toxic substances, materials or wastes.

“Environmental Damages” mean all claims, judgments, damages, fines, liabilities, encumbrances, liens, costs and expenses of investigation and defense of any claim, whether or not such claim is defeated, and of any good faith settlement or judgment, of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, including without limitation reasonable attorneys’ fees and consultants’ fees, any of which are incurred at any time as a result of (i) the release or threat of release of any hazardous substance, hazardous constituent, hazardous waste, pollutant, or contaminant into the environment; (ii) the existence of Hazardous Materials (A) upon or beneath the Leased Property or (B) migrating or threatening to migrate from the Leased Property, or (iii) a violation of Environmental Requirements pertaining to the Leased Property, and including damages to personal injury or injury to property or natural resources occurring upon or off of the Leased Property and all other costs incurred in connection with the investigation or remediation of such Hazardous Materials or violation of Environmental Requirements including the performance of any cleanup, remediation, removal, corrective action, response, abatement or monitoring work required by any federal, state or local government agency.

### Covenants and Requirements:

1. Lessee and its officers, employees, agents, and contractors shall be solely responsible for obtaining, at no cost to the Government, any and all environmental permits or approvals required for Lessee’s actions on the Leased Property, independent of any existing federal, state, and/or local permits held by the Department of the Navy.

2. Lessee and its officers, employees, agents, and contractors shall comply with all Environmental Requirements. Lessee shall be solely responsible for any and all Environmental Damages, including but not limited to fines; penalties; environmental fees or taxes with any interest; enforcement actions instituted in connection with Lessee's use, or otherwise imputed to Lessee by law through others' use or occupancy, of the Leased Property; all costs of corrective action or response, including removal or remedial action incurred by the United States not inconsistent with the National Contingency Plan (NCP); any other necessary costs of response incurred by any other person consistent with the NCP; damages for injury to, destruction of, or loss of natural resources, including the reasonable costs of assessing injury, destruction, or loss; and the costs of any health assessment or health effects study carried out under 42 U.S.C. § 9604.

3. Lessee covenants that it shall not cause any Hazardous Material to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Leased Property except as specifically approved by the Secretary of the Navy in accordance with 10 U.S.C. § 2692. If approval is obtained, Lessee shall strictly comply with the Environmental Requirements, including applicable Federal, state, and local laws and regulations governing use, storage, and release reporting of Hazardous Materials on the Leased Property and the management/disposal of Hazardous Materials. Except as specifically authorized by the Government in writing, Lessee must provide at its own expense for Hazardous Materials management complying with all Environmental Requirements. Government hazardous waste management facilities will not be available to Lessee. Lessee shall not permit its Hazardous Materials to be commingled with waste of the Department of the Navy. Any violation of the requirements of this condition shall be deemed a material breach of this Lease.

4. If any Hazardous Material is brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined or used upon, about or beneath the Leased Property or any portion thereof in violation of subsections 2 and 3 above or is in existence in, on or under the Leased Property, Lessee shall, at the direction of the Government or any federal, state or local authority, remove or remediate such Hazardous Material and/or otherwise comply with the Environmental Requirements of such authority to insure compliance with all Environmental Requirements.

5. Lessee releases, remits, and forever discharges the Government, its officers, agents and employees of and from any and all claims, causes of action, injuries, damages, and demands whatsoever in law or in equity arising out of, or connected with, Lessee's use or otherwise imputed to Lessee by law through others' use or occupancy of the Leased Property. Lessee agrees to indemnify, defend, and hold harmless the United States against all fines, claims, damages, law suits, judgments, and expenses arising out of such use and/or occupancy of the Leased Property and not resulting from the negligence or willful intent or misconduct of Government, its officers, agents, and/or employees.

6. Any agency of the United States, its officers, agents, employees, and contractors, may enter upon the Leased Property, at all reasonable times for any purposes including, but not limited to, purposes of inspection. The Government normally will give the Lessee twenty-four (24) hours prior notice of its intention to enter the Leased Property, unless it determines sooner entry is required for

safety, environmental, operations, or security purposes. The Lessee shall have no claim against the

United States or any officer, agent, employee or contractor thereof, on account of any such entries.

The Government's right of inspection shall be without prejudice to the right of duly constituted enforcement officials to make inspections. This right of Government access shall also include the

right to conduct any environmental response actions the Government deems necessary.

---

GENERAL PROVISIONS

A. GENERAL MAINTENANCE OBLIGATION

Lessee, at its own expense, shall so protect, preserve, maintain and repair the Leased Property, that the same will at all times be kept in at least as good condition as when received less ordinary wear and tear and/or loss or damage for which Lessee is not liable hereunder.

B. LONG TERM MAINTENANCE OBLIGATION

— (1) In addition to its general maintenance obligation under Article A, above, Lessee shall, at its own expense, perform such items of "Long Term Maintenance" (as hereinafter defined) as may from time to time be approved or directed by the Local Government Representative; Provided, the Lessee shall receive credit against the Maximum Amount to be Expended specified in Article 4 of Part I hereof for the "Actual Costs" incurred in the performance of said items upon the satisfactory completion of such performance; Provided, further, Lessee shall at no time be obligated hereunder to expend for Long Term Maintenance any amount in excess of the difference between:

— (a) the Maximum Amount to be Expended as accrued to such time, and

— (b) the total credits allowed against the Maximum Amount to be Expended up to that time.

