

CHAPTER 19

Outleasing

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- be reviewed for legal sufficiency by the local EFD/EPA counsel. EFD/EPA shall provide copies to NAVFACENGCOCOM.
- b. Commanders/Commanding Officers of EFDs are authorized to make minor modifications or additions as deemed appropriate. Any major change in these forms shall have the prior approval of local EFD counsel and of NAVFACENGCOCOM.
- c. The Agricultural or Grazing Lease form (NAVFAC 11011/22 (7-75) Appendix A) contains both the specific and the general provisions. The General Purpose Lease consists of two parts (NAVFAC 11011/24 (10-72) Appendix B and NAVFAC 11011/24A (7-75), Appendix C). Part I contains specific terms and conditions which apply to that lease while Part II contains the general provisions of all leases.

36. CONTRACT INDEBTEDNESS.

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 in cash, the lease provides that it shall be paid in advance.

37. TIMELY ACTION FOR LEASE EXTENSION AND SUCCEEDING LEASES.

The standard form of lease permits unilateral extension of the term thereof, for a stated maximum period, simply by lessee giving the contracting officer required notice of his 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 NAVFACENGCOCOM is required in connection with any extension or the granting of a succeeding lease, all requests therefore should reach NAVFACENGCOCOM not later than 60 days prior to the expiration of the current term or final expiration date of the current lease. Such requests shall be accompanied by the requisite approvals required by paragraphs 13.a and 13.b and shall be supported by factual data in support of the recommended action.

38. LEASE TERMINATION.

Most leases entered into under authority of this Chapter reserve in the Government a right to terminate the lease at any time, without cause. It must be recognized that this right of revocation should never be exercised capriciously. It must be clearly demonstrated that lease termination is necessary 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.

39. AGRICULTURAL AND GRAZING LEASES.

Many active and inactive military installations include agricultural and/or grazing lands which must be retained for the buffer or safety zone, security of the installation, mobilization needs, or future requirements. However, these lands may be put to use for agricultural or grazing purposes and still be 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 the maintenance funds which must be expended. The general rules with respect to outleasing which have been set forth in the preceding paragraphs are equally applicable to Agricultural and Grazing Leases of these types. All such leases shall include soil and water conservation plans prepared in accordance with Chapter 17.

a. Agricultural or Grazing Outlease Receipts.

(1) The enactment of 10 U.S.C. 2667 was based in part on a General Accounting Office (GAO) Report dated 25 November 1981 entitled "DOE Can Increase Revenues Through Better Use of Natural Resources It Holds in Trust", which recommended more aggressive natural resources initiatives and programs and contended that agricultural outleasing would reduce maintenance costs and generate additional income which could, ultimately, result in a net increase in funds deposited with the Treasury.

(2) Title 33 U.S.C. 701C-34, provides 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 10 U.S.C. 2667 and the guidance in this chapter based upon 10 U.S.C. 2667.

(3) Department of the Navy 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 our ultimate goal.

(4) All new or revised land management plans will incorporate the potential for additional agricultural outleases, and related documentation, in a section of the plans dealing specifically with agricultural outleasing. If the potential exists for additional agricultural outleases (compatible with the mission and in consideration of a balanced natural resources program), EPDs will provide 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. The economic analysis should consider:

- (a) cost of required improvements prior to and during outleasing;
- (b) estimated fair market rental value;
- (c) annual operating maintenance expenses;
- (d) long-term maintenance expenses;
- (e) dollar value of conservation benefits; and,
- (f) advantages/disadvantages of a contract for more than the normal five-year maximum term.

EPD professional judgment shall 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 EPD will document the reasons they believe an affirmative decision was not made.

(5) 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 to substantiate land conditions at the time of the initial and all subsequent inspections is encouraged.

(6) Before outleasing land, EPDs will prepare a preliminary environmental assessment, make "not excess" determinations, and screen for other activity use (or document a waiver of the "not excess" and screening requirements). Additional environmental impact analysis documentation is not required unless there is a known potential for adverse environmental impact(s) or likelihood of controversy.

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

- Category I. Administrative expenses of outleasing land for agricultural and grazing use. (This includes permanent and temporary employee labor costs.)
- Category II. Administrative expenses of planning and implementing natural resources (multiple-use) programs other than Category I expenses. (This includes temporary employee labor costs.)
- Category III. Natural resources projects which support objectives of multiple-use natural resources plans (with the exception of plans for commercial forest production), covered by OPNAVINST 5090.1.

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

- (a) Improvements which are normally provided for in the annual Military Construction Authorization and Appropriations Acts.
- (b) Permanent position labor costs not wholly attributable to the agricultural outlease program.
- (c) Projects and expenses supporting commercial forest production.
- (d) Projects and expenses covered by criteria for using conservation funds as outlined in NAVPACINST 7110.18C.

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

- Priority "A" Expenses of outleasing land for agricultural and grazing uses.
- Priority "B" Projects which 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.
- Priority "C" Land management improvement projects to accomplish or support soil surveys, soil maps, erosion control, watershed management and other similar requirements.
- Priority "D" Contracted surveys and inventories essential for development and implementation of multiple-use natural resources management plans and cooperative agreements.
- Priority "E" Expenses of preparing multiple-use natural resources management plans.
- Priority "F" Other natural resources projects which support conservation and natural environment enhancement objectives of approved multiple-use, natural resources management plans.

(10) Receipts from agricultural outleases will cover administrative expenses and finance multiple land use programs in the following manner:

- (a) EPDs will:
 - (1) Establish written collection procedures to prevent improper extension of credit and limit losses during default procedures.

(2) Process all agricultural outlease program receipts as required by NAVCOMPT Manual 043000, 043002, and 043003.

(3) Deposit all collections from outleases on Navy installations to the Budget Clearing Account 17F3875.25AG in accordance with Appendices 19-D, except receipts from land acquired for flood control, navigational or hydroelectric purposes.

(4) Deposit all collection 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. Copies of collection vouchers (NAVCOMPT Form 2277), for Marine Corps installation rental fees, will be forwarded in accordance with Appendix 19-E, to CMC(LFL).

(5) 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&M - Unfunded Reimbursable requirements. Also indicate estimated budget year collections.

(6) Complete and forward Appendix 19-F to NAVFACENGCOM (Code 2042) no later than 30 days after the close of each fiscal year quarter beginning with the first quarter of FY-86. Each project shown on Appendix 19-F will be supported with information required by Appendices 19-G and 19-H. Approval authority for projects identified on Appendix 19-F is delegated to each EPD. Marine Corps Activity projects will be processed separately by the Marine Corps in accordance with Memorandum of Agreement On Agricultural Outleasing between the Commandant of the Marine Corps and the Commander Naval Facilities Engineering Command.

(7) Charge all expenses for requirements covered by criteria described above to functional/subfunctional account H3.

(8) Notify NAVFACENGCOM (Code 0132) as soon as possible if any portion of the agricultural outleasing reimbursable resource authorization cannot be used.

(b) NAVFACENGCOM will:

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

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

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

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

(c) EPDs and naval installations may not request that Naval Regional Finance Center, Washington, or any other disbursing office make disbursements of any kind from the budget clearing account without NAVFACENGCOM prior written approval.

(d) Marine Corps agricultural outlease proceeds will cover all EPD expenses of administering Marine Corps agricultural outleases. Before 1 August of each year, an estimate of EPD expenses for administering agricultural outleases and accomplishing supplemental lease agreement projects on Marine Corps lands must be forwarded to NAVFACENGCOM (Code 2042). Funds will be provided early in the fiscal year by CMC(LFL) to the EPDs. Adjustments in funds to cover actual costs will be negotiated between EPDs and CMC(LFL).

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

40. BANKING OFFICE LEASING.

SECNAV Instruction 5381.1G provides policy guidance for leasing of land and facilities to banking offices on Navy installations. The establishment of banking offices is a staff responsibility of the Comptroller of the Navy. 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 EPD to NAVFACENGCOM. NAVFACENGCOM will obtain additional approvals of the Chief of Naval Operations or Commandant of the Marine Corps and the Comptroller of the Navy. Final review for and recommendations to the Treasury Department or other cognizant offices are the responsibility of the Comptroller of the Navy.

41. NONSELF-SUSTAINING BANKING FACILITIES.

Banking facilities determined by the Treasury Department to be nonself-sustaining organizations will be furnished logistical support, including the use of Navy property and services, without charge, provided the properties and services are available from existing resources. Such property will be furnished in support of a banking facility on a nonreimbursable license, in accordance with Chapter 20, for a period of five years subject to renewal for an additional five years by mutual agreement. Type and size of the facility shall be in accordance with criteria set forth in SECNAV Instruction 5381.1G. In the event of a notice by the Treasury Department, which will be transmitted by NAVCOMPT, that a banking facility has become a self-sustaining organization, the nonreimbursable license under which it occupies Navy property shall be terminated and a lease will be negotiated in accordance with paragraph 42. In those exceptional instances where a nonself-sustaining banking facility is authorized to construct its own building on Government-owned land, no ground rent will be charged until the facility is determined to be self-sustaining or until the lease has expired, whichever occurs first. The other lease terms will be negotiated in accordance with paragraph 43.

42. LEASING FOR SELF-SUSTAINING BANKING FACILITIES, BANKS, AND BRANCH BANKS.

A lease of existing structures to house a self-sustaining military banking facility, a bank, or a branch bank shall be a fair rental value for a period of five years, subject to renewal by mutual agreement for an additional five-year term, and subject also to the right of the Secretary of the Navy to terminate a lease in the event of national emergency, base closure, installation or a major portion thereof becomes excess, default by the lessee, or in the interest of national defense. The lessee shall be responsible for interior alteration and maintenance, and reimbursement shall be made by the lessee for utilities, custodial, janitorial and other services to the extent such are furnished by the government.

