

**DEPARTMENT OF THE ARMY
LEASE TO NONPROFIT ORGANIZATION
FOR PARK AND RECREATIONAL PURPOSES
PINE RIVER RESERVOIR
PORTION OF TRACT 8, CROW WING COUNTY, MINNESOTA**

THIS LEASE, made on behalf of the United States, between the **SECRETARY OF THE ARMY**, acting by and through the Chief, Real Estate Division, U.S. Army Engineer District, St. Paul, hereinafter referred to as the Lessor, and the **NATIONAL LOON CENTER FOUNDATION, INC.**, a non-profit corporation (EIN 82-1717690) duly organized and existing under and by virtue of the laws of the State of Minnesota, with its principal office in the City of Crosslake, Minnesota, hereinafter referred to as the Lessee. The Lessor and the Lessee are sometimes referred to herein jointly as the "Parties" and each separately as a "Party".

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby Leases to the Lessee, the property identified in **Exhibit A**, attached hereto and made a part hereof, hereinafter referred to as the Premises, for the construction, operation, and maintenance of a National Loon Center and associated facilities.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said Premises are hereby leased for a term of **Twenty-five (25) years**, beginning **August 1, 2019**, and ending **July 31, 2044**.

2. CONSIDERATION

The consideration for this Lease is the construction, operation, and maintenance of the Premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

a. All correspondence and notices to be given pursuant to this Lease shall be addressed, if to the Lessee, to:

**National Loon Center Foundation, Inc.
35570 Allen Avenue, Suite 1
P.O. Box 642
Crosslake, Minnesota 56442**

and if to the United States, to:



**Real Estate Contracting Officer
U.S. Army Corps of Engineers - St. Paul District
180 Fifth Street East, Suite 700
St. Paul, Minnesota 55101-1678**

or as may from time to time otherwise be directed by the parties.

b. Notices must be given in a properly sealed envelope, addressed as aforesaid, and deposited, postage prepaid, by either Registered Mail – Return Receipt Requested, or by Certified Mail – Return Receipt Requested, in a post office regularly maintained by the United States Postal Service, or by hand delivery to a Party at the regular mail address of the Party specified above, against a receipted copy. The service of the notice shall be deemed complete upon the receipt of said notice, or the refusal thereof, by the applicable party.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army", "Real Estate Contracting Officer", or "Lessor" shall include their duly authorized representatives. Any reference to "Lessee" shall include, assignees, transferees, successors and their duly authorized representatives.

5. SUPERVISION BY THE REAL ESTATE CONTRACTING OFFICER (RECO)

The use and occupation of the Premises shall be subject to the general supervision and approval of the Real Estate Contracting Officer, hereinafter referred as Lessor, and to such rules and regulations as may be prescribed from time to time by Lessor.

6. APPLICABLE LAWS AND REGULATIONS

a. The Lessee, at its sole cost and expense, shall comply with all applicable Federal, state, and local laws, ordinances, regulations, and standards that are or may become applicable to its activities on the Premises and, in particular, all Environmental Laws relating to occupational safety and health, hazardous substances, the handling and storage of hazardous materials, and the proper generation, handling, accumulation, treatment, storage, disposal, and transportation of hazardous wastes. The Lessee shall at its own expense maintain in effect any permits, licenses or other governmental approvals relating to any regulated materials, if any, required for the Lessee's operation and use of the Premises, and cause each sub-Lessee to maintain in effect any such permits, license or other governmental approvals, if any, required for such sub-Lessee's use, of the Premises. The Lessee shall make all disclosures required of the Lessee by any such Environmental Laws, and shall comply with all orders, with respect to the Lessee's and its sub-Lessees', employees', agents', contractors' and invitees' use of the Premises, issued by any governmental authority having jurisdiction over the Premises or the activity undertaken and take all action required by such governmental authorities to bring the Lessee's and its sub-Lessees', employees', agents', contractors' and invitees' activities on the Premises into compliance with all Environmental Laws affecting the Premises. As between the Parties, Lessee shall be responsible for

determining whether it is subject to local building codes or building permit requirements, and for compliance with them to the extent they are applicable. The Lessee shall be responsible for the failure to comply with such laws ordinances, regulations, and standards, and for any corrective actions or response to any spills, releases, or other conditions related to its activities of the Premises. Lessee's failure to do so is a breach of this agreement.

b. The Lessee must obtain written Government approval as required by 10 U.S.C. § 2692, prior to storing, treating, or disposing of any toxic or hazardous material on the Premises. Toxic or hazardous material includes any material that is a "hazardous substance" under section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9601(14), or designated a "hazardous substance" by the U.S. Environmental Protection Agency under section 102 of CERCLA, 42 U.S.C. § 9602. Toxic or hazardous material also includes any material that is explosive, flammable, or pyrotechnic, any material that is hazardous under 49 CFR Parts 171 to 173, or any material designated as hazardous by the Secretary of Defense or the Secretary of the Army. The Lessee shall ensure any sub-Leases, licenses, rights of entry, or other use agreements the Lessee issues for the Premises contain a similar requirement for obtaining prior Government written approval for the storage, treatment, or disposal of toxic or hazardous material on the Premises. The Lessee shall be responsible for any violations of these requirements by its agents, sub-Lessees, licensees, contractors or invitees, and any successor or successors in interest in or to any of the Premises. The Lessee shall be responsible for the cost of proper management or disposal of any solid or hazardous waste generated by its agents, sub-Lessees, licensees, contractors or invitees, and any successor or successors in interest in or to any of the Premises in the event of failure by them to manage or dispose of such wastes properly.

c. The term "Environmental Law" means any statute, law, act, ordinance, rule, regulation, order, decree, or ruling of any Federal, state and/or local governmental, quasi-governmental, administrative or judicial body, agency, board, commission or other authority relating to the protection of health and/or the environment or otherwise regulating and/or restricting the use, storage, disposal, treatment, handling, release, and/or transportation of hazardous materials, hazardous substances, and hazardous wastes, including, without limitation, CERCLA, the Resource Conservation and Recovery Act, the Federal Water Pollution Control Act, the Clean Air Act, the Hazardous Materials Transportation Act, the Toxic Substances Control Act, the Emergency Planning and Community Right To Know Act, and the environmental laws of the State of Minnesota, each as now or hereafter amended, and all regulations respectively promulgated thereunder.

d. The Lessee shall promptly report to the Lessor any incident for which the Lessee is required to notify a Federal, State or local regulatory agency or any citation by Federal, State or local regulatory agency of non-compliance with any applicable law, ordinance or regulation.

e. This Condition does not prevent the Lessee from storing or using common cleaning agents or commercial chemicals on the Premises. All products used for cleaning purposes shall be stored in a cabinet approved for such use.



7. CONDITION OF PREMISES

The Lessee acknowledges that it has inspected the Premises, knows its condition, and understands that the same is Leased in an "as is," and "where is" condition, without any representations or warranties whatsoever and without obligation on the part of the United States to make any alterations, repairs or additions thereto, except as may be specifically provided herein.

8. DEVELOPMENT AND MANAGEMENT PLANS

The Lessee shall operate and maintain the Premises and any structures, buildings or improvements made to the Premises in accordance with this Lease. All structures shall be constructed and landscaping accomplished in accordance with plans approved by the Lessor's representative having immediate jurisdiction over the Premises. The Lessee also agrees to prohibit any exclusive or private use of all or any part of the Premises by any individual or group of individuals. Title to improvements constructed or placed on the Premises by the Lessee shall remain vested in the Lessee, subject to the Condition on **RESTORATION**, and shall be maintained by the Lessee to the satisfaction of the Lessor's representative having immediate jurisdiction over the Premises.

9. TRANSFERS AND ASSIGNMENTS

a. The Lessee shall neither transfer nor assign this Lease nor sublet the Premises or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this Lease without prior written approval of the Lessor, whose approval may be denied or conditioned in the Lessor's sole discretion. Lessor's consent to one sub-Lease, assignment or other grant of any interest privilege or license does not waive the consent requirement for such future assignments, sub-Lease, or grants any interest, privilege or license. The Lessee shall remain liable for all Lease obligations of the sub-Lessee and all sub-Leases and Assignments by the Lessee shall be subject to: (i) The provisions of this Lease; and (ii) The term of any sub-Lease shall not extend beyond the term set forth in the Lease. Failure to comply with this condition shall constitute a noncompliance for which, in addition to other remedies for breach, the Lease may be revoked immediately by Lessor.

b. The Lessee will not sponsor or participate in timeshare ownership of any structure, facilities, accommodations, or personal property on the Premises. The Lessee will not subdivide nor develop the Premises into private residential development.