Such difference is hereinafter called the "Current Obligated Maintenance Amount."

— "Long Term Maintenance," as used herein, shall mean any item of protection, preservation, maintenance and repair of the Leased Property, or any part thereof, including property in which Lessee's right of use shall be in common with others, the recurrence of which is not anticipated within the twelve (12) month period following its completion. It shall in no event, however, include any item of protection, maintenance or repair which is solely incidental to Lessee's use of the property hereunder and which Lessee is obligated to perform by Article A above, or any other provision of this lease, such as, but not limited to, guard service, janitorial service, replacement of expendable items, garbage and trash collection or disposal, or clean-up work.

— "Actual Costs" as used herein, shall mean the sum of: (a) direct labor costs, plus 10% thereof for incidental expenses for general supervision, administration and overhead, and (b) direct material costs, when Lessee has incurred such costs directly in the performance of any item of Long Term Maintenance approved or directed by the Local Government representative. When Lessee contracts with third parties for performance of any item of Long Term Maintenance, "Actual Costs," as used herein, shall mean the amount of such contracts as shall have been approved in advance by the Local Government Representative.

— (2) Pending completion of performance and final determination of the actual costs of any items of Long Term Maintenance approved or directed as aforesaid, there shall be tentatively credited against the Maximum Amount to be expended at the end of each month of the lease term an estimate of the actual costs incurred in the performance thereof, in order to facilitate administration of this lease and enable the Local Government Representative to properly direct the performance of Long Term Maintenance under this Article.

— (3) If Lessee shall undertake the performance of any item of Long Term Maintenance at any time when the Current Obligated Maintenance Amount is insufficient to allow credit for the actual costs thereof, such actual costs shall constitute a credit against the Maximum Amount to be Expended as that amount may subsequently accrue pursuant to the provisions of Article 4 of Part I hereof; Provided, however, that in the event of the expiration of or termination of this lease prior to the allowance of such credit in whole or in part, Lessee shall make no claim against the Government on account of any difference between actual costs incurred and the Current Obligated Maintenance Amount as of the date of such expiration or termination of the lease, as such difference shall be at the sole cost and expense of Lessee.

— (4) At the end of each year of the term the Current Obligated Maintenance Amount shall be carried forward to the succeeding year; Provided, however, that at any time the Local Government Representative shall so direct, Lessee shall pay the Current Obligated Maintenance Amount, in whole or in part, as cash rent in the manner prescribed by Article Y of this Part II.

— (5) Within thirty (30) days from the expiration or prior termination of this lease, Lessee shall pay to the Government, in the manner prescribed by Article Y of this Part II, the Current Obligated Maintenance Amount as finally determined by the Local Government Representative.

— (6) Lessee shall keep adequate records and books of account showing the actual cost to it of all items of labor, material, equipment, supplies, services, and other items of cost of any nature constituting an item of Actual Costs incurred by it directly in the performance of any item of Long Term Maintenance. The Lessee shall provide the Government with access to such records and books of account and proper facilities for inspection thereof at all reasonable times. All information obtained from said records and books of account shall be deemed confidential.

C. RISK OF LOSS-INSURANCE

(1) Lessee shall bear all risk of loss of or damage to the Leased Property arising from any cause whatsoever, with or without fault by Lessee; Provided, however, that Lessee's liability for any loss or damage resulting from risks expressly required to be insured against under the lease shall not exceed the amount of insurance so required or the amount actually procured and maintained, whichever shall be the greater; Provided, further, that maintenance of the required insurance shall effect no limitation on Lessee's liability with respect to any loss or damage resulting from the willful misconduct, lack of good faith, or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees.

(2) Lessee shall procure and maintain, at its own expense, insurance on the Leased Property in such initial amounts and types as may exceed, but shall not be less than, the minimum amounts and types specified in Article 7 of Part I hereof. However, Lessee shall provide, maintain, change or discontinue such insurance as the Local Government Representative may from time to time require and direct; Provided, Lessee's liability for loss of or damage to the Leased Property is modified accordingly; Provided, further, that if any insurance requirement is so changed an equitable adjustment shall be made in the amount of the Rent or Maximum Amount to be Expended specified in Article 3 or 8 of Part I hereof so as to reflect any resultant savings or increased cost to Lessee.

(3) All insurance which this lease requires Lessee to carry on the Leased Property shall be in such form, for such amounts, for such periods of time and with such insurers as the Government may from time to time require or approve. Each policy of insurance shall contain a provision for thirty (30) days written notice to the Local Government Representative prior to the making of any material change in or the cancellation of the policy. Lessee shall deliver promptly to the Local Government Representative a certificate of insurance or a certified copy of each policy of insurance required by this lease and shall also deliver to him, no later than thirty (30) days prior to the expiration of any such policy, a certificate of insurance or a certified copy of each renewal policy covering the same risks. All insurance required or carried by Lessee on any of the Leased Property shall be for the protection of



the Government and Lessee against their respective risks and liabilities in connection with the Leased Property. Each policy of insurance shall name both Lessee and the United States of America (Department of the Navy) as the insured, and each policy of insurance against loss of or damage to the Leased Property shall contain a loss payable clause reading as follows:

"Loss, if any, under this policy shall be adjusted with (name of lessee) and the proceeds, at the election of the Government, shall be payable to (name of lessee); any proceeds not paid to (name of lessee) shall be payable to the Treasurer of the United States."