43. LEASE OF LAND FOR CONSTRUCTION OF SELF-SUSTAINING BANKING ACTIVITY.

A lease of land for construction of a building by a self-sustaining banking activity shall be at nominal rental and the term of the lease will not exceed twenty-five years. The lease shall be subject to the same right of

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termination and have the same maintenance and utility obligations as above for a lease of a building or portion thereof. Upon termination or expiration, option shall be in the Government either to cause title in all improvements to be vested in the United States or to require the lessee to remove the improvement and restore the land. If title to improvements pass to the United States, arrangements may be made for continued occupancy for the extension of banking services by mutual assent under acceptable lease provisions to include fair rental value only for the land associated therewith, payment of utilities, and support services. The building must be confined to the needs of the banking institution and will not be constructed to also provide for other commercial enterprises or government instrumentalities. As the construction requires prior DOD approval, full information on the lease and the proposed construction, including conformance to space criteria, must be forwarded to NAVFACENCOM for approval prior to the execution of the lease. (See paragraph 13c)

44. CREDIT UNION LEASING.

SECNAV Instruction 5381.3F of 10 May 1982 and DOD Directive 1000.10 provide policy guidance for leasing of land and facilities to credit unions. Proposals for establishment of a full-service credit union on a Navy or Marine Corps installation without an existing full-service credit union must be endorsed by the installation Commander, the activity having command responsibility and its echelon of command, and the EPD to NAVFACENCOM. NAVFACENCOM will obtain additional approvals of the Chief of Naval Operations or Commander of the Marine Corps and Comptroller of the Navy.

a. Space Assignment. One full-service credit union, or one credit union branch, or one credit union facility at each DOD installation will be furnished space at one location, when available, by a no-cost license, in accordance with Chapter 20 for periods of five years. Credit unions providing less than full service and those not serving all assigned DOD personnel on each base are not authorized to be furnished free space.

b. Logistical Support. Janitorial services, fixtures, and maintenance when available will be furnished at no cost to the credit union at the one no-cost location. In addition, utilities such as air conditioners, heat, and lights, when provided, will be at no cost to the credit union at the one no-cost location. However, costs for other services such as telephone lines, long distance toll calls, and space alterations will be reimbursed to the government. Logistical support for overseas credit unions will be in accordance with the above and with OPNAV Instruction 4000.76A. These terms should be reflected in the provisions of the license or lease by which real property or space is furnished.

c. Leasing. Any space or other real property made available to credit unions other than that furnished under a no-cost license pursuant to subparagraph a. above will be covered by a lease following the procedures in this chapter. Land, buildings, and space provided by lease will be made available at fair market rental as determined by a government appraisal based upon comparable properties in the local civilian economy. However, appraisers will take into consideration the fact that on-base land may not always be comparable to similar land in the local commercial geographic area (e.g., recognizing limitation of usage and access, proximity to community center or installation business district, Government's right to take title to improvements constructed at credit union expense, and Government's right to terminate lease).

d. Credit Union Construction. Proposals for construction of credit union buildings on Navy land require the same approvals as previously outlined for an initial full-service credit union. If the construction costs are estimated to be in excess of \$300,000, prior approval of the Assistant Secretary of Defense (Comptroller) and the Assistant Secretary of Defense (Manpower, Installations, and Logistics) is also required. Proposals should contain adequate justification why it is not feasible to construct such buildings off base. Space criteria for the credit union building will be in conformance with specifications in DOD Manual 4270.1-M and will not be used to house other commercial enterprises or Government instrumentalities. A lease of land for such construction shall be at fair rental value as defined in subparagraph c. and shall be for a term not to exceed 25 years. The lease shall contain the following:

(1) a provision for termination by the Government in the event of a national emergency, base closure, the installation or a major portion thereof becomes excess, default by the lessee, or in the interest of national defense.

(2) a provision that, at the option of the Government, structures and other improvements erected thereon shall be conveyed to the Government without reimbursement, or removed and the land restored to its original condition in the event of (a) installation inactivation, closing or other disposal action, (b) liquidation of the credit union, or (c) termination or expiration of the credit union lease.

(3) a provision for written notice from the lessee 90 days in advance of any intention to voluntarily terminate the lease.

(4) a provision that maintenance and the cost of utilities and services furnished shall be the responsibility of the lessee.

When title to the improvements passes to the Government upon lease expiration, arrangements may be made for continued occupancy of the facilities. This may involve issuance of a no-cost license for space requirements within the specifications of DOD Manual 4270.1-M if the lessee qualifies under subparagraph a. The credit union will be given the first right to use any space in excess of that permitted by DOD Manual 4270.1-M provided a mutually acceptable plan is negotiated at fair market rental plus payment of utilities and support costs.

45. ADJUDICATION OF OUTLEASE CLAIMS.

a. The following procedures will be observed in processing present and future outlease disputes:

(1) Upon receipt of a claim under the disputes clause the EPD 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 EPD and the lessee.

The lessee will have 30 days from the date of receipt of the EPD forwarding letter to provide supplementary information to the EPD.

(2) Within 5 days of receipt of the appellant's supplementary information or 40 days from the date of the EPD letter forwarding all documents at issue, the EPD will set a hearing date. The hearing date will be no sooner than 15 days and no longer than 30 days from the date the hearing is set.



(3) The hearing will be conducted by a hearing officer designated by the EPD at the EPD or other appropriate location.

The hearing shall be conducted in a manner to give all indicated parties an opportunity to present evidence and arguments as time, the nature of the proceedings, and the public interest permits.

(4) Within 15 days from the date of the hearing the EPD will issue a decision to include:

- (a) Brief statement of lessee position.
- (b) Brief statement of Navy position.
- (c) Finding of Fact.
- (d) Conclusion.
- (e) Appeal rights to NAVFACENGCOM.

The decision will be sent by certified mail to the lessee.

(5) The decision of the EPD shall be final and conclusive unless, within 30 days from the date of receipt of such decision, the lessee mails or otherwise furnishes to the Commander, Naval Facilities Engineering Command a written appeal. If a final decision is appealed to NAVFACENGCOM, Code 20R will acknowledge the appeal by certified letter to lessee. From that date, NAVFACENGCOM will provide the lessee a copy of all subsequent correspondence/communications associated with the appeal.

(6) NAVFACENGCOM will request the EPD provide copies of all documents at issue in the dispute within 30 days from acknowledgment of appeal. This documentation will include:

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

(7) On the date the information is forwarded to NAVFACENGCOM, the EPD will notify the lessee, by certified mail, of that fact. The notification will state that:

(a) Within 5 days of receipt of the appellant's supplementary information or 40 days from the date of receipt of the EPD letter forwarding all documents at issue, the lessee will be notified by certified mail that NAVFACENGCOM has or has not received the supplementary information and that a final decision will be made within 30 days based upon the information available at that time.

(8) NAVFACENGCOM, Code 20R, will issue a final determination and this determination will be sent by certified mail to the lease.

46. CONSTRUCTION ON LANDS LEASED FROM THE NAVY USING NON-APPROPRIATED FUNDS.

In many cases banks and credit unions have leased Navy land for the purpose of constructing a building in which to conduct their business. All requests for approval of such leasing shall include either a statement that planned construction is in compliance, with the construction criteria in DOD Manual 4270.1-M or a justification for a waiver. Information concerning such construction should be submitted as required by NAVFAC Instruction 11013.38 in order that required reports may be made. All non-appropriated fund construction costing in excess of \$25,000 must be reported to the Armed

Services and Appropriations Committees of Congress. Plans and specifications for such construction shall comply with both the requirements of the Commanding Officer of the activity and all local (State, County, City, etc.) rules and regulations. An environmental assessment or statement, as required, shall be made.

47. DISTRIBUTION.

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

| | |
|---|----------------------------------|
| Signed document | Lessee |
| Signed document | Engineering Field Division |
| Conformed copy | Major Claimant* |
| Conformed copy | Activity |
| Conformed copy | Navy Regional Finance Center |
| | Accounts Receivable & Claims |
| | Division (FR 20) |
| | Washington, D.C. 20390 |
| | or disbursing officer serving |
| | the activity in case of reserve |
| | component facilities and non- |
| | continental activities (NAVCOMPT |
| | Manual, paragraph 043132) |
| | NAVCOMPT (NCD4) |
| Conformed copy (only for banking activities) | |

48. AVAILABILITY OF FORMS.

NAVPAC 11011/22 and 11011/24 and 11011/24A may be requisitioned by forwarding a funded DD-282 to your local Naval Publications and Printing servicing component.

* Except Commander in Chief, U.S. Atlantic Fleet.



DEPARTMENT OF THE NAVY
NAVAL FACILITIES ENGINEERING COMMAND
800 STOVALL STREET
ALEXANDRIA, VA 22304-2300

file

17 DEC 93

copy to at
Ready Spud

From: Commander, Naval Facilities Engineering Command
Subj: DELEGATION OF AUTHORITY FOR APPROVAL OF STRUCTURAL ALTERATIONS, ADDITIONS, OR BETTERMENTS ON NAVY-CONTROLLED REAL PROPERTY UNDER USE BY LICENSE, USE AGREEMENT OR HOST-TENANT AGREEMENT
Ref: (a) NAVFAC P-73, Chapter 20

1. You are hereby delegated authority to approve structural alterations, additions, or betterments on Navy controlled real property under use by license, use agreement or host-tenant agreement. This delegation of authority is effective as of the date of this letter. The changes will be incorporated in the electronic form of reference (a) in the instruction "Use of Department of the Navy Real Property Under License or Use Agreement."