10. FEES, RATES AND PRICES

Fees may be charged by the Lessee for use of the Premises or facilities constructed thereon. The Lessor shall have the right to review such fees and require an increase or reduction when it is determined that the objectives of this Lease have been violated. However, no user fees may be charged by the Lessee for use of facilities developed in whole or in part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

All monies received by the Lessee from operations conducted on the Premises must be utilized by the Lessee for the administration, maintenance, operation and development of the Premises. Any such monies not so utilized or programmed for use within a reasonable time shall be paid to Lessor at the end of each five (5) year period. The Lessee shall furnish annual statements of receipts and expenditures to Lessor with respect to the Premises and the facilities constructed thereon. The statements referred to herein shall be in such form and style and contain such details and breakdown as the Lessor may reasonably require.

11. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this Lease, and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to a condition satisfactory to Lessor's representative having immediate jurisdiction over the Premises, or at the election of Lessor's representative having immediate jurisdiction over the Premises, reimbursement made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to Lessor's representative having immediate jurisdiction over the Premises.

12. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents and employees to enter upon the Premises at any time and for any purpose necessary or convenient in connection with Government purposes, to make inspections, to remove timber or other material, except property of the Lessee, to flood the Premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the lands as may be necessary in connection with Government purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent or employee thereof. The Lessee further agrees to indemnify and hold harmless the Government, its officers, agents, and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the actions listed in this Condition 12.

13. INSURANCE

a. The Lessee shall in any event and without prejudice to any other rights of the Lessor bear all risk of loss or damage or destruction to the Premises, and any building(s), improvements, fixtures, or other property thereon owned or constructed by the Lessor (hereafter "Lessor-Improvements"), arising from any causes whatsoever, to the extent such loss or damage is not covered by coverage of insurance required under this Lease.

b. During the entire term of this Lease, the Lessee, at no expense to the Lessor, shall procure and maintain Property Insurance upon all Lessor-Improvements and personal property

owned by the Lessor with coverage for perils as set forth under the Causes of Loss-Special Form or its equivalent, with coverage extended for the perils of flood and earthquake, in an amount equal to full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage, and a waiver of subrogation endorsement in favor of the Lessor. The replacement value of Lessor-Improvements and personal property shall be subject to adjustment at the request of the Lessor not more frequently than once in any twenty-four-month period, unless there have been substantial changes to any Lessor-Improvements within such period. Such insurance shall have a deductible no greater than \$10,000, unless otherwise approved in writing by the Lessor.

c. The Property Insurance policy shall provide that in the event of loss thereunder, the proceeds of such policy, at the election of the United States, shall be payable to the Lessee to be used solely for the repair, restoration or replacement of the property damaged or destroyed, and any balance of the proceeds not required for such repair, restoration or replacement shall be paid to the United States. If the United States does not elect by notice in writing to the insurer within sixty (60) days after the damage or destruction occurs to have the proceeds paid to the Lessee for the purpose hereinabove set forth, then such proceeds shall be paid to the United States, provided however that the insurer, after payment of any proceeds to the Lessee in accordance with the provision of the Property Insurance policy, shall have no obligation or liability with respect to the use or disposition of the proceeds by the Lessee. Nothing herein contained shall be construed as an obligation upon the United States to repair, restore or replace the Premises or any part thereof.

d. During the entire term of this Lease, the Lessee, at no expense to the Lessor, shall procure and maintain Commercial General Liability Insurance, including Contractual Liability Insurance coverage, covering Lessee's operations on the Premises, with combined single limits of not less than \$5,000,000.00 per occurrence for bodily injury or property damage, naming the Lessor as an additional insured. Such insurance shall be endorsed to provide that the insurance shall be primary to and not contributory to any other insurance, and shall contain a severability of interest clause.

e. Insurance policies required by this Condition 13, shall be issued by insurance companies licensed to do business in the State of Minnesota, with general policyholder's ratings of at least A- and a financial rating of at least VIII in the most current Best's Insurance Reports available on the date the Lessee obtains or renews the insurance policies. If the Best's ratings are changed or discontinued, the Parties shall agree to an equivalent method of rating insurance companies. Each policy will provide that any losses shall be payable notwithstanding any act or failure to act or negligence of the Lessee or the Lessor or any other person, and will provide that the insurer will have no right of subrogation against the Lessor. Under no circumstances will the Lessee be entitled to assign to any third party rights of action that it may have against the Lessor arising out of this Lease.

f. Prior to taking occupancy, Lessee shall furnish Lessor with certified copies of all insurance policies required above. All insurance policies shall provide for 30 days' written notice to Lessor prior to the cancellation or material change of any insurance referred to therein.



14. INDEMNITY

a. The Lessee agrees to assume all risks of loss or damage to property and injury or death to persons by reason of or incident attributable or incident to the condition or state of repair of the Premises or to its possession and/or use of the Premises or the activities conducted under this Lease. The Lessee expressly waives all claims against the Government for any such loss, damage, personal injury, or death caused by or occurring as a consequence of such condition, possession and/or use of the Premises by the Lessee, or the conduct of activities or the performance of responsibilities under this Lease by the Lessee. The Lessee further agrees to indemnify and hold harmless the Government, its officers, agents, and employees from and against all suits, claims, demands or actions, liabilities, judgments, costs, and attorneys' fees arising out of, or in any manner predicated upon, personal injury, death, or property damage resulting from, related to, caused by, or arising out of the possession and/or use of the Premises by the Lessee. The Government will give the Lessee notice of any claim against it covered by this indemnity as soon after learning of such claim as practicable. The Lessee's obligation under this Condition 14 shall survive the expiration or termination of this Lease. The Lessee's obligation hereunder shall apply whenever the Government incurs costs or liabilities for the Lessee's actions giving rise to liability under this Condition 14.

b. The Lessee shall indemnify and hold harmless the United States of America from any costs, expenses, liabilities, fines, or penalties resulting from discharges, releases, emissions, spills, storage, disposal, or any other action by the Lessee giving rise to United States of America liability, civil or criminal, or responsibility under Federal, state, or local environmental laws. The Lessee shall hold the United States harmless from any and all liability, responsibility or claims related to its operations on the property comprising the Leased Premises, including any responsibility or liability associated with the use, storage, treatment or disposal of any hazardous material on the property by the Lessee, and shall take all actions necessary to protect the property, and all other affected property from any damage, including any releases of hazardous materials on or from the property.

c. The Lessee's obligations under this Condition 14 shall apply to all risks of loss or damage to property and injury or death to persons by reason of, or incident to, the possession and/or use of the Premises by the Lessee, the Lessee's officers, agents, servants, employees, or others (excluding those employees or agents of the Government who are on the Premises for the purpose of performing official duties) who may be on the Premises at their invitation or the invitation of any one of them (the "Lessee Parties"), or the activities conducted by or on behalf of the Lessee Parties under this Lease.

15. RESTORATION

On or before the earlier of expiration, revocation, or termination date of this Lease, the Lessee shall vacate the Premises, remove the property of the Lessee, including all Lessee-improvements, and restore the Premises to a condition satisfactory to Lessor. If, however, this Lease is terminated by the Lessor because the Lessee is in default with any of the material terms of this Lease, the Lessee shall vacate the Premises, remove said property and Lessee-

improvements, and restore the Premises to the aforesaid condition within such reasonable time as Lessor may designate. In either event, if the Lessee shall fail or neglect to remove said property and Lessee-improvements and restore the Premises, or, at the sole specific discretion of Lessor, title to all or part of said property shall either become the property of the United States without compensation therefor, or Lessor pass to the United States without compensation therefor in lieu of some or all Lease restoration requirements under this clause. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation or termination of this Lease in restoring the Premises, or any sums expended by the United States for restoration (including, but not limited to environmental responses) of, or damages to, any other property or any persons as a result of the Lessee's operations on the Premises.

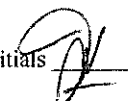
16. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the Premises, because of race, color, religion, sex, age, handicap, or national origin pursuant to Executive Order 13672, 21 July 2014. The Lessee will comply with the Americans with Disabilities Act and, if applicable, the attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) for buildings and sites and for recreation facilities, published by the United States Access Board. The Lessee will comply with Department of Justice rules on non-discrimination on the basis of disability.

b. The Lessee, by acceptance of this Lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 195) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-Lessees and assignees.

c. This Lease is a contract subject to Executive Order 11246, as amended, the regulations issued by the Secretary of Labor in 41 CFR part 60-1.4 to pursuant to the Executive Order, and the following provisions.

(1) The Lessee will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and 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 Real Estate Contracting Officer setting forth the provisions of this nondiscrimination clause.

(2) The Lessee will, in all solicitations or advancements 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, sexual orientation, gender identity, or national origin.

(3) The Lessee will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Lessor's legal duty to furnish information.