(4) In the event that any item or part of the Leased Property shall require repair, rebuilding or replacement resulting from loss or damage, the risk replacement resulting from loss or damage, the risk of which is assumed by Lessee under paragraph (1) of this Article, Lessee shall promptly give notice thereof to the Local Government Representative and, to the extent of its liability as provided in paragraph (1) thereof, shall, upon demand, either compensate the Government for such loss or damage, or rebuild, replace, or repair the item or items of the Leased Property so lost or damaged, as the Government may elect. In the event that the Government shall direct Lessee to effect any repair, rebuilding or replacement which it is required to effect pursuant to this paragraph the Government shall direct the payment to Lessee of so much of the proceeds of any insurance carried by Lessee and made available to the Government on account of loss of or damage to any item or part of the Leased Property as may be necessary to enable Lessee to effect such repair, rebuilding or replacement. In the event the Government shall elect not to require Lessee to repair, rebuild or replace any item or part of the Leased Property lost or damaged, Lessee shall promptly pay to the Government out of any insurance proceeds collected by Lessee such portion thereof as may be allocable to loss of or damage to the Leased Property. When compliance with a Government request to effect any repair, rebuilding or replacement of any lost or damaged item or part of the Leased Property would involve the incurring of costs in excess of Lessee's liability for such loss or damage under this Article, Lessee shall be under no obligation to effect same until after a satisfactory agreement has been reached between the Government and Lessee with regard to Government reimbursement of such excess costs to Lessee.

#### D. REPRESENTATIONS

Lessee has examined, knows and accepts the condition and state of repair of the Leased Property and the Station of which it forms a part, and acknowledges that the Government has made no representation concerning such condition and state of repair, nor any agreement or promise to alter, improve, adapt, repair or keep in repair the same, or any item thereof, which has not been fully set forth in this lease which contains all the agreements made and entered into between the Lessee and the Government.

#### E. SUBJECTION TO EXISTING AND FUTURE EASEMENTS AND RIGHTS IN THE NATURE OF AN EASEMENT

This lease is subject to all outstanding easements and right in the nature of an easement ("easements") for location of any type of facility over, across, in and upon all or any part of the Leased Property, and to the right of the Government to grant additional easements over, across, in and upon the Leased Property that it shall determine to be in the public interest. However, the grant of any additional easements shall be conditioned on the assumption by the grantee of liability to Lessee for damages that Lessee shall suffer for property destroyed or property rendered unusable on account of grantee's exercise of its rights. There is hereby reserved to the holders of those easements that presently exist or that may later be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair, or replacement of facilities located on the Leased Property, and to any Federal, state, or local official engaged in official inspection, of reasonable rights of ingress and egress over the Leased Property necessary for the performance of their duties regarding those facilities.

#### F. TERMINATION BY GOVERNMENT

The Government shall have the right to terminate this lease, at any time, without prior notice, and regardless of any lack of breach by Lessee of any of the terms and conditions of this lease. In the event of termination for any reason not involving a breach by Lessee of the terms and conditions of the lease the Government shall make an equitable adjustment of any advance rentals paid by the Lessee hereunder.

In the event that the Government shall elect to terminate this lease on account of the breach by Lessee of any of the terms and conditions hereof no adjustment in advance rentals paid by Lessee shall be made, and the Government shall be entitled to recover and Lessee shall pay to the Government:

- (1) The costs incurred in resuming possession of the Leased Property.
- (2) The costs incurred in performing any obligation on the part of Lessee to be performed hereunder.
- (3) An amount equal to the aggregate of all rents, Long Term Maintenance Obligation and charges assumed hereunder and not theretofore paid or satisfied, less the net rentals, if any, collected by the Government on the re-letting of the Leased Property, which amounts shall be due and payable at the time when such rents, obligations and charges would have accrued or become due and payable under this lease.

#### G. TERMINATION BY LESSEE

Lessee shall have the right to terminate this Lease upon ninety (90) days written notice to the Local Government Representative in the event of damage to or destruction of all of the improvements on the Leased Property or such a substantial portion thereof as to render the Leased Property incapable of use for the purposes for which it is leased hereunder; Provided, (1) the Local Government Representative either has not authorized or directed the repair, rebuilding or replacement of the improvements or has made no provision for payment for such repair, rebuilding or replacement by application of insurance proceeds or otherwise, and (2) that such damage or destruction was not occasioned by the fault or negligence of Lessee or any of its officers, agents, servants, employees, subtenants, licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this lease.

In addition the Lessee has the right to terminate this Lease at the end of the first year, or at the end of any succeeding year, by providing the Government at least 180 days written notice.