CHARLES C. COCKS
By direction

Distribution:
LANTNAVFACENGCOM (Code 24)
PACNAVFACENGCOM (Code 24)
NORTHNAVFACENGCOM (Code 24)
SOUTHNAVFACENGCOM (Code 24)
CHESNAVFACENGCOM (Code 24)\
SOUTHWESTNAVFACENGCOM (Code 24)
WESTNAVFACENGCOM (Code 24)
ENGFLADACT NW Silverdale (Code 24)
ENGFLADACT MW Great Lakes (Code 24)

APPENDIX 19-A

Department of the Navy
Lease for Agricultural or Grazing Purposes

A-1

Appendix 19-A
CH-14

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DEPARTMENT OF THE NAVY
LEASE FOR AGRICULTURAL
OR GRAZING PURPOSES

CONTRACT NUMBER
(NPR)

LEASE BETWEEN

HEREINAFTER CALLED THE "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 FIVE (5) YEARS.

3. **RENT:** LESSEE SHALL PAY THE GOVERNMENT ANNUAL RENTAL OF \$ _____ PER _____, PAYABLE
IN ADVANCE OF THE RATE OF \$ _____ PER _____ IN CONFORMITY WITH THE PROVISIONS OF
ARTICLE 10W HEREOF.

4. **USE:** THE PREMISES 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) _____ (Title)

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) _____ (Title) _____ (Witness)

9. NAVY IDENTIFICATION DATA

| | |
|------------------------------------|---|
| NAME AND ADDRESS OF NAVAL ACTIVITY | LOCAL GOVERNMENT REPRESENTATIVE/TITLE AND ADDRESS |
| ADDRESS OF LESSEE | |

10. GENERAL PROVISIONS

A. REPRESENTATIONS

Lessee has examined, known 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 runs thereof, which has not been fully set forth in 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 LAND USE CONSERVATION PLAN

During the term of this lease the Lessee shall apply the conservation measures and use the Premises in accordance with the land use conservation plan attached hereto and made a part hereof. Lessee shall in no manner substantially change the content or condition of the land constituting any part of the Premises except for such changes as shall be reasonably required to affect soil or water conservation measures.

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, or 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 release 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 assigns, 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 or 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 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, covenants, 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 repossessions, including, but not limited to, destruction of, destruction 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 the lease on account of the breach by Lessee of any of the terms and conditions hereof an adjustment in advance rental 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 reentering 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 writing of the Premises, which amounts shall be due and payable at the time when the rent next due 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 officers, 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, subcontractors, licensees 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, subcontractors, 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 furnishing of any utilities or services (including supply of water from wells or other systems, or any interruption thereof 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 utility 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, collecting Government-owned property for 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 seventy (70) 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 F of this Article 13.

F. DISPUTES

~~—(a) Except as otherwise provided in this lease, any disputes concerning a Question of Fact arising under this lease which is not disposed of by agreement shall be decided by the Commander, 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, Naval Facilities Engineering Command shall be final and conclusive upon the lessee, within 30 days from the date of receipt of such copy. The lessee shall or otherwise furnish to the Government, Naval Facilities Engineering Command a written appeal addressed to the Secretary of the Navy. The decision~~

of the Secretary or his duly authorized representative for the determination of such appeals shall be final and conclusive. This provision shall not be construed in any way 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 set aside 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 lease, 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 in accordance with the decision of the Comptroller, Naval Facilities Engineering Contract.

(b) This "Dispute" 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.

Q. 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 therefrom but this provision shall not be construed to extend to this lease if made with a compensation for its personal 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 retention advertising; layoff or termination; rates of pay or other forms of compensation; selection for training, including apprenticeship. The lessee agrees in part 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 related 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 its 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 cancelled, suspended or terminated 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 provided 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 (f) in every subcontract or purchase order issued hereunder by this lease, and 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 subcontractor or vendor. The lessee will take such action with respect to any subcontractor or purchase order as the Government may direct as a means of enforcing such provisions including sanctions for non-compliance. Provided, however, that in the event the lessee becomes involved in, or is threatened with, litigation with a subcontractor 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) Covert Labor

In connection with the performance of work required by this lease, Lessee agrees not to employ any person undergoing a sentence of imprisonment as hard labor.

(3) Contract Work Hours Standards Act (40 U.S.C. 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 amount 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 as

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P. DISPUTES

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim", as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment 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 Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c.(2) below. The routine request for rental payment that is not in dispute is not a claim under the Act. The request may be converted to a claim under the Act, by this clause, if it is disputed either as to liability or amount or is not acted upon in a reasonable time.

c. (1) A Claim by the Lessee shall be made in writing and submitted to the Commander/Commanding Officer, _____ Division, 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 Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

- (i) the claim is made in good faith;
- (ii) supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and
- (iii) the amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) (i) If the Lessee is an individual, the certification shall be executed by that individual.

(ii) If the Lessee is not an individual, the certification shall be executed by:

- (A) a senior company official in charge of the Lessee's location (involved); or
- (B) an officer or general partner of the lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command, must, if requested in writing by the Lessee, render a decision within 60 days of the request. For lease-certified claims over \$50,000, the Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command, must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to the Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command or a claim by the Government is presented to the lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any claim, regardless of amount, shall be accompanied by the

certification described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Commander/Commanding Officer, _____ Division, 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. ~~Revised version due to the Government by the Lessee will have interest and penalties as set out in the condition on CONSIDERATION.~~

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the Commander/Commanding Officer, _____ Division, Naval Facilities Engineering Command.

more than 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 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 in 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 subject or otherwise make available to any third party or parties any portion of the Premises 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 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 Department of the Navy and delivered to the Local Government Representative.

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 Annual 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 92-411, 83 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 Commander, 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 interests of the Department are affected.

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.

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CHAPTER 19

OUTLEASING

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CHAPTER 19

OUTLEASING

(Other than BRAC)

1. SCOPE.

With certain specific exceptions listed below, this Chapter implements Department of Defense and Department of Navy policy governing the leasing of all Navy-controlled real and related personal property which is not for the time required for public use. The authority and delegations of authority for the outleasing of such real property are provided herein. Further, the Chapter prescribes the procedures to be followed in the granting, administering, amending, and terminating of all leases executed under the authority of 10 U.S.C. 2667. The specific exceptions referred to above which are outside the scope of this Chapter are:

- a. Lease of industrial reserve property for industrial purposes.
- b. Lease of excess property, as defined in the Federal Property and Administrative Services Act (40 U.S.C. 472), except leases of excess property for economic readjustment purposes pursuant to 10 U.S.C. Section 2667(f).
- c. Lease of oil, mineral, or phosphate lands for exploitation purposes.
- d. Lease of lands of the Naval Petroleum and Oil Shale Reserves.

2. REFERENCES:

- (a) National Environmental Policy Act of 1969 (Public Law 91-190)
- (b) PL 97-321
- (c) 10 U.S.C. Section 2304
- (d) 10 U.S.C. Section 2667
- (e) 40 U.S.C. Section 472
- (f) 41 CFR 101-47.4913
- (g) Defense Acquisition Regulations
- (h) DOD Directive 1000.10 of 11 September 1979
- (i) DOD Manual 4270.1-M
- (j) SECNAVINST 6240.6E of 18 August 1977
- (k) SECNAV Instruction 5381.1G of 7 March 1983
- (l) SECNAV Instruction 5381.3F of 10 May 1982
- (m) SECNAV INSTRUCTION 11011.47 of 20 June 1983
- (n) NAVCOMPT MANUAL 043000, 043002, 043003
- (o) OPNAV Instruction 5090.1 of 26 May 1983
- (p) OPNAV Instruction 4000.76A
- (q) NAVFAC Instruction 11013.38A
- (r) NAVFACINST 7110.18C of 4 March 1983

3. INCLUSION OF PERSONAL PROPERTY.

As used in this Chapter, "real property" includes any item of personal property located thereon that is an integral necessary part or essential to the use or productive capacity of the real property.

4. DEPARTMENT OF DEFENSE LEASING POLICY.

In his memorandum of 11 September 1962, addressed to the Secretaries of the three military services, the Assistant Secretary of Defense (Installations and Logistics) stated the following:

"... it is suggested that a greater number, and a wider variety of properties which are being retained for mobilization purposes could be outleased for agriculture, grazing, commercial and other purposes which, if accomplished, would result in the exploitation of a broader segment of holdings and would provide the means of achieving greater savings in the management of military real property."

In answer to the question of consideration to be charged in outleasing, the Secretary of Defense stated in his 25 April 1962 memorandum to the three military services that "it is the policy of the Department of Defense that the consideration of any lease executed under Title 10, U.S.C. Section 2667, shall be the fair rental value of the property to be leased."

5. DEPARTMENT OF THE NAVY LEASING POLICY.

In keeping with the DOD policy stated above, Department of the Navy real property which is not excess, but not for the time required for public use, may be leased for any legitimate non-Federal use that is consistent with approved Navy policies and authorizing legislation. Navy outgrant policies are enunciated in SECNAV Instruction 11011.47 and are set out in paragraph 5 of Chapter 18. Inherent in this leasing practice is the obligation on the part of the Navy to administer its real property in such a way that the utilization will effectively promote the national defense or be in the public interest. See also ASN (I&E) memo of 12/22/93 - DON Environmental Procedures-Non-BRAC.

6. OBJECTIVES OF NAVY LEASING.

Department of the Navy real property may be leased for any legitimate non-Federal use consistent with approved Departmental policy and legislative authorizations. Several objectives are listed below which have the most wide-spread applicability.

a. Promotion of the national defense and/or national economy.

