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Template for Leasing River and Harbor or Flood Control Property by Department of the Army, December 1, 1948

Department of the Army

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DEPARTMENT OF THE ARMY
LEASE
RIVER AND HARBOR OR FLOOD CONTROL PROPERTY
ON _____

#13

No. _____

THIS LEASE, made between the Secretary of the Army, of the first part, and _____

of the second part, WITNESSETH:

That the Secretary of the Army, by virtue of the authority contained in the Act of Congress approved 5 August 1947 (61 Stat. 774), entitled "An Act To authorize leases of real or personal property by the War and Navy Departments, and for other purposes", and for the consideration hereinafter set forth, hereby leases to the party of the second part, hereinafter designated as the lessee, for a term of _____ beginning _____, 19____, and ending _____, 19____, but revocable at will by the Secretary of the Army, the following described premises or property for _____ purposes:

11. That the lessee shall cut no timber, conduct no mining or drilling operations, remove no sand, gravel, or kindred substances from the ground, except in the exercise of mineral rights heretofore reserved to the record owner thereof, commit no waste of any kind, or in any manner substantially change the contour or condition of the property hereby leased, except changes required in carrying out soil and water conservation measures; but the lessee may salvage fallen or dead timber as may be required for use as firewood.

12. That the lessee shall comply with all applicable laws, ordinances, and regulations of the State, county, and municipality wherein the said demised premises are located, with regard to construction, sanitation, licenses or permits to do business, and all other matters.

13. That the lessee shall not construct any permanent structure on the said demised premises, and shall not construct any temporary structure or advertising sign thereon without the prior written consent of the said officer.

14. That the lessee shall pay to the proper authority, when and as the same becomes due and payable, all taxes, assessments, and similar charges which, at any time during the term of this lease, may be taxed, assessed, or imposed upon the Government or upon the lessee with respect to or upon the leased premises. In the event any taxes, assessments, or similar charges are imposed with the consent of the Congress upon property owned by the Government and included in this lease (as opposed to the leasehold interest of the lessee therein), this lease shall be renegotiated so as to accomplish an equitable reduction in the rental provided above, which shall not be greater than the difference between the amount of such taxes, assessments, or similar charges and the amount of any taxes, assessments, or similar charges which were imposed upon such lessee with respect to his leasehold interest in the premises prior to the granting of such consent by the Congress; Provided, that, in the event that the parties hereto are unable to agree, within 90 days from the date of the imposition of such taxes, assessments, or similar charges, on a rental which, in the opinion of the said officer, constitutes a reasonable return to the Government on the leased property, then in such event, the said officer shall have the right to determine the amount of the rental, which determination shall be binding on the lessee subject to appeal in accordance with provision No. 15 of this lease.

15. That, except as otherwise specifically provided in this lease, all disputes concerning questions of fact which may arise under this lease and which are not disposed of by mutual agreement, shall be decided by the said officer, who shall reduce his decision to writing and mail a copy thereof to the lessee at his address shown herein. Within 30 days from said mailing the lessee may appeal to the Secretary of the Army, whose written decision, or that of his designated representative or representatives or board, shall be final and conclusive upon the parties hereto. Pending decision of a dispute hereunder, the lessee shall proceed with the performance of this lease.

16. That this lease may be terminated by the lessee at any time by giving to the Secretary of the Army, through the said officer, at least ten (10) days' notice in writing; provided that, in case of such termination, no refund by the United States of any rental theretofore paid shall be made.

17. That the lessee shall pay the cost, as determined by the said officer, of producing and/or supplying any utilities and other services furnished by the Government or through Government-owned facilities for the use of the lessee, including the lessee's proportionate share of the cost of operation and maintenance of the Government-owned facilities by which such utilities or services are produced or supplied. The Government shall be under no obligation to furnish utilities or services. Payment shall be made in the manner prescribed by the said officer upon bills rendered monthly.