(4) 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 agency contracting officer, advising the labor union or workers' representative of the Lessee's commitments under Section 202 of Executive Order No. 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment

(5) The Lessee will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(6) The Lessee will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, 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 contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(7) In the event of the Lessee's noncompliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be cancelled, 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 No. 11246 of Sept. 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order No. 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(8) The Lessee will include the provisions of paragraphs (1) through (8) in every

sub-Lease or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each sub-Lessee or vendor. The Lessee will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: provided, however, that in the event the Lessee becomes involved in, or is threatened with, litigation with a sub-Lessee or vendor as a result of such direction, the Lessee may request the United States to enter into such litigation to protect the interests of the United States. [Sec. 202 amended by EO 11375 of Oct. 13, 1967, 32 FR 14303, 3 CFR, 1966-1970 Comp., p. 684, EO 12086 of Oct. 5, 1978, 43 FR 46501, 3 CFR, 1978 Comp., p. 230, EO 13665 of April 8, 2014, 79 FR 20749, EO 13672 of July 21, 2014, 79 FR 42971].

17. MINIMUM WAGE REQUIREMENT (EXECUTIVE ORDER 13658)

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. Minimum Wages

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2019 and December 31, 2019 shall be \$10.60 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2019. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and

clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. § 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

c. **Withholding.** The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

d. **Contract Suspension/Contract Termination/Contractor Debarment.** In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

e. The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

f. Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.60 (or the minimum wage as established each January thereafter) to any

worker.

g. Payroll Records

(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number;
- (ii) The worker's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid;
- (iv) The number of daily and weekly hours worked by each worker;
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR Part 10 and this contract, and in the case of failure to produce such records, the Real Estate Contracting Officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

h. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

i. Certification of Eligibility:

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the

sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

j. Tipped Employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. § 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

k. Anti-Retaliation: It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

l. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

m. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

n. HOLD HARMLESS AND INDEMNIFICATION - If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

18. SICK LEAVE REQUIREMENT (EXECUTIVE ORDER 13706)

Any reference in this section to "prime contractor" or "contractor" shall mean the Lessee and any reference to "contract" shall refer to the Lease.

a. Executive Order 13706: This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

b. Paid Sick Leave:

(1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The contractor shall provide paid sick leave to all employees when due free

and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The contractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

c. **Withholding:** The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

d. **Contract Suspension/Contract Termination/Contractor Debarment:** In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

e. The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

f. Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

g. **Recordkeeping:**

(1) Any contractor performing work subject to Executive Order 13706 and 29 CFR Part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the

Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and Social Security number of each employee;
- (ii) The employee's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid (including all pay and benefits provided);
- (iv) The number of daily and weekly hours worked;
- (v) Any deductions made;
- (vi) The total wages paid (including all pay and benefits provided) each pay period;
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2);
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;
- (ix) Dates and amounts of paid sick leave taken by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in § 13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3);
- (xi) Any records reflecting the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;
- (xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave;
- (xiii) The relevant covered contract;
- (xiv) The regular pay and benefits provided to an employee for each use of paid sick leave; and
- (xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2)(i) If a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(ii) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the contractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the contractor relies on an estimate that is reasonable and

based on verifiable information will an employee's time spent in connection with non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirements, and the contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4)(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

h. The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

i. Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, <http://www.SAM.gov>.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. § 1001.

j. Interference/Discrimination.

(1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(2) A contractor may not discharge or in any other manner discriminate against any employee for:

- (i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13;
- (ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and 29 CFR part 13;
- (iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and 29 CFR part 13; or
- (iv) Informing any other person about his or her rights under Executive Order 13706 and 29 CFR part 13.

k. Waiver: Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

l. Notice: The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR

part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

m. Disputes concerning labor standards: Disputes related to the application of Executive Order 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

19. SUBJECT TO EASEMENTS

This Lease is subject to all existing easements, or those subsequently granted, as well as established access routes for roadways and utilities located, or to be located, on the Premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and the easements will not be granted which will, in the opinion of Lessor, interfere with the use of the Premises by the Lessee.

20. SUBJECT TO MINERAL INTERESTS

This Lease is subject to all outstanding mineral interests. With regard to Federally-owned mineral interests, it is understood that they may be included in present or future mineral Leases issued by the Bureau of Land Management (BLM) which has responsibility for mineral development on Federal lands. The Lessor will provide Lease stipulations to BLM for inclusion in said mineral Leases that are designed to protect the Premises from activities that would interfere with the Lessee's operations or would be contrary to local law.

21. DEFAULT AND TERMINATION

a. Default. The following events shall be deemed to be an event of default (hereafter "Event of Default") by the Lessee under this Lease:

(1) Lessee shall fail to comply with any condition, provision, covenant, or warranty made under this Lease by Lessee and shall not cure such failure within thirty (30) days after written notice thereof to Lessee, unless said non-compliance is the subject of a shorter notice given by a federal, state, or local governmental agency, in which case the shorter notice shall apply. Lessee shall have such longer period as may be approved in writing in advance by the Lessor, to cure such default so long as the Lessee commences curing such default within the initial thirty (30) day period and diligently prosecutes such cure to completion in accordance with a schedule approved in writing by the Lessor.

(2) The Lessee's voluntarily filing for bankruptcy protection under Title 11 of the United States Bankruptcy Code ("Bankruptcy Code") or voluntarily becoming subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights, or having an involuntary case commenced against the Lessee by any creditor of the Lessee pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights and is not dismissed or discharged within sixty (60) days after filing.

(3) Lessee shall become insolvent, shall make a transfer in fraud of creditors, or shall make an assignment for the benefit of creditors.

(4) A receiver or trustee shall be appointed for the Premises or for all or substantially all of the assets of the Lessee.

(5) Lessee shall do or permit to be done anything which creates a lien upon the Premises.

(6) Lessee shall fail to comply with the prohibitions set forth under 10 U.S.C. § 2692.

b. This Lease may be relinquished by the Lessee by giving Ninety (90) days prior written notice to Lessor in the manner prescribed in the Condition on **NOTICES**.

22. HEALTH AND SAFETY

a. The Lessee shall keep the Premises in good order and in a clean, sanitary and safe condition by and at the expense of the Lessee.

b. In addition to the right of revocation for non-compliance previously stated, Lessor, upon discovery of any hazardous condition on the Premises that presents an immediate threat to health or danger to life or property, will so notify the Lessee and will require that the affected part or all of the Premises be closed until such condition is corrected and the danger eliminated. If the condition is not corrected Lessor will have the option to (1) correct the hazardous condition and collect the cost of repairs from the Lessee, or (2) revoke the Lease. The Lessee shall have no claim for damages against the United States, or any officer, agent or employee thereof on account of action pursuant to this condition.

23. PUBLIC USE

The Lessee shall not forbid the full use by the public of the water areas of the project, subject however, to the authority and responsibility of the Lessee to carry out its responsibilities under this Lease to manage the Premises and provide safety and security to the facility and the facility users.

24. PROHIBITED USES

a. The Lessee shall not permit gambling on the Premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the Premises or permit them to be used for any illegal business or purpose. There shall not be conducted on or permitted on the Premises any activity which would constitute a nuisance. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by the Lessee if permissible by state and local law. Any request to conduct a game of chance must be submitted in writing to Lessor for written approval.

b. Occupying any lands, buildings, vessels or other facilities within the Premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the Premises for security purposes, if authorized by the Lessor.

c. In accordance with state and local laws and regulations, the Lessee may store, or dispense, or permit the storage or dispensing of beer, malt beverages, wine or other intoxicating beverages on the Premises for members of the Lessee organization and their guests. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of any liquor is prohibited.

25. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the Premises, except as may be authorized under and pursuant to the Condition on **DEVELOPMENT AND MANAGEMENT PLANS**. The Lessee may salvage fallen or dead timber on the Leased Premises for use as firewood only. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this Lease.