(1) Navy land should be leased where there exists a productive, non-Federal use potential that is compatible with the station mission.

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

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

(1) Considerable savings of operation and maintenance funds may be achieved through leasing inasmuch as this places the obligation for ordinary maintenance on the lessee.

(2) 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.

(3) Improved management of agricultural and grazing lands should be obtained through incorporation of soil and water conservation plans in such leases. Such plans are outlined in Volume II of this Manual.

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(4) Outleasing land for agricultural or grazing uses is consistent with policy established in SECNAV Instruction 6240.6E, emphasizing multiple-use programs for management of renewable natural resources.

c. Obtaining the maximum cash return to the United States consistent with the accomplishments of objectives (a) and (b).

7. LEASING AUTHORITY OF SECRETARY OF THE NAVY.

The Secretary of the Navy derives his authority to lease from title 10 U.S.C. Section 2667, which states:

Leases: non-excess property

a. Whenever the Secretary of a military department considers it advantageous to the United States, he may lease to such lessee and upon such terms as he 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;
- (2) not for the time needed for public use; and,
- (3) not excess property, as defined by section 472 of title 40.

b. A lease under subsection (a) -

- (1) May not be for more than five years, unless the Secretary concerned 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 provision of law;
- (3) must permit the Secretary to revoke the lease at any time, unless he determines that the omission of such a provision will promote the national defense or be in the public interest; and,
- (4) may provide, notwithstanding 40 U.S.C. Section 303b or any other provision of law, for the maintenance, protection, repair, or restoration, by the lessee, of the property leased, or of the entire unit or installation where a substantial part of it is leased, as part or all of the consideration for the lease.

c. This section does not apply to oil, mineral, or phosphate lands. (Mineral leasing policies and procedures are covered in Chapter 19.)

d. Money rentals received by the United States directly from a lease under this section.

- (1) Except as provided in paragraph (2), shall be covered into the Treasury as miscellaneous receipts. Payments for utilities or services furnished to the lessee under such a lease by the department concerned may be covered into the Treasury to the credit of the appropriation from which the cost of furnishing them was paid.
- (2) For agricultural or grazing purposes (other than lands acquired by the United States for flood control or navigation purposes or any related purposes, including the development of hydroelectric power) may be retained and spent by the Secretary concerned in such amounts as the Secretary considers necessary to cover the administrative expenses of leasing for such purposes and to cover financing of multiple-land use management programs at any installation under the jurisdiction of the Secretary. Use of these funds is not restricted to the installation on which they are derived.

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 shall 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 shall be renegotiated.

f. Notwithstanding clause (3) of subsection (a), real property and associated personal property, which have been determined excess as the result of a defense installation realignment or closure, may be leased to State or local governments pending final disposition of such property if —

- (1) The Secretary concerned determines that such action would facilitate State or local economic adjustment efforts, and
- (2) the Administrator of General Services concurs in the action.

8. REQUIREMENTS.

a. Secretarial standards with respect to the leasing of Navy real property are set forth in SECNAV Instruction 11011.47, which implements the authority contained in 10 U.S.C. 2667, cited above. The Secretary has determined that the leasing of Navy-controlled real property which is not excess property, but is not for the time needed for public use, will promote the national defense or be in the public interest when the policies set forth in paragraph 5 of Chapter 18 have been met.

b. In consonance with National Environmental Policy Act of 1969 (Public Law 91-190) as implemented by OPNAV Instruction 5090.1, an environmental evaluation shall be made for each proposed outlease. Additional environmental impact analysis documentation is not required unless there is a known potential for adverse environmental impact(s) or likelihood of controversy. If from the evaluation it is determined the proposed leasing may have a significant impact on the environment or may be controversial, an environmental assessment or impact statement shall be prepared and processed in accordance with OPNAV Instruction 5090.1. If the proposed lease is one requiring approval of NAVFACENGCOM or higher authority, the transmittal letter shall make a statement as to the result of the evaluation or include environmental documentation as appropriate.

9. SECRETARIAL DETERMINATION.

a. SECNAV Instruction 11011.47 states that the Secretary has determined that the granting of a lease for a term in excess of five years and/or the omission from a lease of his unqualified right to revoke it at any time will be in the public interest when the Commander, Naval Facilities Engineering Command, or his designee, finds that one of the following conditions exists:

- (1) A lease of a parcel of land requires a long term, but not to exceed twenty-five years, to amortize the cost of public school construction or to satisfy the requirements of the Department of Education.
- (2) A lease pursuant to SECNAV Instruction 5381.1G involves the construction or rehabilitation of a building for a banking activity to serve the installation, and requires a long term to amortize the cost of construction, such term not to exceed twenty-five years.
- (3) A lease pursuant to SECNAV Instruction 5381.3F involves the construction or rehabilitation of a building for a Federal or state credit union to serve the installation, and requires a long term to amortize the cost of construction, such term not to exceed twenty-five years.

(4) A lease of a parcel of land for agricultural purposes requires a long term, but not to exceed ten years, to amortize lessee expenses required to establish or restore agricultural productivity to the lease area.

(5) A lease for a banking activity granted pursuant to SECNAV Instruction 5381.1G for a term of not more than five years requires omission of the Secretary's unqualified right to revoke it.

10. AUTHORITY OF COMMANDER, NAVAL FACILITIES ENGINEERING COMMAND TO OUTLEASE.

The Secretary of the Navy by SECNAV Instruction 11011.47 (see paragraph 6 of Chapter 18) has delegated to the Commander, Naval Facilities Engineering Command (NAVFACENGCOM) with the right to redelegate, authority to take all necessary action to grant, amend, administer, and terminate leases of Department of the Navy-controlled real property to organizations and persons outside the Department of the Navy. This authority is conditioned that unless the Commander, or his designee, determines either that there is only one available lessee or that leasing to a selected lessee can be fully justified as being in the best interest of the Government, the property shall be advertised for leasing and awarded to the highest responsible bidder. It is further required that each lease entered into under this authority shall contain provisions as follows:

a. The lease term, including all rights of renewal, shall not exceed five years unless a determination for a term in excess of five years has been made pursuant to paragraph 9 or unless such requirement is waived by the Secretary.

b. A reservation in the Government of the right to revoke the lease at any time unless a determination is made pursuant to paragraph 9 or unless such requirement is waived by the Secretary.

c. A prohibition against subleasing by the lessee of any part of the property without the prior written approval of the Commanders/Commanding Officers of the EPDs/EFAs.

d. 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 shall be renegotiated.

e. As the above delegation of authority is derived from authority placed in the Secretary by 10 U.S.C. 2667, it is restricted by that statute to property not for the time needed for public use and not excess property, as defined by 40 U.S.C. 472.

The Secretary of the Navy has further delegated to NAVFACENGCOM all administrative determinations involving outleasing of Navy property.

11. AUTHORITY FOR COMMANDERS/COMMANDING OFFICERS OF EPDS TO OUTLEASE.

a. All rights to grant, modify, administer, and terminate leases delegated to the Commander, Naval Facilities Engineering Command, as indicated in paragraph 10, are hereby redelegated to the Commanders/Commanding Officers of the EPDs.

b. In all cases where specific authority to lease has not been delegated, the Commanders/Commanding Officers of the EPDs are authorized to grant, modify, administer, and terminate such leases upon the advice by NAVFACENGCOM to proceed and within those limitations imposed in the specific case in question.

c. Authority is delegated to issue decisions in outlease disputes. This authority may be redelegated but not to the outlease contracting officer or to any person below the level of the contracting officer.

d. Authority is also delegated to the Commander/Commanding Officer of the EPD, the approval, award, administration of maintenance and improvement agricultural outleasing projects as specified in paragraph 39b(3). The authority delegated herein may be redelegated.

12. APPROVALS AND CLEARANCES FOR OUTLEASING.

a. Approvals to be obtained the activity.

Prior to approving the proposed outlease, the Activity shall obtain the following approvals:

- (1) Approval of the major claimant where the estimated annual rental exceeds \$200,000;
- (2) Approval of the Commandant of the Marine Corps for all Marine Corps leases;
- (3) Approval of the Commander, Naval Supply Systems Command for leases involving storage and/or warehouse space;
- (4) Approval of the major claimant for leases involving the construction of a bank building by a banking institution, pursuant to SECNAV Instructions 5381.1G and 11011.47;
- (5) The approvals of the Officer-in-Command's superiors in the echelon of command as the Officer-in-Command deems necessary for the granting of a lease not authorized by this chapter; and,
- (6) Approval of the major claimant for leasing involving the private sector for the express purpose of seeking private capital investment instead of using military construction funds.

b. Approvals to be obtained by an Engineering Field Division.

- (1) The appropriate EPD will obtain the prior approval, subject to the requirements of paragraph 13a, of the Officer-in-Command of the affected shore (field) activity for any proposed outleasing. The EPD will forward to NAVFACENGCOM all leasing proposals requiring approvals or clearances at the Comptroller, Secretarial, or Congressional level.
- (2) The appropriate EPD will forward outlease dispute claims if the lessee appeals an EPD decision to NAVFACENGCOM for final determination.

c. Approvals and clearances to be obtained by NAVFACENGCOM.

- (1) Leasing involving the construction of a bank building by a banking institution.
NAVFACENGCOM will process the proposal as may be required for NAVCOMPT and ASD (Comptroller) approvals, will make the determinations required by SECNAV Instruction 11011.47, and will submit to ASD(IA&L), for transmittal to the Congressional Committees on Appropriations and Armed Services, the data required by NAVFAC Instruction 11013.38A.
- (2) Leasing involving a lease not authorized under this chapter.
NAVFACENGCOM will obtain the approval of the Assistant Secretary of the Navy (Shipbuilding and Logistics).
- (3) Leasing involving property having an estimated annual fair market rental value in excess of \$200,000.
NAVFACENGCOM will obtain the clearance of the Armed Services Committees of the Congress in accordance with 10 U.S.C. 2662. This requirement does not apply to leases for agricultural or grazing purposes.