#### H. SURRENDER

Upon the expiration of this lease or its prior termination, Lessee shall quietly and peacefully remove itself and its property from the Leased Property and surrender the possession thereof to the Government; Provided, in the event the Government shall terminate this lease upon less than thirty (30) days notice, Lessee shall be allowed a reasonable period of time, as determined by the Local Government Representative, but in no event to exceed thirty (30) days from receipt of notice of termination, in which to remove all of its property from and terminate its operations on the Leased Property. During such period prior to surrender, all obligations assumed by Lessee under this lease shall remain in full force and effect; Provided, however, that if the Local Government Representative shall, in his sole discretion, determine that such action is equitable under the circumstances, he

may suspend, in whole or in part, any further accruals of Rent or Maximum Amount to be Expended between the date of termination of the lease and the date of final surrender of the Leased Property.

#### I. RESTORATION OF LEASED PROPERTY

Before the expiration or prior termination of this lease, Lessee shall restore the Leased Property and each item thereof to the condition in which it was first received and used by Lessee, or to such improved condition as may have resulted from any improvement made therein by the Government or by Lessee, subject however, to ordinary wear and tear and loss or damage for which Lessee is not liable hereunder; Provided, in the event the Government shall terminate this lease upon less than thirty (30) days notice Lessee shall have thirty (30) days from receipt of notice of termination to accomplish such restoration.

#### J. INSTALLATIONS, ALTERATIONS AND REMOVALS

During the term of this lease, or any extension thereof, Lessee shall have the right, at its own expense, to install such of its own machinery and equipment, to make such minor improvements and additions and to attach such removable fixtures in or upon the Leased Property as may be necessary for its use of the Leased Property pursuant to this lease, and to remove all improvements and additions Lessee has placed upon the Leased Property at any time prior to the expiration or termination of this lease or any extension thereof; Provided, that in the event of termination by the Government upon less than thirty (30) days notice Lessee may remove all improvements and additions Lessee has placed upon the Leased Property within thirty (30) days from the receipt of notice of termination. All property not so removed shall be deemed abandoned by Lessee and may be used or disposed of by the Government in any manner whatsoever without any liability to account to Lessee therefore, but such abandonment shall in no way reduce any obligation of Lessee for restoration under Article I of this Part II.

It is expressly agreed and understood that Lessee will make no substantial alterations, additions or betterments to or installations upon the Leased Property without the prior written approval of the Local Government Representative, and then only subject to the terms and conditions of such approval which may include an obligation of removal and restoration upon the expiration or termination of this Lease. Except insofar as said terms and conditions may expressly provide otherwise, all such alterations, additions, betterments and installations made by Lessee shall become the property of the Government when annexed to the Leased Property or any part hereof.

#### K. INDEMNIFICATION BY LESSEE GOVERNMENT NON- LIABILITY

Lessee covenants that it will indemnify and save and hold harmless the Government, its officers, agents and employees for and from and all liability or claims for loss of or damage to any property owned by or in the custody of Lessee, its officers, agents, servants, employees, subtenants, licensees, or invitees, or for the death of or injury to any of the same which may arise out of or be attributable to the condition, state of repair or Lessee's use and occupancy of the Leased Property, or the furnishing of any utilities or services, or any interruption therein or failure thereof, whether or not the same shall be occasioned by the negligence or lack of diligence of Lessee, its officers, agents, servants or employees.

#### L. UTILITIES AND SERVICES

In the event that the Government shall furnish Lessee with any utilities and services maintained by the Government which Lessee may require in connection with its use of the Leased Property, Lessee shall pay the Government the charges therefore in addition to the cash rent required under this lease. Such charges and the method of payment thereof shall be determined by the appropriate supplier of such service, in accordance with applicable laws and regulations, on such basis as the appropriate supplier of such service may establish, which may include a requirement for the installation of adequate connecting and metering equipment at the sole cost and expense of Lessee. It is expressly agreed and understood that the Government in no way warrants the continued maintenance or adequacy of any utilities or services furnished by it to Lessee.

#### M. LIENS

Lessee shall promptly discharge or cause to be discharged any valid lien, right in rem, claim or demand of any kind, except one in favor of the Government, which at any time may arise or exist with respect to the Leased Property or materials or equipment furnished therefore, or any part thereof, and if the same shall not be promptly discharged by Lessee, the Government may discharge, or cause to be discharged, the same at the expense of Lessee.

#### N. ACCESS

The Government shall have access to the Leased Property at all reasonable times for any purposes not inconsistent with the quiet use and enjoyment thereof by Lessee, including, but not limited to, the purpose of inspection.

#### O. STATE AND LOCAL TAXES

In the event that as a result of any future Act of Congress, subjecting Government-owned property to taxation, any taxes, assessments or similar charges are imposed by State or local authorities upon the Leased Property (other than upon Lessee's possessory interest therein), Lessee shall pay the same when due and payable and this lease shall be renegotiated so as to accomplish an equitable reduction in the amount of the Rent of Maximum Amount to be Expended specified in Article 3 or 4 of Part I hereof, which reduction shall in no event exceed the amount of such taxes, assessments, or similar charges; Provided, in event the parties hereto are unable to agree within ninety (90) days from the date of the imposition of such taxes, assessments, or similar charges, upon a rental which in the opinion of the Local Government Representative constitutes a reasonable return to the Government on the Leased Property, the Local Government Representative shall have the right to determine the amount of the rental, which determination shall be binding on Lessee, subject to the appeal as a dispute in accordance with the provisions of Article P of this Part II.