26. DISPUTES CLAUSE

a. Disputes Valued at \$10,000 or less (exclusive of interest). Except as otherwise provided in this Lease, any dispute between the Government and the Lessee arising under or related to this Lease involving \$10,000.00 (exclusive of interest) or less shall be decided by the Real Estate Contracting Officer. The Real Estate Contracting Officer shall reduce his or her decision to writing and mail or otherwise furnish a copy to the Lessee. With respect to any such dispute, the Lessee agrees that the decision of the Chief shall be final and conclusive and shall not be appealable or otherwise subject to challenge.

b. Disputes Valued at More than \$10,000 (exclusive of interest) but not exceeding \$25,000. The Lessee and the Government agree that the following procedures constitute the administrative procedures that must be exhausted with respect to any dispute arising under or

related to this Lease involving more than \$10,000 (exclusive of interest) but not exceeding \$25,000, before the Lessee or the Government may pursue any other remedy that is available to it pursuant to this Lease or law. Any dispute involving more than \$10,000.00 (exclusive of interest) but not exceeding \$25,000 shall be decided by the Chief, U.S. Army Corps of Engineers Mississippi Valley Division (hereafter "Division"). The Division Chief of Real Estate shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Lessee. With respect to any such dispute, the Lessee agrees that the decision of the Division shall be final and conclusive and shall not be appealable or otherwise subject to challenge.

c. Disputes Valued at More than \$25,000 (exclusive of interest). The Lessee and the Government agree that the following procedures constitute the administrative procedures that must be exhausted with respect to any dispute arising under or related to this Lease involving more than \$25,000 before the Lessee or the Government may pursue any other remedy that is available to it pursuant to this Lease or Law. Any dispute involving more than \$25,000 shall be decided by the Director of Real Estate, U.S. Army Corps of Engineers (hereafter "Director"). The Director shall reduce his or her decision to writing and mail or otherwise furnish a copy thereof to the Lessee. The decision of the Director shall be final and conclusive unless, within thirty (30) calendar days from the date of receipt of the decision, the Lessee appeals the decision, by certified mail, to the Deputy Assistant Secretary of the Army (Installations, Housing & Partnerships), and delivers a copy of its appeal to the Director by certified mail. The Deputy Assistant Secretary of the Army (Installations, Housing & Partnerships) shall render a decision by a date mutually agreed upon by the Parties. Either Party shall have the right to appeal the decision of the Deputy Assistant Secretary of the Army (Installations, Housing & Partnerships) or his or her authorized representative to a court of competent jurisdiction in a timely manner, consistent with Condition 26.d; otherwise the decision of the Deputy Assistant Secretary of the Army (Installations, Housing & Partnerships) shall be final.

d. Judicial Review. The Lessee or the Government, after exhausting the administrative remedies specified in Condition 26.c, may: (i) Pursue any remedy available to it under the law; or (ii) Before or in conjunction with pursuing any remedy that is available to it under law, by mutual agreement, submit the dispute to an alternative dispute resolution procedure, other than binding arbitration, authorized by the Administrative Dispute Resolution Act of 1996, (5 U.S.C. §§ 571-581).

e. Opportunity to be Heard and to Offer Evidence. In connection with any dispute between the Parties, each of the Lessee and the Government shall be afforded an opportunity to be heard and to offer evidence in support of its position.

f. The Lessee shall proceed diligently with the performance of the Lease, pending final resolution of any request for relief, claim, or action arising under the Lease, and comply with any decision of the Director or Deputy Assistant Secretary of the Army (Installations, Housing & Partnerships).

27. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal authorities, the parties to this Lease shall protect the Premises against pollution of its air, ground and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous materials within the Leased area is specifically prohibited. The Lessee shall comply with such regulations, conditions or instructions in effect or prescribed by the Environmental Protection Agency, or by any Federal, state, interstate or local governmental agency as they may apply to the Premises or the activities undertaken by the Lessee subject to this Lease. The Lessee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Lessee's activities, the Lessee shall be liable to restore the damaged resources or, at the option of the Government, reimburse the Government its costs of doing so.

c. The Lessee is required to participate in all aspects of an Environmental Review Guide for Operations (ERGO) assessment, including but not limited to pre-briefings, the Outgrant Pre Visit Questionnaire, the assessment, exit briefings, etc., of their outgranted area. The Lessee shall promptly initiate and complete all necessary corrective actions, as determined and directed by the Lessor in order to fully resolve those findings contained in Environmental Assessment Reports that the Real Estate Contracting Officer determines must be implemented. Failure of the Lessee to take the required corrective action(s) identified in the ERGO assessments may be referred to the appropriate enforcement agency who will render final determinations with respect to compliance with relevant laws or regulations. Continued non-compliance by the Lessee may also serve as grounds for revocation of this Lease.

d. The Lessee must obtain approval in writing from Lessor before any pesticides or herbicides are applied to the Premises.

28. ENVIRONMENTAL CONDITION OF PROPERTY

An Environmental Condition of Property (ECP) Report may be required by the Lessor upon expiration, revocation or termination of this Lease to assess and document the environmental condition of the property at that time. This report/assessment will assist in determining any environmental remediation requirements that would need to be completed by the Lessee. Any such requirements will be completed by the Lessee in accordance with the Condition on **RESTORATION**.

Lessee's Initials *JS* Lessor's Initials *BS*

29. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, or remains. In the event such items are discovered on the Premises, the Lessee shall immediately notify Lessor and protect the site and the material from further disturbances until Lessor gives clearance to proceed. In the event that any material is identified that does not appear to be natural but instead made or constructed by humans with the potential to be a historic item (e.g stone foundations, ceramics, worked rock such as an arrowhead or point), Lessee shall immediately notify Lessor and protect the site and material from further disturbances until Lessor gives clearance to proceed.

30. SOIL AND WATER CONSERVATION

The Lessee shall maintain, in a manner satisfactory to Lessor, all soil and water conservation structures that may be in existence upon said Premises at the beginning of or that may be constructed by the Lessee during the term of this Lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the Premises. Any soil erosion occurring outside the Premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by Lessor.

31. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this Lease upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bona fide employees or established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this Lease without liability or, in its discretion, to require the Lessee to pay, in addition to the Lease rental or consideration, the full amount of such commission, percentage, brokerage or contingent fee.

32. OFFICIALS NOT TO BENEFIT

No member of or delegate to congress or resident commissioner shall be admitted to any share or part of this Lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if this Lease is for the general benefit of such corporation or company.

33. MODIFICATIONS

This Lease contains the entire agreement between the parties hereto, and no modification of this Lease, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative and this provision shall apply to this condition as well as other conditions of this Lease.

34. NO INDIVIDUAL LIABILITY OF GOVERNMENT OFFICIALS

No covenant or agreement contained in this Lease shall be deemed to be the covenant or agreement of any individual officer, agent, employee or representative of the Government, in his or her individual capacity and none of such persons shall be subject to any personal liability or accountability by reason of the execution of this Lease, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty, or otherwise.

35. IDENTIFICATION OF GOVERNMENT AGENCIES, STATUTES, PROGRAMS AND FORMS

Any reference in this Lease, by name or number, to a government department, agency, statute, regulation, program, or form shall include any successor, amendment, or similar department, agency, statute, regulation, program or form.

36. DISCLAIMER

This Lease is effective only insofar as the rights of the United States in the Premises are concerned; and the Lessee shall obtain any permit or license which may be required by Federal, state, or local statute in connection with the use of the Premises. It is understood that the granting of this Lease does not preclude the necessity of obtaining any Department of the Army permit for activities which involve the discharge of dredge or fill material or placement of fixed structures in the waters of the United States, pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. § 403), and Section 404 of the Clean Waters Act (33 U.S.C. § 1344).

PRIOR TO execution of this Lease, the following site specific Conditions have been added hereto and made a part hereof:

37. FACILITY DESIGN AND GREEN SPACE PRESERVATION

a. The final design for the National Loon Center must conform to a context sensitive design, as approved by the Lessor. The building footprint and any activities associated with construction (equipment storage, staging, utility installation, etc.) shall be conducted in such a manner so as to minimize impacts to the existing vegetation, specifically all mature evergreen trees and shrubbery. Removal of any existing vegetation must be approved in advance by the Pine River Dam Supervisory Park Ranger.

b. The National Loon Center facility footprint shall not exceed 5,700 square feet. The facility shall also be limited in height to not more than 30 feet. An additional 1,000 square feet of space, surrounding the exterior foundation of the facility, may be used for facility appurtenances and/or separate physical improvements. All proposed exterior features or improvements are subject to the review and approval of the Lessor. Additional space for exterior improvements may be authorized by the RECO.

c. The physical location of the National Loon Center shall have no impact on current Pine River Dam Project operations, to include the Project Office, maintenance facilities, dam operations, recreation, and visitor traffic patterns.

d. The Lessee shall submit the proposed plans and specifications and construction schedule for the National Loon Center and its attendant features to the Lessor for approval. Said schedule shall contain major construction milestones and a final completion date. Lessor shall not commence construction or any land disturbing activity prior to approval of those plans and specifications and schedule by the Lessor. Any such review and approval is for the Government's purposes only and does not constitute a warranty that the plans and specifications are sound from an engineering perspective or that the Lessee's schedule is reasonable. The Lessee shall diligently construct the National Loon Center and its attendant features in accordance with the approved plans, specifications, and schedule and failure to do so is a material breach of this Lease. The Lessee shall not be deemed in breach of this Lease for delays in achieving the milestones or completion date in the approved schedule caused by unforeseen events outside the control of, and without the fault or neglect of, the Lessee or its contractors (Force Majeure events). Lack of adequate funding does not constitute a Force Majeure event.

e. The Lessee must provide the Lessor with all final approved State, county, city, and/or local building permits and plan sets prior to initiation of construction. In the event the Lessee requires a variance from any State, county, city, and/or local building codes, the Lessee must first obtain approval from the Lessor and then pursue the variance request through the appropriate governmental body.