(4) Leasing involving the private sector for the express purpose of seeking private capital investment instead of using military construction funds.

NAVFACENGCOM will obtain the approval of the Chief of Naval Operations and clearance of the Armed Services Committees of the Congress.

13. DETERMINATION OF NON-REQUIREMENT FOR PUBLIC USE.

Prior to exercising any leasing authority, the property proposed for leasing must be determined to be not excess but not currently required for public use. Such determination shall be made by the Commander/Commanding Officer of EPDs after the property has been screened for requirement through:

- a. other Navy and Marine Corps activities;
- b. other military departments;
- c. the Coast Guard; and,
- d. local regional office of General Service Administration.

All addressees of the screening should be advised that unless a request for the use of the property is received within thirty (30) days from the date of the screening letter, it will be presumed that no requirement exists. If the screening process gives rise to any request for Government use of the property, such request shall be processed in accordance with Chapter 20. The screening requirement may be waived only if the Commander/Commanding Officer of the EPD determines in writing that because of the special circumstances involved no useful purpose will be served by screening. This written determination should be retained for future reference by the EPD.

14. LEASING ON COMPETITIVE BID BASIS.

To secure the benefits of competition and to eliminate any sound basis for criticism on grounds of favoritism, leasing shall be accomplished through competitive procedures normally through the use of sealed bids. Leasing by other than competitive means must follow the procedures set forth in paragraph 19-15. Although anyone, including Government employees, may submit a bid in response to an Invitation to Bid, the EPD may reject any bid that creates the possibility or appearance of a conflict of interest. The reasons for such a rejection will be fully documented. The procedure for obtaining bids will be substantially as follows:

- a. A Notice of Availability and Invitation to Bid 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, state the permitted uses, include the general terms and conditions of the lease, and state the amount of Performance Bond required. The amount of consideration to the Government should be the only variable supplied by the bidder. The time and location of the bid opening will be determined by the EPD, after considering all the circumstances, and will be precisely stated in the Invitation to Bid. If the proposed lease will involve either (1) a term (including all rights of renewal) in excess of five (5) years; or (2) an estimated fair market annual rental value in excess of \$200,000,

prior approval of NAVFACENGCOM must be obtained. The local EPD/EFA counsel must review for legal sufficiency any deviation from the terms and conditions of the standard lease form. The EPD/EFA shall provide copies to NAVFACENGCOM.

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- b. The Notice and Invitation should be given such circularization and publication as is deemed appropriate and reasonable under the circumstances.
- c. Estimate the Fair Market Value of the property to be leased and its Fair Rental Value for leasing for the purpose, term, and conditions proposed.
- d. Bids will be received and opened in accordance with the Notice and Invitation and will be evaluated as to adequacy of the amount bid and the responsibility of the bidder. The opening of bids may be delegated. This would normally be done only when the bid opening is not at the EPD office.
- e. Accept the highest responsible bid and enter into a lease in accordance with the provisions of this Chapter.
- f. If no acceptable bid is received, the EPD may readvertise the property in accordance with the above procedures or if circumstances warrant, negotiate with one or more of the unsuccessful bidders to obtain the highest possible rental for the Government.

15. LEASING ON A NEGOTIATED BASIS.

a. Negotiated leasing to a selected lessee, except as stated 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 (see paragraph 10 above). If the Commander/Commanding Officer of an EPD considers that certain property should be leased to selected lessee on a negotiated basis, documentation will be prepared and retained in EPD files that will support his position. Such documentation shall also include a signed certification from the Officer commanding the installation concerned stating as follows:

- (1) that, to the best of his knowledge and belief, no personnel in his command who has any responsibility regarding the prospective lease has any present or anticipated personal or financial interest in such lease; and
- (2) that, to the best of his knowledge and belief, no such personnel have received any gift or gratuity in connection with the proposed leasing.

b. When a significant modification or amendment is proposed for any existing lease, a certification containing the substance of that set out in subparagraph (a) above is also required.

16. PROCEDURE TO BE FOLLOWED WHEN NAVFACENCOM APPROVAL IS REQUIRED.

Any leasing proposal requiring additional approvals shall be submitted to NAVFACENCOM in writing. This proposal shall be supported by a comprehensive leasing plan which shall include any of the following items as may be appropriate:

- a. A general identification and description of the property proposed for leasing, together with a map showing its relation to the remainder of the activity.
- b. A statement as to the determination of non-requirement for public use and the basis thereof.
- c. A statement indicating the approval of the Supply Systems Command if the lease is intended for the use of storage or warehouse space.
- d. Details of the Navy's real estate interest in the property.

e. Recital of all proposed deviations from terms and conditions of most appropriate standard lease form, supported by adequate justification. For any lease for a term (including renewals) in excess of five years or modifying the Government's right to terminate the lease at any time without notice, justification must be sufficient to support a determination by the Assistant Secretary of the Navy (Shipbuilding and Logistics) that such action will either promote the national defense or be in the public interest.

f. Proposed draft of any Notice of Availability and Invitation for Bids or Solicitation of Lease Proposals.

g. Draft of any proposed lease departing from standard lease forms.

h. Estimate of appropriate rental consideration and basis thereof. Any recommendation for a consideration less than fair market rental value must be fully justified.

i. When leasing (other than for agricultural or grazing purposes) is proposed for property for which the estimated annual fair market rental value exceeds \$200,000, the leasing plan shall include the information necessary to prepare a Disposal Report, prepared in the format of Appendix "G" to Chapter 23.

j. For any renewal or amendment of an existing contractual instrument, such information on the conditions thereof and experience thereunder as may be pertinent and appropriate, together with the certification required by paragraph 15.b, above.

k. A statement to the effect that the requirements of Chapter 4 of OPNAV Instruction 5090.1 have been satisfied.

l. Any other information considered pertinent to proper evaluation of the proposed transaction.

17. CONSIDERATION.

a. Consideration for any lease executed under the authority of Title 10 U.S.C. 2667 shall be either the fair market rental value of the property to be leased or the cost to issue and process the lease whichever is higher. In accordance with DOD Instruction 7230.7, the EPD will ensure an annual fair market return for the Government by using Period Point Averaging or any other commercial practice for calculating rental value for other than competitive long-term leases.

b. The consideration required of a lessee, as established by the high bid or through negotiation, may be reduced by (1) the amount of any long-term maintenance obligation assumed by the lessee in a specific dollar amount; (2) the estimated premium cost of any insurance required to be procured and maintained by the lessee, except third-party liability insurance; and/or in the case of property leased to educational institutions, by an amount equal to the value of any benefits which have accrued or may accrue to the United States through the use of such property.

18. PROHIBITION OF EXPENDITURE OF RENTAL FUNDS.

10 U.S.C 2667 does not permit the Navy to use or spend any of the cash rental generated by the lease except as set forth in paragraphs 7d(2) and 39a(1); it does, however, permit the Department to accept as part or all of the consideration for the lease the performance by the lessee of obligations to maintain, protect, repair or restore the leased property. SECNAV

Instruction 11011.47 also permits the Department to extend such obligation to an entire unit or installation when the lease covers a "substantial part" of the entire unit or installation. The lessee's maintenance and repair obligation will normally be limited to the leased premises except where such limitation would involve practical difficulties such as hiring of duplicate guards or maintenance crews to care for interrelated areas or portions of a building.

19. GENERAL MAINTENANCE.

In addition to the rental obligation set forth in the lease, the lessee has under the general provisions of the standard lease forms an obligation to maintain the leased property in a satisfactory condition, to prevent or repair any damages resulting from the lessee's use thereof, and to restore the property to the condition in which it was received or to such improved condition as it may have been placed during the lease term.

20. LONG-TERM MAINTENANCE.

As provided in paragraph 18, the lease may allow that all or a portion of the consideration therefore may be fulfilled by performing long-term maintenance, the provisions for which are described in detail in the General Provisions, Part IIB of the General Purpose Lease, Appendix C to this chapter.

21. CRITERIA FOR DIRECTION OR APPROVAL OF LONG-TERM MAINTENANCE ITEMS.

The long-term maintenance provisions are included in the standard forms of General Purpose Lease for the benefit of the Government, to permit the saving in maintenance and operating funds. These provisions contemplate retention in the Government of absolute discretion in deciding what items of maintenance performed shall entitle a lessee to credit against his obligation thereunder, making the question one for unilateral determination by the Government. The provisions do so by restricting these obligations to items which not only satisfy the definition of long-term maintenance but also shall be either approved or directed by the Commander/Commanding Officer of the EPD. The necessity for his approval or direction permits the Commander/Commanding Officer, to the extent that lessee's accrued obligations will cover the costs thereof, to direct performance of any item he considers necessary to protect the Government's interest in the property. The provisions impose no obligation on the Government to authorize any item of maintenance, but permit the Commander/Commanding Officer in consideration of maintenance items proposed by a lessee, usually for his own purpose, to approve or disapprove the items proposed, at his discretion. This discretion should be exercised on the basis of whether under all the circumstances the performance of such items by lessee will be of sufficient benefit to the Government to justify the expenditure of funds involved. Generally when leased property is to be retained by the Government, mutual benefit to the parties will result from most items satisfying the definition of long-term maintenance. However, the relative priority of necessary items to be approved or directed must be determined by the Commander/Commanding Officer.