18. That for such period as the lessee is in possession of the leased property pursuant to the provisions and conditions of this lease the lessee shall procure and maintain at its cost a standard fire and extended coverage insurance policy or policies on the leased property to the full insurable value thereof. The lessee shall procure such insurance from any responsible company or companies. The policies evidencing such insurance shall provide that in the event of loss thereunder the proceeds of the policy or policies, at the election of the Government, shall be payable to the lessee to be used solely for the repair, restoration, or replacement of the property damaged or destroyed, any balance of the proceeds not required for the repair, restoration, or replacement of the property damaged or destroyed to be paid to the Government, and that in the event the Government does not elect by notice in writing to the insurer within 60 days after the damage or destruction occurs to have the proceeds paid to the lessee for the purposes hereinabove set forth, then such proceeds shall be paid to the

Government, provided, however, that the insurer, after payment of any proceeds to the lessee in accordance with the provisions of the policy or policies, shall have no obligation or liability with respect to the use or disposition of the proceeds by the lessee. Nothing herein contained shall be construed as an obligation upon the Government to repair, restore, or replace the leased property or any part thereof.

19. That no Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. Nothing, however, herein contained shall be construed to extend to any incorporated company, if the lease be for the general benefit of such corporation or company.

20. That the lessee shall maintain, in a manner satisfactory to the said officer, terraces and other soil and water conservation structures that may be in existence upon said premises at the beginning of or that may be constructed during the term of this lease, and the use of the said leased premises by the lessee shall be in accordance with good soil conservation practices and with the land-use plan attached hereto and made a part of this lease.

21. That the lessee shall enter into and carry out the terms of a soil conservation agreement with the Soil Conservation District in which said premises are located, at such time as this service is made available by the Soil Conservation District.

22. That the lessee will cooperate in programs for the management and improvement of fish and wildlife and in furtherance thereof the leased premises will be subject to free public use for fishing and hunting.

23. That the lessee shall not hunt on the leased premises unless the premises are made available to the general public for hunting in accordance with Condition No. 24.

24. That the lessee will cooperate in programs for management and improvement of fish and wildlife, and will also cooperate in making such of the leased premises available for free public hunting in so far as such use is not detrimental to the use of the premises by the lessee for the purposes stated on page 1 of this lease.

25. That the said leased premises shall be subject to the right of the Fish and Wildlife Service, Department of the Interior, or the _____, to use the premises as a free public shooting ground or as a wildlife sanctuary in which no hunting or trapping will be permitted.

26. That, on or before the date of expiration of this lease or its termination by the lessee, the lessee shall at its cost vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to as good order and condition as that existing upon the date of commencement of the term of this lease, less ordinary wear and tear and damage to the leased property covered by insurance and for which the Government shall receive or has received insurance funds in lieu of having the damaged property repaired, replaced, or restored. If, however, this lease is revoked, the lessee shall vacate the leased property, remove the property of the lessee therefrom, and restore the leased property to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove the property of the lessee and so restore the leased property, then, at the option of the Secretary of the Army, the property of the lessee shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the leased property to be so restored at the expense of the lessee, and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

26 (ALTERNATE) That, on or before the date of expiration of this lease, or its termination by the lessee, the lessee shall vacate the demised premises, remove the property of the lessee therefrom, and restore the premises to as good order and condition as that existing upon the date of commencement of the term of this lease, damages beyond the control of the lessee and due to fair wear and tear excepted. If, however, this lease is revoked, the lessee shall vacate the premises, remove said property therefrom, and restore the premises to the condition aforesaid within such time as the Secretary of the Army may designate. In either event, if the lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Secretary of the Army, said property shall either become the property of the United States without compensation therefor, or the Secretary of the Army may cause it to be removed and the premises to be restored at the expense of the lessee

and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work.

27. That if more than one lessee is named in this lease the obligations of said lessees herein contained shall be joint and several obligations.

28. That, except as otherwise specifically provided, any reference herein to "Division Engineer", "District Engineer", or "said officer" shall include his duly appointed successors and his authorized representatives.

29. That all notices to be given pursuant to this lease shall be addressed, if to the lessee, to

_____ ;
if to the Government, to the _____ ;

_____ ;
or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when inclosed in a properly sealed envelope or wrapper, addressed as aforesaid, and deposited postage prepaid (or, if mailed by the Government, deposited under its franking privilege) in a post office or branch post office regularly maintained by the United States Government.