#### P. DISPUTES CLAUSE (September 1989)

~~—(a) Except as otherwise provided in this lease, any dispute concerning a question of fact arising under this lease which is not disposed of by agreement shall be decided by the Commander, Southwest Division, Naval Facilities Engineering Command, who shall reduce his decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the Commander, Southwest Division, Naval Facilities Engineering Command shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessee mail or otherwise furnish to~~

the Commander, Naval Facilities Engineering Command a written appeal. The decision of the Commander, Naval Facilities Engineering Command or his authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be pleaded in any suit involving a question of fact arising under this lease as limiting judicial review of any such decision to cases where fraud by such official or his representative or board is alleged. Provided, however, that any such decision shall be final and conclusive unless the same is fraudulent or capricious or arbitrary or so grossly erroneous as necessarily to imply bad faith or is not supported by substantial evidence. In connection with any appeal proceeding under this clause, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of his appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with the performance of the lease and in accordance with the decision of the Commander, Southwest Division, Naval Facilities Engineering Command.

(b) This "Disputes" clause does not preclude consideration of questions of law in connection with decisions provided for in paragraph (a) above. Nothing in this lease, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

a. This Lease is subject to the provisions of the Contract Disputes Act of 1978, as amended, (41 U.S.C. §601-613), the "Act".

b. Except as provided in the Act, all disputes arising under or relating to this Lease shall be resolved under this clause and the provisions of the Act.

c. "Claim", as used in this clause, means a written demand or written assertion by the Lessee or the Government seeking, as a matter of right, the payment of money in a sum certain, the adjustment or 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 claimant. 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 23.D.(2) below. A voucher, invoice, or other routine request for 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 complying with the submission and certification requirements of this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

(1) A claim by the Lessee shall be made in writing and submitted within six (6) years after accrual of the claim to the Government ( ) for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the \_\_\_\_\_.

(2) Lessee shall provide the certification stated in subparagraph (2)(b)(ii) immediately below, when submitting any claim:

(a) Exceeding \$100,000; or

(b) Regardless of the amount claimed, when using:

**(i) Arbitration conducted pursuant to 5 U.S.C. §575-580; or**

(ii) Any other alternative means of dispute resolution (ADR) technique that the agency elects to handle in accordance with the Administrative Dispute Resolution Act (ADRA).

**"I certify that the claim is made in good faith; that the supporting data is accurate and complete to the best of Lessee's knowledge and belief; that the amount requested accurately reflects the Lease adjustment for which the Lessee believes the Government is liable; and that I am duly authorized to certify the claim on behalf of the Lessee."**

**(3) The certification requirement does not apply to issues in controversy that have not been submitted as all or part of a claim.**

(4) The certification may be executed by any person duly authorized to bind the Lessee with respect to the claim.

e. For Lessee claims of \$100,000 or less, the Government, must, if requested in writing by the Lessee, render a decision within sixty (60) days of the request. For Lessee-certified claims over \$100,000, the \_\_\_\_\_ must, within sixty (60) days decide the claim or notify the Lessee of the date by which the decision will be made.

(1) The decision of the Government 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 Government, 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 arbitration conducted pursuant to 5 U.S.C. § 575-580 or when using any other ADR techniques that the agency elects to handle in accordance with ADRA, any claim, regardless of amount, shall be accompanied by the certification described in paragraph 23.D(2)(b)(ii) above and executed in accordance with paragraph 23.D(4) above.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the \_\_\_\_\_ 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. With regard to claims having defective certifications, as defined in (FAR) 48 CFR 33.201, interest shall be paid from the date that the \_\_\_\_\_ initially receives the claim. 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 \_\_\_\_\_ receives the claim and then at the rate applicable for each six (6) month period as fixed by the Treasury Secretary during the pendency of the claim.

h. Notwithstanding anything herein to the contrary, 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 \_\_\_\_\_.

Q. COVENANT AGAINST CONTINGENT FEES

Lessee warrants that no person or 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 agencies maintained by Lessee for the purpose of securing business. For breach or violation of this warranty, the Government shall have the right to annul this lease without liability or in its discretion to require Lessee to pay, in addition to the rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

#### R. 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 benefit to arise therefore, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

#### S. FAILURE OF GOVERNMENT TO INSIST ON COMPLIANCE

The failure of the Government to insist, in any one or more instances, upon performance of any of the terms, covenants or conditions of this lease shall not be construed as a waiver or relinquishment of the Government's right to the future performance of any such terms, covenants or conditions and Lessee's obligations in respect to such future performance shall continue in full force and effect.

#### T. ASSIGNMENT OR SUBLETTING

Lessee shall not transfer or assign this lease or any interest therein nor sublet or otherwise make available to any third party or parties any portion of the Leased Property or rights therein without the prior written consent of the Government. Under any assignment made, with or without consent, the assignee shall be deemed to have assumed all of the obligations of Lessee hereunder, but no assignment shall relieve the assignor of any of Lessee's obligations hereunder except for an extension of the lease term beginning after such assignment, and then only if the Government shall have consented thereto.