22. LONG-TERM MAINTENANCE ON EXCESS LEASED PROPERTY.

Note that the Governmental benefit accruing from performance of long-term maintenance items changes drastically when leased property is determined

to be excess. This condition necessitates a complete review of the long-term maintenance policy for the property. Under such circumstances, the Commander/Commanding Officer shall review any long-term maintenance item submitted for his approval in light of the disposal plan for the property. Standards for maintenance and protection of excess property are outlined in 41 CFR 101-47.4913. Generally, approval should be restricted to items which are necessary to preserve the overall value of the property for disposal purposes. Borderline cases involving unusual circumstances require EFD/EPA approval.

23. 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 also matters within the discretion of the 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.

24. LONG-TERM MAINTENANCE ADMINISTRATION.

Accomplishment of the purposes of the long-term maintenance provisions will require their proper administration in light of the comments herein. Proper administration requires the following action on the part of the Commander/Commanding Officer.

a. General planning of long-term maintenance items to be performed during the lease term as the Maximum Amount to be Expended shall accrue, and establishment of priorities therefor on the basis of relative urgency of requirements and resultant benefit, together with timely review of such planning to give proper consideration to any change in circumstances developing during the lease term. Since such items may include those for the mutual benefit of the Government and the lessee as well as those solely for the benefit of the Government, consultation with the lessee in such general planning is appropriate.

b. Preparation and/or review of plans and specifications and estimates of cost of particular items proposed to be directed or submitted for approval, as may be appropriate.

c. Approval or direction of lessee's undertaking of particular items in accordance with approved plans and specifications and where they are to be performed in whole or in part under a lessee's contract with third parties, prior approval of the amount of such contract.

d. During the undertaking of any item, supervision of the work to assure its prompt and satisfactory completion in accordance with the approved plans and specifications.

e. During the undertaking, 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 therefor. Lessees should be required to maintain adequate accounting records to permit prompt determination of actual costs allocated to each item. Where the Commander/Commanding Officer considers it necessary or appropriate he shall request the Navy Regional Accounts Office to audit lessee's records.

f. Periodic review of the Current Obligated Maintenance Amount under each lease to determine the advisability of permitting further accruals therein or of directing payment of all or any portion thereof as cash rent.

25. CONSERVATION PLAN.

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

b. Marine Corps Activity Commanders will have primary responsibility for conservation plans supporting Marine Corps activity agricultural outlease contracts. However, EPDs will normally prepare conservation plans supporting agricultural outlease contracts for Marine Corps activities unless a Marine Corps activity chooses to prepare the plan. EPD costs in preparing conservation plans and inspecting leases to insure compliance with the conservation plans will be funded by the Marine Corps (see paragraph 39a(9)(a)4)). EPDs will approve conservation plans prepared by Marine Corps activities before the plans become part of agricultural outlease (real estate) contracts.

26. GENERAL INSURANCE REQUIREMENTS.

Lessees of improved real property shall be required to assume all risk of loss or damage thereto. The extent of liability shall be limited to the amount of insurance required or actually carried whichever is the greater; provided, however, that maintenance of the required insurance shall not effect any reduction of the lessee's liability with respect to any loss or damage resulting from willful misconduct, lack of good faith, or failure to exercise due diligence by the lessee or parties charged by the lessee with the supervision or direction of the leased property. Commanders/Commanding Officers of Engineering Field Divisions shall specify the types and minimum amounts of insurance coverage required to protect the various kinds of Government property involved against all hazards which are customarily insured against locally. These insurance types include, but are not limited to, fire and extended coverage, boiler, crane and pier and wharf insurance. The minimum amount of coverage for property damage insurance carried shall not be less than the actual cash value of the property. When a lease is granted for a portion of a building, the Commander/Commanding Officer of the EPD should determine the amount of insurance required, if any, by taking into account the portion being used, the type of use, the value of the building, and the financial responsibility of the lessee. In the absence of unusual circumstances, such value will be computed as the difference between the current replacement value and normal depreciation thereon to the effective date of the lease.

27. INSURANCE FOR AGRICULTURAL OR GRAZING LEASES.

Agricultural or grazing leases are basically leases of land only, therefore, insurance is not always required. Where improvements are involved, insurance may be required if needed to protect the Government's interest. Third party liability insurance should also be required where the

Commander/Commanding Officer of the EPD determines that the Government may be exposed to the risk of personal injury lawsuits for accidents occurring in connection with the use of leased premises. The lessee will in any event be responsible for destruction or damage to any Government property located on or adjacent to the leased premises.

28. SPECIFIC INSURANCE REQUIREMENTS.

a. The lessee of any improved Navy-controlled real property shall provide insurance protecting both lessee and the Government from liability to any third party for damage to property, bodily injury or death, in such specific minimum amounts as the Commander/Commanding Officer of the EPD shall determine to be sufficient to adequately protect the interests of the Government under all the circumstances involved. 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. The above criteria shall also be applied to leases for unimproved properties where the Commander/Commanding Officer of the EPD determines it necessary to protect the government.

b. The lessee of any Navy-controlled property is responsible for any contamination of that property by either himself, his agents or assigns and invitees. Prior to the execution of an outlease, the Commander/Commanding Officer of the EPD shall make a determination as to the risk of contamination. Where the lessee processes, disposes, generates or handles any contaminants, hazardous wastes or hazardous substances, the lessee shall be required to obtain insurance or post a bond in an amount sufficient to cover possible cleanup costs. The Commander/Commanding Officer of the EPD shall determine, based upon the risk, the amount of insurance or bond that will be required. The lessee shall also provide the Contracting Officer with a copy of all permits which may be required for his proposed use of the premises and demonstrate to the satisfaction of the Contracting Officer that he is and will be in compliance with all local, state, and federal laws and regulations. The following paragraphs shall be included in all outleases:

***DAMAGE TO GOVERNMENT PROPERTY**

*In the event of damage, including damage by contamination, to any Government property by the Lessee, his officers, agents, servants, employees, subtenants, licensees or invitees, the Lessee, at the election of the Government, shall promptly repair, replace, or make monetary compensation for the repair or replacement of such property to the satisfaction of the Government.

Prior to the execution of an outlease, the Lessee shall provide evidence of compliance with all local, state, and federal environmental laws and regulations. In the event that the lessee will process, dispose, generate or handle any contaminants, hazardous wastes or hazardous substances, the lessee shall obtain insurance or post a bond in an amount sufficient to cover possible cleanup costs. The amount shall be determined by the Commander/Commanding Officer.

c. Each policy of insurance required under any lease shall satisfy the following requirements:

(1) It shall be issued by an insurance company which is licensed to operate in the state where the property is located and which is of sufficient size and financial stability to assume the risk involved. Any appeal which may arise as to the acceptability of the insurer or proposed insurer shall be referred to NAVFACENGCOCOM for resolution.

(2) It shall name both the lessee and the United States of America (Department of the Navy) as the insured.

(3) It shall contain a provision for thirty (30) days written notice to the local Government Representative designated in the lease prior to any material change in, or the cancellation of, the policy.

(4) All fire, extended coverage and allied forms of insurance on Government 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 of America."

29. SELF-INSURANCE WAIVERS.

If a prospective lessee claims to be a self-insurer, the lessee should write a letter to the EPD which clearly indicates financial capability to be a self-insurer and requests that the insurance requirements of the lease be waived. Upon receipt of the request, the Commander/Commanding Officer of the EPD will make a written determination of whether or not to authorize the waiver. If the waiver is authorized, the space on the lease form provided for the insurance coverage should state self-insurer and the authority.

30. CO-INSURANCE.

If a prospective lessee 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 from the operation of such clause shall be at the sole risk of lessee and shall not relieve lessee of its liability to the Government in the full amount of insurance required. Such consent shall be expressed in writing specifying that it shall be of no force and effect until the delivery to the Commander/Commanding Officer of the EPD of the written acceptance of the conditions thereof by the lessee.

31. INSURANCE EXEMPTIONS.

The law in some states precludes the state, counties, and local governmental agencies from providing insurance. Where this situation prevails, the requirement for insurance will be waived for such lessees. In the section of the lease which provided for insurance coverage, the exempting statute of the state will be cited in support of the statement that the insurance requirement has been waived. Although such an agency may be relieved of an insurance obligation, that agency shall nevertheless assume the same liabilities arising out of its use of Government property as any lessee not so exempted.

32. SECURITY FOR PERFORMANCE.

In every lease in which any consideration moving to the Government shall be other than cash rent payable in advance, the Commander/Commanding Officer of the EPD shall require the lessee to furnish security for the performance of

the obligation. This requirement may be waived by the Commander/Commanding Officer only when he considers that a performance bond or 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 cash or negotiable Government bonds in lieu of a performance bond. Although there is no standard formula for determining the amount of the performance bond, the amount should be based upon the value of the leased property and the value of the work performed under the outlease conservation plan or under the long-term maintenance obligation. 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. Be sure that the performance bond furnished is clearly identified with the lease secured thereby.

33. INSPECTIONS.

a. On or prior to the effective date of any lease, duly authorized representatives of the EPD and the lessee shall jointly inspect the property. The condition of each item of property will be set forth on a condition report signed by the inspectors. The report will be attached to, and incorporated into, the lease as an exhibit. Of equal importance to the initial inspection is the inspection upon expiration or termination of the lease. This final inspection shall also be made by duly authorized representatives of the EPD and the lessee. The final condition report when compared with the initial report, will serve as the measure of the lessee's restoration obligation 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 EPDs are authorized to develop and utilize condition report forms appropriate to their needs. The liberal use of photographs in such reports is encouraged.