38. FACILITY OPERATION AND MAINTENANCE PLAN

The Lessee shall prepare and provide the Lessor with a copy of the National Loon Center's operation and maintenance (O&M) manual/plan in advance of the facility being made available for use by the general public. The O&M manual/plan should be provided to the Lessor no less than fourteen (14) days in advance of the official opening of the National Loon Center. The Lessee shall also furnish the Lessor with any supplemental O&M agreements that may be entered into, by and between, the Lessee and any other facility supporting organizations or entities.

39. PUBLIC FACILITIES

a. By way of this Lease, the Lessee is granted permission to remove the existing comfort station that is currently located within the Premises. The Lessee must replace the existing comfort station with public restrooms that are accessed from the exterior of the National Loon Center and will accommodate no less than four (4) users at a time. No less than one (1) of the public restrooms must be handicap accessible. Additionally, the Lessee shall provide public shower facilities within the footprint of the National Loon Center. All facilities shall be constructed so as to comply with the Americans with Disabilities Act (ADA) accessibility standards.

b. The restroom/shower accommodations must be made available for public use, 24 hours per day, during the months of May, June, July, August, September, and October each year. During the remaining months of the year, the Lessee shall provide public restroom facilities to the visiting public during normal business hours of operation for the National Loon Center.

c. As a component of the National Loon Center facility, the Lessee shall replace the existing sewage treatment lift station with a lift station capable of supporting the live load deemed necessary, per local code, for all facilities currently connected to the existing lift station as well as any new facilities that may benefit from connection to the new lift station.

d. The Lessee shall provide at least three (3) portable toilet units prior to the removal of the existing comfort station and shall maintain these portable toilet units until such time as the new public restroom facilities have been constructed and made available for public use. No less than one (1) of the portable toilet units must be handicap accessible.

e. All plans and specifications for the replacement of said facilities identified herein, shall be submitted to the Lessor for review and approval prior to the initiation of construction.

f. Within the interior space of the National Loon Center, the Lessee shall maintain a portion of the facility's overall space as free and open to the general public. The minimum square footage of space to be made available under this Condition shall be no less than 10% of the facility's overall square footage. It is the intent of the Lessor to ensure that the National Loon Center provides an opportunity for all demographics to experience interpretive services.

40. HOURS OF OPERATION AND SPECIAL EVENTS

a. The Lessee shall prominently display the hours of operation for the National Loon Center. The hours of operation must not conflict with the established "Quiet Hours" of the Pine River Dam Recreation Area. The current quiet hours for the recreation area are 10:00 PM to 7:00 AM, every day.

b. The Lessee may hold special events at the National Loon Center. All special events must be approved no less than five (5) business days in advance of the event by the Pine River Dam Supervisory Park Ranger. A Special Event Permit will be issued by the Pine River Dam Supervisory Park Ranger and may contain conditions that must be adhered to by the Lessee. In the event of a conflict between conditions contained in a Special Event Permit and this Lease, this Lease will govern.

41. TRAFFIC / PEDESTRIAN STUDY AND PARKING FACILITIES

a. Prior to the finalization of design for the National Loon Center, the Lessee shall complete a comprehensive traffic and pedestrian study that specifically addresses ingress and egress to the recreation area, traffic flow patterns, pedestrian safety, and visitor parking options. The study must focus on vehicle and pedestrian traffic patterns entering, exiting, and circulating within the recreation area during the peak recreation season (May – September).

b. The results of the traffic and pedestrian study shall be reviewed jointly by the Lessee and Lessor. All findings and/or recommendations will be considered in the development of the National Loon Center plans and specifications. Any findings and/or recommendations that are deemed appropriate by the Lessor, shall be required to be implemented by the Lessee as part of the approved facility.

c. No existing on-site parking facilities will be made available for National Loon Center staff or visitors to the National Loon Center during the peak recreation season. An exception to this restriction will be made for vehicles displaying a valid Handicapped Parking license plate or placard.

d. All truck deliveries of supplies, equipment, and/or materials for construction and facility operation and maintenance activities must be conducted in such a manner so as to not interfere with normal recreation area operations.

42. PERFORMANCE BOND

a. The Lessee shall furnish a performance bond¹ or other monetary security acceptable to Lessor for the protection of the Government as follows:

(1) Entirety of the Lease - The Lessee shall obtain and maintain monetary security in the amount of \$100,000 guaranteeing that Lessee will perform and fulfill all the undertakings, covenants, terms, conditions, and agreements of the lease during the term of the lease or any extensions thereof that are granted by the Government. The Lessee may adjust the monetary security required by this subparagraph upward for inflation on the 5-year anniversary of this lease and every 5 years using the Engineering News Record Building Cost Index (or, if that index is no longer published or otherwise available, another means of inflation adjustment reasonably related to the cost of construction and maintenance of improvements to real property). The base year for the index will be the most current month and year that has been published by Engineering News Record as of the date of execution of the Lease; and

(2) Period of Construction - The Lessee shall obtain and maintain monetary security in the amount of \$2 million (\$2,000,000) guaranteeing that Lessee will construct the National Loon Center in compliance with the schedule and in accordance with the plans and specifications approved in writing by the Real Estate Contracting Officer under Condition 37.d, **FACILITY DESIGN AND GREEN SPACE PRESERVATION**. Such monetary security shall be in place and approved in writing by the Real Estate Contracting Officer prior to the commencement of any earthmoving activities related to the construction of the National Loon Center. Such monetary security must remain in effect throughout the construction of the National Loon Center and any warranty periods

¹ If the Lessee elects to use a performance bond for either or both of the monetary security requirements identified in this Condition, Standard Form 1418 shall be used. For purposes of this Condition, the term "contract" as used in Standard Form 1418 shall be deemed to refer to this Lease.

(but in no event less than one calendar year following the completion of the National Loon Center).

b. The Lessee shall furnish the monetary security required by this Condition 42 as follows:

(1) as to the monetary security required by subparagraph (a)(1) of this Condition 42, within 30 days of the execution of this Lease, but in any event, before occupancy of the premises.

(2) as to the monetary security required by subparagraph (a)(2) of this Condition 42, no less than 15 calendar days prior to the Period of Construction, but in any event, prior to any land distributing activities on the Premises.

c. The Government may require additional monetary security at the discretion of the Real Estate Contracting Officer if Lessee materially changes or proposes to change the use of the leased premises, has repeated instances of noncompliance with the conditions of the Lease (whether major or minor), or otherwise engages in actions or inactions that materially increases the risk to the Government. The Government may secure the additional protection by directing the Lessee to increase the penal amount of the existing monetary security or to obtain additional monetary security.

d. The monetary security shall be in the form of firm commitment, supported by corporate sureties whose names appear on the list contained in Treasury Department Circular 570 or by other acceptable security such as postal money order, certified check, cashier's check, irrevocable letter of credit, or, in accordance with Treasury Department regulations, certain bonds or notes of the United States. Treasury Circular 570 is available online at: <http://www.fms.treas.gov/c570/>. In the alternative, Lessee may provide the required monetary security (in United States currency) in an interest-bearing escrow account acceptable to the Government. If the monetary security required by subparagraph (a)(2) of this Condition 42 is provided by funds placed in an escrow account, the amount of monetary security may be reduced at the discretion of the Real Estate Contracting Officer as the construction work proceeds (for instance, when the building envelope is complete). The Government may draw funds from the escrow account(s) as necessary to remedy any breaches of this Lease.

43. FINANCIAL ASSURANCE AND INITIATION OF CONSTRUCTION

a. This Lease is subject to Lessee's ability to secure the funding required to complete construction of the National Loon Center. Failure on the part of the Lessee to secure the funds required to complete construction (100% completion equates to the issuance of a valid Occupancy Permit) will result in termination of the Lease in compliance with the Condition on **DEFAULT AND TERMINATION**.

b. The Lessee must obtain all necessary building permits and approvals within 18 months of execution of this Lease. Construction activity must be initiated within 24 months of Lease execution. All construction activity must be completed within 48 months of Lease execution. In

the year that construction activity is initiated, the Lessee may not begin construction prior to September 15th. Failure to comply with the aforementioned schedule will result in termination of the Lease in compliance with the Condition on **DEFAULT AND TERMINATION**.

c. The Lessee shall provide the Lessor with construction progress reports on a monthly basis. Progress reports will be provided by the 5th day of the month and must contain sufficient information to effectively inform the Lessor of the overall percentage of completion.

44. LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations and with all applicable laws, ordinances and regulations of the state, county and municipality wherein the Premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business.

b. The Lessee will provide an annual certification that all water and sanitary systems on the Premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Americans with Disabilities Act (ADA) accessibility standards, noting any deficiencies and providing a schedule for correction.

c. In addition to other applicable codes, the Lessee shall comply with the most current edition of the National Fire Protection Association (NFPA) Code 70, National Electric Code (NEC), and any other applicable codes and standards covering the type of facilities to be operated and maintained by the Lessee. Upon request by the Real Estate Contracting Officer, the Lessee will provide a certification that all electrical installations on the Premises have been inspected by a qualified individual and comply with the applicable codes.

45. PROGRAMMATIC AGREEMENT REGARDING THE ISSUANCE OF A LEASE TO ALLOW FOR THE CONSTRUCTION OF A NATIONAL LOON CENTER AT THE CROSS LAKE RECREATION AREA

On April 29, 2019, the U.S. Army Corps of Engineers, St. Paul District and the Minnesota State Historic Preservation Office entered into a Programmatic Agreement (Agreement) regarding the issuance of a Lease to allow for the construction of a National Loon Center at the Cross Lake Recreation Area, Crow Wing County, Minnesota, attached hereto and made a part hereof as **Exhibit B**. The Lessee and Lessor agree to comply with all terms and conditions of said Agreement shall be binding upon the Lessee and Lessor.

46. EMPLOYEE AND CONTRACTOR E-VERIFY PROGRAM

a. The Lessee must pre-screen all employees and contractors employed by the National Loon Center Foundation using the E-verify Program (<http://www.dhs.gov/E-Verify>) website. The Lessee must ensure that the candidates for employment and all contractors have two valid forms of Government issued identification to ensure the correct information is entered into the E-verify system. The Lessee must maintain a verified list of all employees and on-site contractors at all

times and shall provide the Lessor with said list as requested.

47. CORPORATE SPONSORSHIPS

No advertisement or marketing of any corporate sponsor or any other brand or product shall be permitted on the premises without prior approval from Lessor. Such requests must be submitted in writing to Lessor, and any requests giving the appearance of the Government endorsing any corporate sponsor, brand, or product will not be approved.


48. NON-COMPLIANCE

Failure, on the part of the Lessee, to satisfactorily correct any substantial or persistent non-compliance findings within the timeframe specified by the Real Estate Contracting Officer shall be grounds for closure of all or part of the Premises, temporary suspension of National Loon Center operations, or revocation of the Lease, after notice in writing of such intent. **THIS LEASE** is not subject to Title 10 United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this 2 day of August, 2019.


Kevin J. Sommerland
Chief, Real Estate
Real Estate Contracting Officer

THIS LEASE is also executed by the Lessee this 31st day of July, 2019.


National Loon Center Foundation, Inc.
By: James Anderson
President

CERTIFICATE OF AUTHORITY

I, Leah Hegnish, certify that I am the Vice President of the NATIONAL LOON CENTER FOUNDATION, INC., that JAMES ANDERSON, who signed the foregoing instrument on behalf of the Lessee was then PRESIDENT of the NATIONAL LOON CENTER FOUNDATION, INC. I further certify that the PRESIDENT was acting within the scope of powers delegated to this officer by the governing body of the Lessee in executing said instrument.

Date 7 31 19

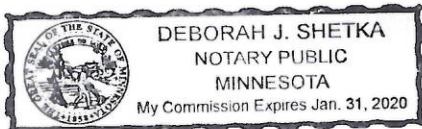
Signature [Handwritten Signature]

ACKNOWLEDGMENT

STATE OF Minnesota
COUNTY OF Crowley

PERSONALLY APPEARED BEFORE ME, the undersigned authority in and for the county and state, on this 31st day of July, 2019, within my jurisdiction, the within named James Anderson, who acknowledged that he is the President of National Loon Center Foundation, Inc. and that for and on behalf of the said company, and as its act and deed she/he executed the above and foregoing instrument after having been duly authorized by said company so to do.

(SEAL)



[Handwritten Signature]
NOTARY PUBLIC

My Commission Expires: 1-31-20



Leased Area

**U.S. Army Corps of Engineers - St. Paul District
Mississippi River Headwaters
Pine River Dam Project
A portion of Tract 8 is located in
Section 8, Township 137N, Range 27W
Containing 0.76 Acre, more or less

Lease to Non-Profit Organization
Contract No. DACW37-1-19-0041
Exhibit "A"**

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE ISSUANCE OF A LEASE TO ALLOW FOR
THE CONSTRUCTION OF A NATIONAL LOON CENTER AT THE
CROSS LAKE RECREATION AREA
CROW WING COUNTY, MINNESOTA**

25 April 2019

WHEREAS, the U.S. Army Corps of Engineers, St. Paul District (Corps) owns, operates, and manages the Cross Lake Recreation Area (CLRA) pursuant to the Rivers and Harbors Acts of 1880 (21 Stat. 180) and 1882 (22 Stat. 191), the Flood Control Act of 1944 (Public Law 78-534), and the Federal Water Project Recreation Act of 1965 (16 U.S.C. § 4601-12, *et seq.*; Public Law 89-72); and

WHEREAS, the Corps is evaluating an application from the National Loon Center Foundation (NLCF) requesting issuance of a lease from the Corps under 16 U.S.C. § 460d, to construct a National Loon Center and associated facilities (Project) at the CLRA; and

WHEREAS, the Corps has determined that the issuance of a lease is a federal undertaking subject to the requirements of Section 106 of the National Historic Preservation Act of 1966, as amended (54 U.S.C. 306108, *et seq.*) (NHPA), and the Advisory Council on Historic Preservation's (ACHP) implementing regulations, 36 CFR Part 800; and

WHEREAS, the Corps, in consultation with the Minnesota State Historic Preservation Office (SHPO), has defined the area of potential effect (APE) for the Project as documented in Attachment A. The APE includes all areas of potential direct effects in the Project area as well as areas where indirect effects may be caused by the Project. The APE as documented in Attachment A is based on the Project as proposed at the time of execution of this Programmatic Agreement (PA); and

WHEREAS, the APE for the Project may be further refined as a result of additional consultation and as plans for the Project are further developed; and

WHEREAS, the Corps has initially identified two potential historic properties within the APE. The Pine River Dam Compound (21CW0219) which has been identified by the Corps as potentially eligible for listing in the National Register of Historic Places (NRHP), and the Pine River Dam (CW-CLC-002) which has previously been determined eligible for listing in the NRHP. These previous property evaluations are considered by the Corps as being either outdated or incomplete and therefore the two properties warrant additional evaluation for NRHP eligibility under the terms of this PA. The Corps will continue to complete identification and evaluation efforts for these properties and any other currently unidentified properties as stipulated in this PA; and

WHEREAS, the Corps will not be able to complete consultation regarding the final identification of historic properties for the Project prior to the completion of the environmental document for compliance with the National Environmental Policy Act (NEPA), making execution of this PA for the Project appropriate pursuant to the NHPA and 36 CFR § 800.14(b)(1)(ii); and

WHEREAS, pursuant to 36 CFR § 800.2(c)(1) the Corps has consulted with the SHPO on the proposed Project plans and has determined that review and consultation pertaining to additional design development for the Project will be needed in order for the Corps to fully assess the potential effects to historic properties, including those identified through additional survey; and

WHEREAS, pursuant to 36 CFR § 800.2(c)(2) the Corps has invited the Bad River Band of Lake Superior Chippewa, Fond du Lac Band of Lake Superior Chippewa, Leech Lake Band of Ojibwe, Lower Sioux Indian Community, Mille Lacs Band of Ojibwe, Red Lake Band of Chippewa Indians, Shakopee Mdewakanton Sioux Community, Sisseton-Wahpeton Oyate, Upper Sioux Community, and White Earth Band of Ojibwe to consult on the proposed Project and to sign this PA as a concurring party. No tribes have accepted the invitation to sign this PA as a concurring party; however, the Corps will continue to consult with tribes that may attach religious and cultural significance to historic properties as stipulations are met. This consultation is not limited to those tribes that may have participated in the development of this PA; and

WHEREAS, the NLCF, as the non-Federal sponsor for this Project, has participated in consultation; and has been invited to sign this PA as an “invited signatory” pursuant to 36 CFR § 800.6(c)(2) due to the fact that it will have responsibilities under this PA; and

WHEREAS, pursuant to 36 CFR § 800.2(d), public involvement and an appropriate level of public notification for the Project has been coordinated with the concurrent scoping, public review and comment, public meetings, and technical reviews as required under NEPA and its implementing regulations; and

WHEREAS, pursuant to 36 CFR § 800.6(a)(1), the Corps has notified the ACHP of its decision to enter into this PA, and has provided the documentation specified in 36 CFR § 800.6(a)(1), and the ACHP has chosen not to participate in this PA;

NOW, THEREFORE, the Corps and the SHPO agree that upon execution of this PA, the Corps shall ensure that any lease instrument that is issued for the proposed Project shall be conditioned to incorporate the following stipulations to account for the potential effects of the undertaking on historic properties.