#### U. LABOR PROVISION

##### (1) Equal Opportunity

During the term of this lease the lessee agrees as follows:

(a) The lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The lessee will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. The lessee agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Government setting forth the provisions of this nondiscrimination clause.

(b) The lessee will, in all solicitations or advertisements for employees placed by or on behalf of the lessee, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex or national origin.

(c) The lessee will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided by the government, advising the labor union or worker's representative of the lessee's commitments under this Equal Opportunity clause and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(d) The lessee will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(e) The lessee will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and by the rules, regulations, and orders of the Secretary of Labor or pursuant thereto, and will permit access to his books, records, and accounts by the Government and the Secretary of Labor for purposes of investigating to ascertain compliance with such rules, regulations, and orders.

(f) In the event of the lessee's noncompliance with the Equal Opportunity clause of this lease or with any of said rules, regulations, or orders, this lease may be canceled, terminated or suspended in whole or in part and the lessee may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended by Executive Order 11375 of October 13, 1967, and such other sanctions may be imposed and remedies invoked as provided in Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(g) The lessee will include the provisions of paragraphs (a) through (f) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Exec. Order No. 11,246 of September 24, 1965, as amended by Exec. Order No. 11,375 of October 13, 1967, so that such provisions will be binding upon each sublessee or vendor. The lessee will take such action with respect to any sublessee or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for noncompliance: Provided, however, that in the event the lessee becomes involved in, or is threatened with, litigation with sublessee or vendor as a result of such direction by the Government, the lessee may request the United States to enter into such litigation to protect the interests of the United States.

##### (2) Convict Labor

In connection with the performance of work required by this lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment at hard labor.

(3) Contract Work Hours Standards Act (40 U.S. §§ 327-330). This lease, to the extent that it is a contract of a character specified in the Contract Work Hours Standards Act 940 U.S.C. 327-330) and is not covered by the Walsh-Healy Public Contracts Act (41 U.S.C. 35-45), is subject to the following provisions and exceptions of said Contract Work Hours Standards Act and to all other provisions and exceptions of said law:

(a) The Lessee shall not require or permit any laborer or mechanic in any workweek in which he is employed on any work under this contract to work in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek on work subject to the provisions of the Contract Work Hours Standards Act unless such laborer or mechanic receives compensation at a rate not less than one and one-half times his basic rate of pay for all such hours worked in excess of 8 hours in any calendar day or in excess of 40 hours in such workweek, whichever is the greater number of overtime hours. The "basic rate of pay," as used in this clause, shall be the amount paid per hour, exclusive of the Lessee's contribution or cost for fringe benefits and any cash payment made in lieu of providing fringe benefits, or the basic hourly rate contained in the wage determination, whichever is greater.

(b) In the event of any violation of the provisions of paragraph (a), the Lessee shall be liable to any affected employee for any amounts due, and to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic employed in violation of the provisions of paragraph (a) in the sum of \$10 for each calendar day on which such employee was required or permitted to be employed on such work in excess of 8 hours or in excess of the standard workweek of 40 hours without payment of the overtime wages required by paragraph (a).

#### V. GOVERNMENT RULES AND REGULATIONS

Lessee shall comply with such rules and regulations regarding station security, ingress, egress, safety and sanitation as may be prescribed, from time to time, by the Local Government Representative or by the Commanding Officer of the Station.

#### W. USE IN PERFORMANCE OF GOVERNMENT CONTRACTS

Lessee shall notify the Local Government Representative promptly whenever the use of the Leased Property in the performance of Government contracts changes so as to utilize 75 per cent or more of the total capacity thereof, and conversely whenever such use changes so as to utilize less than 75 per cent of such capacity.

#### X. NOTICES

No notice, order, direction, determination, requirement, consent, or approval under this lease shall be of any effect unless in writing. All notices required under this lease shall be addressed to Lessee, or to the Local Government Representative, as may be appropriate, at the addresses thereof specified in this lease or at such other addresses as may from time to time be agreed upon by the parties hereto.

#### Y. PAYMENTS

All payments to the Government required under this lease shall be made by check or postal money order made payable to the Treasurer of the United States and delivered to the Local Government Representative.

#### Z. INTEREST

Notwithstanding any other provision of this lease, unless paid within thirty (30) days, all amounts that become payable by the Lessee to the Government under this lease (net of any applicable tax credit under the Internal Revenue Code) shall bear interest from the date until paid and shall be subject to adjustments as provided by Part 6 of Appendix E of the Armed Services Procurement Regulation, as in effect on the date of this lease. The interest rate per annum shall be the interest rate in effect which has been established by the Secretary of the Treasury pursuant to Public Law 92-41; 85 STAT 97 for the Renegotiation Board, as of the date the amount becomes due as herein provided. Amounts shall be due upon the earliest one of (i) the date fixed pursuant to this lease; (ii) the date of the first written demand for payment, consistent with this lease, including demand consequent upon default termination; (iii) the date of transmittal by the Government to the Lessee of a proposed supplemental agreement to confirm completed negotiations fixing the amount; or (iv) if this lease provides for revision of prices, the date of written notice to the Lessee stating the amount of refund payable in connection with a pricing proposal or in connection with a negotiated pricing agreement not confirmed by lease amendment.