30. That all uranium, thorium, and all other materials determined pursuant to section 5 (b) (1) of the Atomic Energy Act of 1946 (60 Stat. 761) to be peculiarly essential to the production of fissionable material, contained, in whatever concentration, in deposits in the lands covered by this instrument are hereby reserved for the use of the United States, together with the right of the United States through its authorized agents or representatives at any time to enter upon the land and prospect, for, mine, and remove the same, making just compensation for any damage or injury occasioned thereby. However, such land may be used, and any rights otherwise acquired by this disposition may be exercised, as if no reservation of such materials had been made; except that, when such use results in the extraction of any such material from the land in quantities which may not be transferred or delivered without a license under the Atomic Energy Act of 1946, as it now exists or may hereafter be amended, such material shall be the property of the United States Atomic Energy Commission, and the Commission may require delivery of such material to it by any possessor thereof after such material has been separated from the ores in which it was contained. If the Commission requires the delivery of such material to it, it shall pay to the person mining or extracting the same, or to such other person as the Commission determines to be entitled thereto, such sums, including profits, as the Commission deems fair and reasonable for the discovery, mining, development, production, extraction, and other services performed with respect to such material prior to such delivery, but such payment shall not include any amount on account of the value of such material before removal from its place of deposit in nature. If the Commission does not require delivery of such material to it, the reservation hereby made shall be of no further force or effect.

31. That Condition(s) No. (s) _____
were deleted before the execution of this lease.

IN WITNESS WHEREOF I have hereunto set my hand

by authority of the Secretary of the Army this _____ day of _____, 19____.

THIS LEASE is also executed by the lessee this _____ day of _____, 19____

(Seal)

Signed and sealed in the presence of:

(Post Office Address)

INSTRUCTIONS
FOR THE PREPARATION OF LEASES
ON ENG FORM 1366
RIVER AND HARBOR AND FLOOD CONTROL PROPERTY

1. Condition No. 3 of ENG Form 1366 should be deleted when an inventory and condition report is not required, i. e., where no improvements exist on the leased premises.
2. If the lease is granted to a corporation, the words "or for injuries to the person of the lessee (if an individual)" should be deleted from Condition No. 8. If the lease is granted to an individual, only the words "(if an individual)" should be deleted. If the lease is granted to a partnership, the words "(if an individual)" should be deleted.
3. Condition No. 17 should be deleted when utilities or other services are not to be furnished by the Government.
4. Condition No. 18 and Condition No. 26 should be deleted and Condition No. 26 (ALTERNATE) should be retained where insurance is not to be required. Where insurance is to be required, Condition No. 18 and Condition No. 26 should be retained and Condition No. 26 (ALTERNATE) should be deleted. If the lessee is a State or political subdivision thereof and is to be its own insurer, where insurance is required, then Condition No. 18 and Condition No. 26 should be deleted and Condition No. 26 (ALTERNATE) should be retained, but the words "beyond the control of the lessee and" should be deleted therefrom.
5. Conditions Nos. 20 and 21 should be deleted except when the form is used for the preparation of leases for agricultural and/or grazing purposes. That part of Condition No. 20 reading "and with the land-use plan attached hereto and made a part of this lease" should be deleted if it is not practicable to prepare a land-use plan before granting the lease.
6. Whenever it is determined that fish and wildlife considerations will predominate over agricultural uses, Condition No. 22 will be retained and Conditions Nos. 23 and 24 will be deleted.
7. Whenever it is determined that agricultural uses should predominate over fish and wildlife considerations, Conditions Nos. 23 and 24 will be retained and Condition No. 22 will be deleted.
8. Condition No. 25 will be deleted except in leases of land which is included in an area covered by an agreement with the United States Fish and Wildlife Service or with the agency exercising administration over the wildlife resources of the State wherein the land is located, for the management of the fish and wildlife resources of the area. In the blank space, insert the name of the agency exercising administration of the wildlife resources of the State wherein the premises are located.
9. Notation of deletions should be made in Condition No. 31 of the lease form. Paragraph numbers need not be changed on account of deletions.