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

34. ADMINISTRATIVE RESPONSIBILITY.

a. Paragraph 11 of this Chapter vests Commanders/Commanding Officers of the EPDs 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. Within the prescribed limits, full authority has been delegated to EPDs to grant, amend, administer, and terminate leases for the use of Department of the Navy real property. The supervision and administration of such leases in a businesslike manner is essential to the best interest of the Government. Where desirable or necessary because of distance, special

conditions imposed, or any other reason, the EFD 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 are familiar with and understand all the general provisions of the Standard Forms of lease and the particular provisions of individual leases under their administration. It is equally important that lessee be informed of the limits of his rights and the extent of his obligations under the lease prior to its execution.

35. STANDARD FORM OF LEASE.

a. Appendices at the end of this Chapter are Standard Forms of leases which in most cases may be used "as is." Two exceptions will be:

(1) Rental Payment Provision. All leases should be modified to specify the time period within which payment is due. The Prompt Payment Act (PL 97-177) requires federal agencies to pay their bills on time, to pay interest penalties when penalties are late, and to take discounts only when payments are made within the discount period.

(2) Disputes clause. The following disputes clause will be contained in future outlease contracts.

(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/Commanding Officer, _____, 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/Commanding Officer, _____, Division, Naval Facilities Engineering Command shall be final and conclusive unless, within 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/Commanding Officer, _____, 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."

See FAC 22 Nov 94 Letter for latest clause

APPENDIX 19-AA
Department of the Navy
Lease for Agricultural or Grazing Purposes

Addendum

Amendment to Paragraph - P. Disputes

AA-1

Appendix 19-AA
CH-14

DISPUTES CLAUSE - TO BE SUBSTITUTED IN ALL LEASES

F. Disputes.

(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/Commanding Officer, _____ 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/Commanding Officer, _____ Division, Naval Facilities Engineering Command shall be final and conclusive unless, within 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 proceed diligently with the performance of the lease and in accordance with the decision of the Commander/Commanding Officer, _____ 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.

APPENDIX 19-B
Department of the Navy
General Purpose Lease
PART I

B-1

Appendix 19-B
CI-14

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DEPARTMENT OF THE NAVY
GENERAL PURPOSE LEASE
PART I

CONTRACT NUMBER (NFIR)

LEASE BETWEEN

HEREINAFTER CALLED "LESSEE") AND THE UNITED STATES OF AMERICA (HEREINAFTER CALLED THE "GOVERNMENT"), CONSISTING OF THIS PART I, THE GENERAL PROVISIONS OF PART II OF GENERAL PURPOSE LEASE (NAVFAC 1101/24), ATTACHED HERETO AND MADE A PART HEREOF, AND SUCH SPECIAL PROVISIONS AS ARE INCORPORATED BY ARTICLE 8 OF THIS PART I.

1. **LEASED PROPERTY:** UNDER THE TERMS AND CONDITIONS OF THIS LEASE, THE GOVERNMENT HEREBY LEASES TO THE LESSEE THAT PORTION OF THE HEREINAFTER CALLED THE "STATION" HEREINAFTER DESCRIBED, WHICH PORTION IS HEREINAFTER CALLED THE "LEASED PROPERTY":

AS DELINEATED ON THE MAP OF THE STATION, MARKED "EXHIBIT A", ATTACHED HERETO AND MADE PART HEREOF;

TOGETHER WITH ALL IMPROVEMENTS THEREON AND APPURTENANCES THEREUNTO BELONGING.

TOGETHER WITH THOSE ITEMS OF PERSONAL PROPERTY IDENTIFIED ON THE LIST, MARKED "EXHIBIT B", ATTACHED HERETO AND MADE PART HEREOF.

TOGETHER WITH RIGHTS OF INGRESS AND EGRESS AND THE RIGHT, IN COMMON WITH OTHERS, TO THE USE OF ALL SUPPORTING FACILITIES, ROADWAYS AND/OR RAILROAD TRACKS SERVING THE LEASED PROPERTY TO THE EXTENT NECESSARY TO ENABLE LESSEE TO USE SAME FOR THE PURPOSES OF THIS LEASE.

ATTACHED HERETO AND MADE PART HEREOF IS A CONDITION REPORT, MARKED "EXHIBIT C", SIGNED BY REPRESENTATIVES OF THE GOVERNMENT AND LESSEE, WHICH SETS FORTH THE CONDITION OF EACH ITEM OF THE LEASED PROPERTY AS DETERMINED FROM THEIR JOINT INSPECTION THEREOF.

2. **TERM:** THE TERM OF THIS LEASE SHALL BEGIN ON _____ AND END ON _____, UNLESS SOONER TERMINATED IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE F OR G OF PART II 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 FIVE (5) YEARS.

3. **RENT:** LESSEE SHALL PAY THE GOVERNMENT AN ANNUAL RENTAL OF \$ _____ PAYABLE _____ IN ADVANCE AT THE RATE OF \$ _____ PER _____, IN CONFORMITY WITH THE PROVISIONS OF ARTICLE Y OF PART II HEREOF.

4. **EXPENDITURES FOR LONG TERM MAINTENANCE:** THE "MAXIMUM AMOUNT TO BE EXPENDED" FOR ITEMS OF LONG TERM MAINTENANCE FOR WHICH LESSEE ASSUMES AN OBLIGATION IN ARTICLE 8 OF PART II HEREOF IS \$ _____ PER ANNUM AND SHALL ACCRUE ON THE FIRST DAY OF EACH MONTH OF THE TERM OF THIS LEASE AT THE RATE OF \$ _____ PER MONTH.

5. **USE:** THE SOLE PURPOSE FOR WHICH LESSEE SHALL USE THE LEASED PROPERTY, IN THE ABSENCE OF PRIOR WRITTEN APPROVAL OF THE GOVERNMENT FOR ANY OTHER USE, IS THE FOLLOWING:

6. **INSURANCE:** THE INITIAL MINIMUM AMOUNTS AND TYPES OF INSURANCE WHICH LESSEE SHALL PROCURE AND MAINTAIN ON THE LEASED PROPERTY IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE C OF PART II HEREOF ARE THE FOLLOWING:

| THE TWO EXTREMES COVERED | | OTHER TYPES (Specify) | |
|--------------------------|--|-----------------------|----|
| From | | From | \$ |
| To | | To | \$ |

| LIABILITY | | | |
|-----------------|---------------------|---------------------|-----------------|
| PROPERTY LESSEE | PROPERTY GOVERNMENT | PROPERTY GOVERNMENT | PROPERTY LESSEE |
| \$ | \$ | \$ | \$ |

7. **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 \$ _____. 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.

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6. SPECIAL PROVISIONS: THERE ARE HEREBY INCORPORATED INTO THIS LEASE, BY ATTACHMENT HERETO, THE FOLLOWING SPECIFIED ADDITIONAL PROVISIONS WHICH SHALL BE CONTROLLING IN THE EVENT OF ANY CONFLICT WITH THE GENERAL PROVISIONS OF PART II OF THIS LEASE.

9. EXECUTION BY LESSEE

NAME OF LESSEE _____

BY _____

(Signature)

(Witness)

(Title)

(Title)

10. FOR CORPORATE 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)

(Title)

11. EXECUTION FOR AND ON BEHALF OF THE GOVERNMENT

THE UNITED STATES OF AMERICA

BY _____

(Contracting Officer)

(Date)

(Witness)

12. NAVY IDENTIFICATION DATA

NAME AND ADDRESS OF NAVAL STATION

LOCAL GOVERNMENT REPRESENTATIVE/TITLE AND ADDRESS

ADDRESS OF LESSEE

NAVPAC 11811/24 (BACK)

APPENDIX 19-C
Department of the Navy
General Purpose Lease
PART II

C-2

Appendix 19-C
CH-14

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DEPARTMENT OF THE NAVY
GENERAL PURPOSE LEASE
PART II

CONTRACT NUMBER
NFCR

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 hereunder, as referred to in the Condition Report incorporated by Article I of Part I hereof, subject, however, to ordinary wear and tear and 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 maintenance 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 item 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 as a source 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, and 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, in such part as 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 provided 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, subcontractors, 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 be required, but shall not be less than the minimum amounts and types specified in Article 5 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 4 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 same of interest and the proceeds, in the absence of the Government, shall be payable to same of interest; any proceeds not paid to same of interest shall be payable to the Treasurer of the United States."

(d) 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 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, repair or replace 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 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 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 Leased Property, 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 Leased Property 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 damage as Lessee shall suffer for property destroyed or property rendered unusable on account of Grantee's exercise of its rights thereunder. There is 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 Leased Property as shall be necessary for the performance of their duties with regard to such 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 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 an 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 rent, Long Term Maintenance Obligation and charges assumed hereunder and not heretofore paid or satisfied, less the net rentals, if any, collected by the Government on the renting of the Leased Property, which amounts shall be due and payable at the time when such rent, 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 thirty (30) 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, subcontractors, licensees or invitees, or by any failure or refusal on the part of Lessee to fully perform its obligations under this lease.

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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 maintain the Leased Property and each item thereof to the condition in which it was received, as set forth in the Condition Report incorporated by Article I of Part I hereof, or to such improved condition as may have resulted from any improvements made therein by the Government or by Lessee during the lease term, 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 to or upon the Leased Property as may be necessary for its use of the Leased Property pursuant to this lease, and to remove same 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 such items 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 accrue to Lessee therefor, but such abandonment shall in no way reduce any obligations 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 attached to the Leased Property or any part thereof.

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 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, subcontractors, licensees, or tenants, 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 therefor 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 unobstructed 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 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 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 or Maximum Amount to be Expended specified in Article J or K 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 herein 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 appeal as a dispute in accordance with the provisions of Article P of this Part II.