#### AA. ADMINISTRATION

The local Government Representative specified in Article 13 of this lease shall, under the direction of the \_\_\_\_\_, have complete charge of the administration of this lease, and shall exercise full supervision and general direction thereof insofar as the interests of the Government are affected.

## Appendix-A

### **SAMPLE BANK/CREDIT UNION OPERATING AGREEMENT**

DoD Financial Management Regulation Volume 5.  
Chapter 34, Appendix C September 2000

#### **SAMPLE OPERATING AGREEMENT BETWEEN MILITARY INSTALLATIONS AND FINANCIAL INSTITUTIONS**

*NOTE: The following operating agreement template identifies general arrangement and content. Content of the actual operating agreement may vary according to the circumstances of each installation.*

Operating Agreement Between (*Name of Installation*), (*State or Country Installation Located*) and (*Name of Financial Institution*).

This Agreement is made and entered into this day by and between the installation commander of (*name of installation*) in his or her official capacity as installation commander, hereinafter referred to as the “commander” and the (*name of financial institution*), having its principal office at (*location of home office*) hereinafter referred to as the “financial institution,” together hereinafter referred to as “the parties.” Whereas the commander and the financial institution enter into this Operating Agreement upon the mutual consideration of the promises, covenants, and agreements hereinafter contained.

1. The parties understand and agree that this Agreement shall in no way modify, change, or alter the terms and conditions of Lease Number (*number of lease*) covering the use of real property described therein, and this Agreement shall continue, subject to the termination provisions herein-after set forth, during the terms of said lease and any extensions thereof. In the case of a banking institution operating a military banking facility (MBF) overseas, this agreement will not change the conditions of the contract between the banking institution and the Department of Defense.

2. The financial institution agrees to operate a (federally or state) chartered office on-base in accordance with the policies and procedures set forth in DoD Directive 1000.11, “Financial Institutions on Military Installations;” and Volume 5, Chapter 34, of the DoD Financial Management Regulation as codified in the Code of Federal Regulations (CFR); and, in addition for the

Overseas Military Banking Program (OMBP), the policies and procedures set forth in the applicable DoD contract. The hours of operation shall be between (*hour office opens*) and (*hour office closes*), and on the following days (*week days office open*) except on government holidays when the financial institution may be closed. The Program Office for the OMBP shall notify the commander of any changes to the DoD contract.

3. The financial institution shall provide the following services:

a. Services for Individuals

- (1) Demand (checking) account services
- (2) Cashing personal checks and government checks for account holders
- (3) Maintaining savings accounts and (any other interest bearing accounts)
- (4) Selling official checks, money orders, and traveler’s checks

- (5) Selling and redeeming United States savings bonds
- (6) Providing direct deposit service
- (7) Loan Services
- (8) Electronic banking (i.e., automated teller machines, internet banking).

b. Services for Disbursing Officers

- (1) Furnishing cash (if the Financial institution's terms for doing so is consistent with sound management practices)
- (2) Accepting deposits for credit to the Treasury General Account (where the financial institution has entered into an agreement with the Department of the Treasury).

c. Services for Nonappropriated Fund Instrumentalities and Private Organizations

- (1) Demand (checking) account services, including wire transfers
- (2) Savings accounts and nonnegotiable certificates of deposit or other interest bearing accounts offered by the banking institution
- (3) Currency and coin for change.
- (4) Service charges shall be as follows:

a. Service for Individuals

(1) No fees shall be charged to individuals for the services listed in subparagraphs 3.a.(2) and 3.a.(5), above, except for subparagraph 3.a.(2), wherein checks drawn on other financial institutions may be treated in accordance with the financial institution's established policy. Any charge to cash a government check shall not exceed that typically charged by financial institutions in the vicinity of the installation. Fees assessed to account holders and non-account holders for use of automated teller machines shall be the customary service charges of the financial institution or those negotiated for base personnel per the attached schedule.

(2) Checking and savings accounts. Fees for individual checking and savings accounts shall be the customary service charges of the financial institution or those negotiated for base personnel per the attached schedule.

(3) Sale of official checks, money orders, traveler's checks and other types of financial paper. Charges for these services shall be the customary charges of the financial institution operating the on-base office.

b. Service for Disbursing Officers. No charge shall be made for the services listed in subparagraph 3.b.(2), above. Compensation to the financial

institution shall be per its separate agreement with the Department of the Treasury. Charges, if any, for the services stated in subparagraph 3.b.(l) shall be as locally negotiated with the financial institution.

c. Nonappropriated Fund Instrumentalities and Private Organizations. State the charges or refer to a schedule of charges for funds and organizations that do not participate in a central banking program. For those activities participating in a central banking program, determine the compensation to the financial institution by account analysis.