STIPULATIONS

The Corps shall ensure that the following measures are carried out.

STIPULATION 1. GENERAL RESPONSIBILITIES

- A. The signatories to this PA are the Corps and the SHPO and the Invited Signatory to this PA is the NLCF. Collectively the Signatories and Invited Signatory are referred to in this PA as "Parties". The Signatories, Invited Signatory, and the Concurring Signatories have rights as defined under 36 CFR § 800.6.
- B. The Corps is responsible for oversight of performance under this PA and shall carry out compliance with Section 106 of the NHPA, including leading consultation as it pertains to identification of historic properties and findings of effect.
- C. The NLCF shall provide to the Corps completed cultural resource reports with fully documented eligibility determinations and recommendations.
- D. The NLCF shall provide to the Corps the plans and specifications for all proposed Project-related activities including proposed buildings, structures, paths, parking, landscaping, other features, staging areas, and utility locations.
- E. The NLCF shall ensure that any contractors or consultants hired to execute the work relevant to this PA shall be aware of and subject to the terms and stipulations of this PA.
- F. The NLCF may not proceed with construction of the Project until the Corps has determined that there are no unresolved issues pertaining to historic properties in those areas, and the Corps has issued a written notice to proceed.

STIPULATION II. COMPLETION OF THE IDENTIFICATION OF HISTORIC PROPERTIES

- A. Following the execution of this PA and prior to the commencement of any construction activities, the NLCF shall have its consultants complete and document historic property identification efforts and NRHP eligibility recommendations in accordance with 36 CFR § 800.4. The NLCF shall ensure that any archaeologists, historians, or architectural historians who conduct cultural resource identification and evaluation efforts related to the Project meet the professional qualification standards in the appropriate field as defined in the Secretary of the Interior's (SOI) *Standards and Guidelines for Archaeology and Historic Preservation* (48 FR 44716-01).
- B. All historic property identification, evaluation, and survey work carried out pursuant to this PA will meet the SOI *Standards for Archaeology and Historic Preservation*, applicable NRHP Bulletins, and applicable State of Minnesota guidelines.
- C. The NLCF shall ensure that, at a minimum, its consultants complete a literature search of the Project area which includes consulting Minnesota site files, previous survey reports, and other documents at the SHPO for information on previously recorded historic properties, site leads, and previously surveyed areas. The literature search shall be used to direct the scope of the research design, Phase I reconnaissance and Phase II intensive level surveys.

NLCF Project PA Final

- D. An Archaeological Resources Protection Act (ARPA) permit request shall be submitted to and approved by the Corps' real estate division prior to initiating any Phase I or Phase II surveys.
- E. Any archaeological investigations conducted in association with the proposed Project shall follow the guidelines outlined in the *SHPO Manual for Archaeological Projects in Minnesota*.
- F. The Phase I/Phase II architecture/history investigations shall follow the guidelines outlined in the Heritage Preservation Department, *Historic and Architectural Survey Manual* and shall include survey and evaluation of all properties identified within the APE for direct and indirect effects for the Project.
- G. The NLCF and their consultants shall provide to the Corps their fully-documented historic property identification efforts, including NRHP-eligibility determinations and recommendations. The Corps shall review the provided documentation and shall provide its fully-documented eligibility determinations and recommendations to the SHPO and Tribes, who shall have thirty (30) calendar days from receipt of the documentation to provide their comments to the Corps.
- H. After receipt of comments from the SHPO and Tribes, the Corps shall provide all comments to the NLCF consultants and the NLCF consultants shall incorporate all changes requested in those comments within thirty (30) days of receipt.
- I. If the Corps chooses to not accept a comment by the SHPO or Tribes, the Corps shall provide a written explanation to the SHPO or Tribes and consult, as appropriate, to seek resolution. If resolution cannot be made, the Corps shall resolve the dispute pursuant to Administrative Provision VI.
- J. Following completion of review and consultation as required under Stipulation II (G-I), the NLCF and its consultants shall submit the final report and any associated historic property inventory forms to the Corps, and the Corps will submit these documents to SHPO for incorporation into the statewide historic property records inventory. Reports shall be considered final upon written notice from the Corps.

STIPULATION III. PROJECT PLAN REVIEW AND ASSESSMENT OF EFFECT

- A. The NLCF shall provide the Corps with all Project plans, including plans for temporary construction-related work and any design modifications made prior to initiating Project construction. The Project design must effectively meet the Project purpose and need while avoiding, minimizing, and/or mitigating adverse effects to historic properties.
- B. The NLCF or its consultant shall review the Project plans and apply the criteria of adverse effect as established in 36 CFR § 800.5(a). Based on this review, the NLCF shall provide the Corps with a fully documented recommendation of effect for all historic properties in the APE pursuant to 36 CFR § 800.5. Following review and approval of the recommendation of effect, the Corps shall complete the findings of effect and continue to Stipulation III (C).
- C. If the Corps determines the Project will not adversely affect historic properties within the APE based upon the assessment and documentation provided under Stipulation III (B), then the Corps will make a No Adverse Effect finding in accordance with 36 CFR § 800.5(b) and submit this fully documented finding, in accordance with 36 CFR § 800.11(e), to the SHPO and Tribes, who shall have thirty (30) days to review and provide written comments to the Corps.

- D. If the Corps receives agreement from the SHPO and no written objections are issued by any party regarding the Corps' finding of No Adverse Effect within the 30-day review period, then the NLCF may proceed with development of subsequent Project designs in accordance with the No Adverse Effect finding, per 36 CFR § 800.5(c)(1).
- E. If the SHPO or a Tribe does not agree with the Corps' No Adverse Effect finding and specifies reasons for the disagreement in writing within the 30-day review period, the Corps shall notify the NLCF of the disagreement and the Corps will either consult further with the SHPO to resolve the disagreement or request ACHP review pursuant to 36 CFR § 800.5(c)(2).
- F. If the Corps determines the Project will have an Adverse Effect, the Corps shall resolve the adverse effect pursuant to Stipulation IV.

STIPULATION IV. RESOLUTION OF ADVERSE EFFECTS

- A. If the Corps determines, pursuant to review and consultation under Stipulation III of this PA, that the Project will have adverse effects on historic properties, the Corps shall consult with the Parties to this PA and consulting Tribes, as applicable, to resolve the Adverse Effect including first consideration of whether or not the Adverse Effect may be avoided through modification of Project design or other measures.
- B. If the Parties to this PA and consulting Tribes, if applicable, reach agreement in writing on modifications or measures to avoid adverse effects and essentially revise the finding to a No Adverse Effect finding, then the Corps shall document the agreement in the Corps' administrative record for the Project and share findings with the Parties to this PA and consulting Tribes, as applicable. The Project shall then be carried out according to the Corps' written agreement to avoid adverse effects.
- C. If the Parties to this PA, and consulting Tribes, if applicable, fail to reach agreement on appropriate avoidance measures pursuant to Stipulation IV (A) of this PA, then the Corps shall make a determination that the Adverse Effect cannot be avoided and will continue consultation with the Parties and consulting Tribes, as applicable, pursuant to Stipulations IV (D-E) to determine appropriate minimization and/or mitigation measures to resolve the Adverse Effect. Pursuant to the notice standards set in 36 CFR § 800.6(a)(1), the Corps shall notify the ACHP of the Adverse Effect determination by providing the documentation specified in 36 CFR § 800.11(e). The ACHP shall use the criteria in Appendix A of 36 CFR Part 800 to determine whether it will participate in consultation to resolve the adverse effect and inform the Corps of its decisions within fifteen (15) calendar days of receipt.
- D. The Corps shall consult with the Parties to this PA and consulting Tribes, as applicable, to determine appropriate minimization and/or mitigation measures to resolve the Adverse Effect. Once an agreement has been reached in writing, the NLCF or its consultants shall develop a Mitigation Plan (Plan) for review and approval by the Corps that is appropriate to the historic property and the nature and scale of the Adverse Effect. The Plan shall incorporate minimization and mitigation measures agreed upon during consultation. The Corps shall provide a final draft of the Plan to the Parties to this PA and consulting Tribes, as applicable, who will have thirty (30) calendar days from receipt to review and provide comments. The NLCF or its consultants will incorporate the comments into the final Plan.
- E. The final Plan shall be agreed to in writing by the Corps and the Parties to this PA and will be carried out according to its terms in order to resolve adverse effects. If the Corps and the SHPO cannot come to an agreement on the Plan, Administrative Provision VI will be followed to resolve the dispute.