P. DISPUTES

(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, Naval Facilities Engineering Command, who shall reduce his decision in writing and mail or otherwise furnish a copy thereof to the lessee. The decision of the Commander, Naval Facilities Engineering Command shall be final and conclusive unless, within 30 days from the date of receipt of such copy, the lessee mails or otherwise furnishes to the Commander, Naval Facilities Engineering Command a written appeal addressed to the Secretary of the Navy. The decision of the Secretary or his duly 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, Naval Facilities Engineering Command.

(b) This "Dispute" 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.

G. 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, concerning 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.

H. 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 therefrom, but this provision shall not be construed to extend to this lease if made with a corporation for its general benefit.

I. 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.

J. 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 concurred therein.

K. 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 retention 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 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

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provisions will be binding upon each sublessee or vendor. The lessee will take such action with respect to any sublessee or vendor in the order as the Government may direct as a result 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) Covered 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, in 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-Healey 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 such 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) at 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 order, 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 Department of the Navy 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 due until paid and shall be subject to adjustment as provided by Part 6 of Appendix C 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, or 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 the lease, including demand consistent upon default termination; (iii) the date of termination 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 II of this lease shall, under the direction of the Commander, 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 interests of the Government are affected.

APPENDIX 19-CC

Department of the Navy
General Purpose Lease

Addendum

Amendment to Paragraph - P. Disputes

19-CC

CC-1

Appendix

CH-14

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DISPUTES CLAUSE - TO BE SUBSTITUTED IN ALL LEASES

P. Disputes.

(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/Commanding Officer, _____ 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/Commanding Officer, _____ Division, Naval Facilities Engineering Command shall be final and conclusive unless, within 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 proceed diligently with the performance of the lease and in accordance with the decision of the Commander/Commanding Officer, _____ 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.

See FAC letter of 22 Nov 94 for latest version.

Agricultural and Grazing Lease Deposit Instructions
for Collections Relative to Leases of Navy Lands

CONUS EFD offices receiving lease payments will prepare a NAVCOMPT Form 2277 and send it with the check to the Disbursing Officer, Navy Regional Finance Center, Special Accounts Division, Code 43, Attn: Ms. Key, Washington, DC 20371. Pacific Engineering Field Division will deposit these receipts with the local disbursing officer. The NAVCOMPT Form 2277 will be completed in accordance with the instruction provided in NAVCOMPTINST 7000.43. The following specific requirements apply:

| <u>Block No.</u> | <u>Enter</u> |
|------------------|---|
| 3 | The lease number |
| 4 | The deposit number, if applicable |
| 98 | Period covered by the deposit |
| 9C | Description of check |
| | Type of service provided |
| 11A | Naval Installation generating receipt |
| | AA |
| 11B | 17F3875 |
| 11C | 25AG |
| 11D | 007 |
| 11E | Positions #1-5 UIC of the EFD Depositing the Payment. |
| 11F | 0 |
| 11G | 00025 |
| 11H | 3C |
| 11I | 000000 |
| 11J | Position 1 - User Code (alpha) of EFD administering the lease |
| | Positions #2-6 - UIC of Naval Installation |
| | Position #7 - Zero |
| | Positions #8 through 12 - 98004 |

Copy of NAVCOMPT Form 2277 to:
Naval Facilities Engineering Command
Attn: 0142
200 Stovall Street
Alexandria, VA 22332-2300

APPENDIX 19-D

AGRICULTURAL AND GRAZING LEASE DEPOSIT INSTRUCTIONS
FOR COLLECTIONS RELATIVE TO LEASES OF MARINE CORPS LANDS

COMUS EFD offices receiving lease payments will prepare a NAVCOMPT Form 2277 and send it with the check to the Disbursing Officer, Navy Regional Finance Center, Special Accounts Division, Code 43, Attn: Ms. Key, Washington, DC 20371. The NAVCOMPT Form 2277 will be completed in accordance with the instruction provided NAVCOMPTINST 7000.43. The following specific requirements apply to collections received for leases of Marine Corps lands only:

| <u>Block No.</u> | <u>Enter</u> |
|------------------|---|
| 3 | The lease number |
| 4 | The deposit number, if applicable |
| 9B | Period covered by the deposit |
| 9C | Description of check |
| | Type of service provided |
| | Marine Corps installation generating receipt. |
| 11A | AA |
| 11B | 17F3875 |
| 11C | 27AG (MARCORPS) |
| 11D | 007 |
| 11E | 000000 |
| 11F | 0 |
| 11G | 00027 |
| 11H | 3C |
| 11I | 000000 |
| 11J | Position 1 - User Code (alpha) of EFD administering the lease |
| | Positions #2-6 - UIC of Naval Installation |
| | Position #7 - Zero |
| | Positions #8-12 - 98004 |

Copy of NAVCOMPT Form 2277 to:
Headquarters, U.S. Marine Corps
Code LFL
Washington, DC 20380

APPENDIX 19-E

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____ Quarter - FY ____

AGRICULTURAL OUTLEASING PROGRAM QUARTERLY FISCAL REPORT FOR
DIVISION, NAVAL FACILITIES ENGINEERING COMMAND, _____

| | ____ Qtr | YTD | | |
|--|-----------------------------|----------------|----------------|--------------|
| | ----- | ----- | | |
| A. <u>Income</u> | | | | |
| 1. Receipts from Navy Outleases | \$ _____ | \$ _____ | | |
| 2. Receipts from Marine Corps Outleases | \$(_____) | \$(_____) | | |
| TOTAL INCOME FROM OUTLEASES | | | | |
| B. <u>Administrative Cost</u> | | | | |
| 1. Natural Resources Branch | \$ _____ | \$ _____ | | |
| 2. Real Estate Operations | \$ _____ | \$ _____ | | |
| 3. Station Support | \$ _____ | \$ _____ | | |
| Subtotal | \$ _____ | \$ _____ | | |
| 4. Marine Corps Support by EFD | \$(_____) | \$(_____) | | |
| TOTAL ADMINISTRATIVE COST | \$ _____ | \$ _____ | | |
| C. <u>Project Cost</u> (List by Title, Priority, Designation, & Location) | | | | |
| | ID Cost as OBLIGATED/ACTUAL | | | |
| 1. | | | | |
| 2. | | | | |
| 3. | | | | |
| 4. | | | | |
| 5. | | | | |
| TOTAL PROJECT COST (OBLIGATED/ACTUAL) | \$ _____ | \$ _____ | | |
| D. Planned or Actual Navy Administrative Expenses by Quarter (000). | | | | |
| <u>1ST QTR</u> | <u>2ND QTR</u> | <u>3RD QTR</u> | <u>4TH QTR</u> | <u>TOTAL</u> |
| E. Planned or Actual Navy Project Obligations by Quarter (000). | | | | |
| <u>1ST QTR</u> | <u>2ND QTR</u> | <u>3RD QTR</u> | <u>4TH QTR</u> | <u>TOTAL</u> |
| F. Report Prepared by: _____ Date: _____ | | | | |

AGRICULTURAL OUTLEASING FUNDED PROJECT INFORMATION SHEET

1. UIC Number: _____
2. Installation: _____

3. Major Claimant: _____
4. EFD: _____
5. Project Title: _____

6. Project Priority: _____
7. Cost: _____
8. Schedule of Completion:
 - a. Start of design _____
 - b. Completion of design _____
 - c. Start of construction _____
9. Situation Statement:
10. Proposed Action:
11. Economic analysis (If Applicable) or Other Pertinent Information:
 - a. Payback potential in rentals \$ _____
 - b. Potential for O&M savings \$ _____
 - c. Increase in land value \$ _____
 - d. Other savings/increase in value \$ _____
 - e. Other tangible benefits \$ _____
12. Comments or remarks:

APPENDIX 19-G

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INSTRUCTIONS FOR PREPARING
AGRICULTURAL
OUTLEASE FUNDED PROJECT INFORMATION SHEET

Project information provides a brief description of how the project will be completed and will achieve management objectives set forth in installation natural resources management plans. Information listed below addresses preparation of project information on enclosure (6).

1. Unit Identification Code (UIC) - Enter N for Navy and the 5-digit number from NAVCOMPT Manual Volume 2 Chapter 5.
 2. Installation - Name and address (obtain from SMDL); city and county where the work will be done; name, title and telephone number of the installation natural resources manager (if applicable).
 3. Major Claimant - From NAVFAC P-164.
 4. EFD - Natural resources contact at EFD; name, EFD and telephone number.
 5. Project Title - Be specific so reviewers have a clear indication of the proposal.
 6. Priority - Identify priority designation ("A", "B", "C", "D", "E", or "F") for all projects. Priority designation information is provided in COMNAVFACENGCOM Guidance.
 7. Cost - List the design cost (if any), construction cost (preparation), and total cost.
 8. Schedule of Completion - This provides a schedule of the stages of project execution (month and year).
 9. Situational Statement - Provide a detailed description of the situation to be corrected. Include the following information.
 - a. Description of site
 - b. Current use of site
 - c. Definition of problem or opportunity
 - d. Applicability to outleasing program
- Pictures, charts, maps and drawings shall be included, as necessary to provide a clear understanding of the situation and permit adequate evaluation.
10. Proposed Action - Provide a detailed description of the project, plan or survey. Include the following information as applicable.
 - a. Description of work to be done
 - b. Description of how the project will improve the natural resources program
 - c. Outline of scope of work

APPENDIX 19-H

11. Economic Analysis and Other Information - This will include information not shown elsewhere in the submittal that is necessary for the evaluation of the project. If the project has payback potential or potential for O&M savings provide a brief economic analysis.

12. Comments on Remarks - Summarize non-quantifiable benefits such as reducing potential for mission conflicts with endangered species protection or improving community support and quality of life on the installation.