

Authorization ID: #AUTH_ID#
Contact ID: #HOLDER_ID#
Expiration Date: #EXPIRATION_DATE#
Use Code: #USE_CODE#

FS-2700-31 (12/06)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
FOREST SERVICE**

ELECTRIC TRANSMISSION LINE EASEMENT

**AUTHORITY:
Section 501(a)(4) of the Federal Land Policy and Management Act,
43 U.S.C. 1761(a)(4)**

<Delete all user notes before printing.>

This electric transmission line easement for the [capacity and name of transmission line] (hereinafter "easement"), dated _____, is granted by the United States, acting through the United States Department of Agriculture, Forest Service (hereinafter "grantor"), to [name], [a corporation or other entity] of the State of _____ (hereinafter "grantee").

The grantor, in consideration of an annual land use fee paid by the grantee, grants to the grantee, subject to existing easements and other valid outstanding rights, a non-exclusive easement for an electric transmission line, consisting of towers, poles, or other structures (including all necessary foundations, footings, cross-arms, and other fixtures), cables, and underground and overhead wires, for the transmission of electric energy and communications in conjunction with the authorized operations (hereinafter "transmission facilities").

This easement is located across National Forest System lands in the County(ies) of _____, State of _____. This easement encompasses approximately ____ acres and is ____ feet wide and ____ feet long. This easement covers #USE_ACRES# acres or #USE_MILES# miles in the #TOWNSHIP_SECT_RANGE# #FIRST_DIVISION# #FIRST_DIV_NAME_NUMBER#, #SECOND_DIVISION# SECOND_DIV_NAME_NUMBER#, #THIRD_DIVISION# #THIRD_DIV_NAME_NUMBER# (hereinafter "the easement area"), as shown on the map attached as Appendix A.

The grantor further grants to the grantee:

1. The right of ingress to and egress from the easement area along private roads and trails that are necessary to access the easement area (hereinafter "access roads and trails"), listed in Appendix C, and the right to construct, reconstruct, and maintain the access roads and trails, in accordance with the following provisions:
 - a. All plans for development, layout, construction, reconstruction, or alteration of access roads and trails, as well as revisions to those plans, must be prepared by a licensed engineer or other qualified professional acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the grantee to furnish as-built plans, maps, or surveys upon completion of the work.
 - b. The grantor does not have an obligation to maintain the access roads and trails.
 - c. The rights granted in this clause shall be subordinate to any easement on an access road or trail subsequently granted by the United States to a local public road authority for a public road.
2. The right to install, maintain, and use gates and fences in the easement area with the prior written approval of the authorized officer. All gates shall have reflective markings in accordance with Forest Service Engineering Manual EM 7100-15.

The following are attached to and incorporated into this easement:

- APPENDIX A: Maps, Surveys Plats, Site Plans, and Engineer Drawings of the Easement Area
- APPENDIX B: Operating Plan
- APPENDIX C: Listing of Access Roads and Trails
- APPENDIX D: Listing of Ancillary Structures Other Than Roads, Towers, Poles, and Lines

This easement is granted subject to the following terms and conditions.

I. GENERAL TERMS

A. AUTHORITY. This easement is issued pursuant to Section 501(a)(4) of the Federal Land Policy and Management Act, 43 U.S.C. 1761(a)(4), and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the _____ or a subordinate official with delegated authority.

<USER NOTES FOR CLAUSE I.C.>

<Include the following clause I.C for grantees operating under a FERC license. Delete the remaining clause I.C.>

C. TERM. This easement shall expire at midnight on _____ [insert date grantee's FERC license expires], the date the grantee's license from the Federal Energy Regulatory Commission expires.

<Include the following clause I.C for grantees that are not operating under a FERC license. Delete the remaining clause I.C.>

C. TERM. This easement shall expire at midnight on [insert date easement expires], [number of years] from the date it is granted.

D. RENEWAL. This easement does not provide for renewal. At least two years before expiration of this easement, the grantee may apply for a new easement that would renew the use and occupancy authorized by this easement. Renewal of the use and occupancy authorized by this easement is at the sole discretion of the authorized officer. At a minimum, before renewing the use and occupancy authorized by this easement, the authorized officer shall require that (1) the use and occupancy to be authorized by the new easement is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new easement is the same as the type of use and occupancy authorized by this easement; and (3) the grantee is in compliance with all the terms and conditions of this easement. The authorized officer may prescribe new terms and conditions when a new easement is granted.