- F. If any agreed-upon mitigation included in the final Plan involves archaeological data recovery or some other historic property documentation, then Project construction activities may not begin until after the completion of the fieldwork for the data recovery or documentation and the Corps has provided written notification in this regard.

STIPULATION V. POST-REVIEW DISCOVERIES

- A. If previously unidentified historic properties, including human remains, are discovered unexpectedly during construction of the Project, or previously known historic properties are affected, or have been affected in an unanticipated adverse manner, all ground-disturbing activities will cease in the area of the historic property, as well as within one hundred (100) feet of it, to avoid and/or minimize harm to the property. The NLCF or its contractor will immediately notify the Corps of the discovery and implement interim measures to protect the discovery from damage, looting, and vandalism, including but not limited to protective fencing and covering of the discovery with appropriate materials. Upon receipt of the notification, the Corps shall notify the SHPO and Tribes and may inspect the construction site to ensure that construction activities have halted. The SHPO and Tribes may jointly confer at the site to assess the property and potential impacts, and to determine the most appropriate avoidance measures.

- B. Non-Human Remains

Within seventy-two (72) hours of the discovery of the remains, the NLCF shall have a qualified archaeologist, historian and/or architectural historian, as appropriate, who meets the *SOI's Professional Qualifications Standards* (36 CFR Part 61) for their respective field to record, document, and provide a recommendation to the Corps. The Corps will inform the SHPO and any tribes that may attach religious and cultural significance to the property, of the discovery.

- C. Human Remains

If an unmarked human burial or skeletal remains are encountered during construction activities, all ground disturbing activities will cease. The NLCF or its contractor will immediately notify the Corps and local law enforcement and the NLCF will bring in a qualified consultant as appropriate who meets the SOI professional qualification standards for his or her respective field. The NLCF consultant will comply with federal laws as well as take into account the ACHP's Policy Statement on the Treatment of Burial Sites.

1. If it is immediately obvious that the skeletal remains found are non-human and are in association with cultural material, the procedures described in Stipulation V (A) and (B) shall be followed.
2. The Corps shall immediately notify the SHPO, and appropriate tribes within twenty-four (24) hours via email, fax, or telephone. The Corps will also notify the Office of the State Archaeologist (OSA) and Minnesota Indian Affairs Council (MIAC).
3. If it is not certain whether the remains are human, all work will immediately cease within a 100-foot radius from the point of discovery and the NLCF consultant will secure the area. The NLCF consultant will place pin flags in a 100-foot radius around the discovery and ensure that appropriate measures are taken to protect the discovery from further disturbance. All human remains, regardless of ancestry, will be treated with dignity and respect.
4. The police will investigate the human remains and contact the medical examiner. If the human remains are modern, the police and/or medical examiner will assume responsibility. If it is determined the remains are not modern or do not reflect a crime scene and/or the police relinquish their jurisdiction over the remains, the Corps will consult with the SHPO and appropriate tribes regarding additional steps to be followed.

5. If the human remains appear to be prehistoric or historic Native American, the Corps will meet the requirements of the Native American Graves Protection and Repatriation Act for all Native American human remains, funerary objects, sacred objects, and objects of cultural patrimony on a case-by-case basis, in accordance with 43 CFR Part 10. An action plan will be written for each case by the Corps in consultation with appropriate consulting parties.
6. Measures to protect the human remains and any associated artifact(s) will remain in effect until the remains and associated artifacts have been fully evaluated and appropriate treatment of the discovery (if applicable) has been completed. The contractor will not resume work in the vicinity of the find until the Corps has granted clearance to do so.

ADMINISTRATIVE PROVISIONS

VI. DISPUTE RESOLUTION

Should any party to this PA object at any time to any actions proposed or the manner in which the terms of the PA are implemented, the Corps shall consult with such party (or parties) to resolve the objection. The parties shall work cooperatively to achieve a consensus to resolve any disagreement. If the Corps determines the objection(s) cannot be resolved, the Corps shall:

- A. Forward all documentation relevant to the dispute, including the Corps' proposed resolution, to the ACHP. The ACHP shall provide the Corps with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, the Corps shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. The Corps will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, the Corps may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, the Corps shall prepare a written response that takes into account any timely comments regarding the dispute from the Signatory Parties, and provide them and the ACHP with a copy of such written response.
- C. Any comment provided by the ACHP or Signatory Party in response to a dispute shall be taken into account by the Corps with reference only to the subject of the dispute; the Signatory Parties' responsibility to carry out all other actions subject to the terms of this PA that are not the subject of the dispute remain unchanged.

VII. AMENDMENTS.

This PA may be amended when such an amendment is agreed to in writing by the Signatory Parties. Any party to this PA may request that it is amended, whereupon the parties shall consult in accordance with Administrative Provision VI of this PA. The amendment will be effective on the date that a signed copy of the amendment is filed with the ACHP.

VIII. DURATION

This PA will remain in effect for a period of five (5) years from the date of execution; at such time, if the terms of the PA have not been implemented, this PA will be null and void. If the Corps anticipates that the terms of this PA will not be completed within this timeframe it will notify the Signatory Parties in writing at least thirty (30) calendar days prior to the expiration date. This PA may be extended by the

written concurrence of the Signatory Parties. If this PA expires and the Corps elects to continue with the undertaking, then the Corps will reinitiate review of the Project in accordance with 36 CFR Part 800.

IX. TERMINATION

A. If any Signatory Party to this PA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other Signatory Parties to attempt to develop an amendment per Administrative Provision VII of this PA. If within thirty (30) days an amendment cannot be reached, any Signatory Party may terminate the PA upon written notification to other Signatory Parties.

B. Once the PA is terminated, and prior to work continuing on the undertaking, the Corps must either (a) execute a Memorandum of Agreement (MOA) pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. The Corps shall notify the Signatory Parties as to the course of action it will pursue.

X. OTHER LAWS, RULES, AND REGULATIONS

No provision of this PA, whether express or implied, is intended or designed to exempt any party from its respective obligations, duties, and responsibilities pursuant to any provisions of the NHPA, the ACHP's implementing regulations at 36 CFR Part 800, or the provisions of any other federal, state, or local law, regulation, rule or ordinance not specifically referenced herein.

XI. ANTI-DEFICIENCY PROVISION

All obligations on the part of the Corps under this PA shall be subject to the appropriation, availability, and allocation of sufficient funds to the Corps for such purposes.

XII. EXECUTION OF THIS PA


A. By their signature hereon, the signatories to this PA certify that they have the authority to sign for the organization or agency they represent and to bind said organization or agency to the terms, conditions, and stipulations herein contained.

B. This PA will become effective upon execution. The Corps will ensure each party is provided with a complete copy and that the final PA, updates to appendices, and any amendments are filed with the ACHP.

C. Execution and implementation of this PA evidences that the Corps has taken into account the effects of the proposed Project on historic properties and has afforded the ACHP opportunity to comment pursuant to Section 106 of the NHPA.

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
AND
THE MINNESOTA STATE HISTORIC PRESERVATION OFFICE
REGARDING
THE ISSUANCE OF A LEASE TO ALLOW FOR
THE CONSTRUCTION OF A NATIONAL LOON CENTER AT THE
CROSS LAKE RECREATION AREA
CROW WING COUNTY, MINNESOTA**

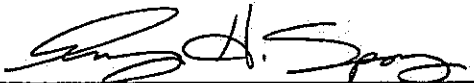
**SIGNATORY:
U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT**

By: 
Samuel L. Calkins
Colonel, Corps of Engineers
District Commander

Date: 26 April 2019

**PROGRAMMATIC AGREEMENT
BETWEEN
THE U.S. ARMY CORPS OF ENGINEERS, ST. PAUL DISTRICT
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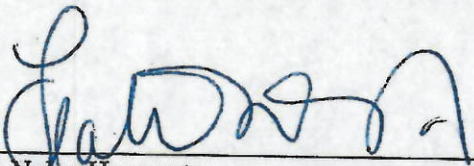
**SIGNATORY:
MINNESOTA STATE HISTORIC PRESERVATION OFFICE**

By: 
Amy H. Spong
Deputy State Historic Preservation Officer

Date: 4/26/19

**PROGRAMMATIC AGREEMENT
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CROSS LAKE RECREATION AREA
CROW WING COUNTY, MINNESOTA**

**INVITED SIGNATORY:
NATIONAL LOON CENTER FOUNDATION**

By:  Date: 4 29 19
Leah Nolan Heggerston
Executive Director of National Loon Center &
Vice President of Board of Directors National Loon Center Foundation

ATTACHMENT A: AREA OF POTENTIAL EFFECTS



- The APE for architecture/historic properties includes construction limits for the National Loon Center building, the boat dock system, and the immediately adjacent properties that are not visually screened from the Project. The APE for archaeology includes the limits of the proposed construction for the
- National Loon Center building and dock system.