5. It is agreed that the financial institution shall:

a. Notify the commander or designated representative of any proposed changes to the attached schedule of fees and services at least 30 days prior to implementation.

b. Follow the requirements in Volume 5, Chapter 34, of the *DoD Financial Management Regulation*, and any changes thereto.

c. Comply with Department of the Treasury requirements for establishment and operation of a Treasury General Account where the financial institution agrees to act as a depository for government funds.

d. Absolve the (*Military Service*) and its representatives of responsibility or liability for the financial operation of the financial institution; and for any loss (including losses due to criminal activity), expenses, or claims for damages arising from financial institution operations.

e. Indemnify and hold harmless the United States from (and against) any loss, expense, claim, or demand, including attorney fees, court costs, and costs of litigation, to which the government may be subjected as a result of death, loss, destruction, or damage in connection with the use and occupancy of (*Military Service*) premises occasioned in whole or in part by officers, agents or employees of the financial institution operating an office of the financial institution.

f. Favorably respond, whenever feasible, to reasonable local command requests for lectures and printed materials to support consumer credit education programs, financial management program and newcomer's briefings.

g. Prominently post in the lobby of the financial institution the name, duty telephone number of the (Bank or Credit Union) Liaison Officer.

h. Accept the Government travel card in all on-base ATMs operated by the financial institution.

i. Abide by the installation fire protection program, including immediate correction of fire hazards noted by the installation fire inspector during periodic fire prevention inspections.

6. The commander shall provide the following space and support:

a. Space requirements for financial institution operations shall be administered in accordance with the existing outgrant (i.e., lease, permit or license).  
(*Show Number of Outgrant*).

b. Utilities (i.e., electricity, natural gas or fuel oil, water and sewage), heating and air conditioning, intrastation telephone service, and custodial and janitorial services to include garbage disposal and outdoor maintenance (such as grass cutting and snow removal) on a reimbursable basis.

c. DoD housing and minor dependent education in overseas locations for military banking facility (MBF) and credit union personnel in accordance with Volume 5, Chapter 34, subparagraphs 340603.A.1.C, 340603.A.1.d, 340803.B, and 340803.C of the *DoD Financial Management Regulation*.



7. Termination of this Agreement shall be consistent with the termination provision of the real property lease and Volume 5, Chapter 34, of the *DoD Financial Management Regulation*. The Secretary of the (*Military Department*) shall have the right to terminate this Agreement at any time. Any termination of the right of the financial institution to operate on the installation shall render this Agreement terminated without any applicable action by the commander.

8. Any provision of this Agreement that is contrary to or violates any laws, rules, or regulations of the United States, its agencies, or the state of (*state in which the financial institution is located*) that apply on federal installations shall be void and have no force or effect; however, both parties to this Agreement agree to notify the other party promptly of any known or suspected continuing violation of such laws, rules, or regulations.

9. So long as this Agreement remains in effect, it shall be reviewed jointly by the commander and the financial institution at least once every 5 years to ensure compatibility with current DoD issuances and to determine if any changes are required to the Agreement.

IN WITNESS WHEREOF, the commander and the financial institution, by their respective duly authorized office, have hereunto set their hands this day of (*month, day, year*)

FINANCIAL INSTITUTION OFFICIAL      INSTALLATION COMMANDER

**STANDARD INSURANCE COVERAGE  
COMMERCIAL GENERAL LIABILITY**

<b>USE</b>	<b>COVERAGE</b>	<b>TYPE</b>	<b>COMMENTS</b>
<b>Admin</b>			
No customers to avg <10/day	\$1 million/\$25,000	Bodily Injury/Property***	Customers include business invitees. Property amount depends on value of U.S. personalty in/around premises.
Avg 10> customers/day	\$2 million/\$25,000	Bodily Injury/Property	
<b>Mixed</b>			
Low risk	\$2 million/\$50,000	Bodily Injury/Property	Evaluate risk by avg number customers daily/weekly; avg number/size vehicles daily/weekly; volume/size/contents of boxes/containers
Medium risk	\$3 million/\$100,000	Bodily Injury/Property	
High risk	\$4 million/\$100,000	Bodily Injury/Property	
<b>Heavy Industrial/Construction</b>			
Low risk	\$2 million/\$100,000	Bodily Injury/Property	
Medium risk	\$3 million/\$200,000	Bodily Injury/Property	
High risk	\$5 million/\$300,000	Bodily Injury/Property	
<b>Easements</b>			
Low risk	\$500,000/\$25,000	Bodily Injury/Property	Evaluate risk by frequency and severity of surface/air use.
Medium risk	\$1 million/\$50,000	Bodily Injury/Property	
High risk	\$2 million/\$100,000	Bodily Injury/Property	
<b>Grazing</b>			
	\$500,000/\$25,000	Bodily Injury/Property	
<b>Air Shows/Very High Risk</b>	\$50 million/\$10 million	Bodily Injury/Property	If \$100 million BI needed, keep property damage at \$10 million. \$25,000 deductible okay on \$50 or \$100 million. Very high risk includes airport operator liability where hangar use includes flying aircraft.

\*\*\* Standard deductible should be \$10,000 unless RECO, FEC counsel, or HQ AM1 approves a higher amount. All BI amounts are single limit coverages.