E. AMENDMENT. The terms and conditions of this easement shall be amended as necessary every [number] years from the date of issuance to reflect changing laws, regulations, directives, and conditions. This easement also may be amended at any time by written agreement of the grantor and the grantee.

F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS. In exercising the rights and privileges granted by this easement, the grantee shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the easement area, to the extent they do not conflict with federal law, regulation, or policy. The grantor assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. RESERVATIONS. All rights not specifically granted to the grantee are reserved to the grantor, including:

1. The right of access to the easement area, including a continuing right of physical entry to the easement area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation.

2. The right to use, administer, and dispose of all natural resources and improvements other than the transmission facilities, including the right to use roads and trails and authorize rights-of-way and other uses in the easement area in any way that is not inconsistent with the grantee's rights and privileges under this easement, after consultation with all parties involved. Except for any restrictions that the grantee and the grantor agree are necessary to protect the installation and operation of the transmission facilities, the easement area shall remain open to the public for all lawful purposes.

H. ASSIGNMENT. This easement is fully assignable, subject to the following conditions:

1. The grantee shall be in compliance with all the terms and conditions of this easement.
2. Assignments shall have prior written approval of the authorized officer.
3. The authorized officer may modify the terms and conditions of this easement and the assignee shall agree in writing to comply with the terms and conditions of the easement as modified.
4. Upon change in ownership of the transmission facilities or change in control of the business entity that holds this easement, this easement may be assigned to the new owner or to the party acquiring control, provided that the conditions in clause I.H.1 through I.H.3 are met.
 - a. In the case of a corporation, control is an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.
 - b. In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity.
 - c. In other circumstances, control is any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

II. IMPROVEMENTS

A. LIMITATIONS ON USE. Nothing in this easement gives or implies permission to build or maintain any structure or facility or to conduct any activity unless specifically provided for in this easement. Any use not specifically authorized by this easement must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new easement or easement amendment is at the sole discretion of the authorized officer.

B. PLANS. All plans for development, layout, construction, reconstruction, or alteration of improvements in the easement area, as well as revisions to those plans, must be prepared by a licensed engineer, architect, landscape architect, or other qualified professional acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the grantee to furnish as-built plans, maps, or surveys upon completion of the work.

C. RELOCATION. This easement is granted with the express understanding that should future location of federally owned improvements or road rights-of-way require relocation of the authorized improvements, the relocation will be conducted by and at the expense of the grantee within a reasonable period specified by the authorized officer.

III. OPERATIONS

A. OPERATING PLAN. The grantee shall prepare an operating plan in consultation with the authorized officer or the authorized officer's designated representative. The operating plan shall cover all operations authorized by this easement. The operating plan shall outline steps the grantee will take to protect public health and safety and the environment and shall include sufficient detail and standards to enable the Forest Service to monitor the grantee's operations for compliance with the terms and conditions of this easement. At a minimum, the operating plan shall address access to and operation and maintenance of the transmission facilities, including dates or season of operations, a vegetation management plan, and restrictions on use, such as fire restrictions,

established by the grantor. The operating plan shall be submitted by the grantee and approved by the authorized officer or the authorized officer's designated representative prior to commencement of operations and shall be attached to this easement as Appendix B. The operating plan shall be reviewed and updated as necessary by the grantee and reapproved by the authorized officer at least every 5 years.

B. USE OF NATIONAL FOREST SYSTEM ROADS AND TRAILS. The grantee's use of National Forest System roads and National Forest System trails shall comply with applicable requirements in 36 CFR Part 212, Subpart A; 36 CFR Part 261, Subpart A; and orders issued under 36 CFR Part 261, Subpart B. Motor vehicle use shall be consistent with designations made under 36 CFR Part 212, Subpart B, unless specifically provided otherwise in the operating plan.

C. LEASING. The grantee may lease transmission facilities that are owned by the grantee with the prior written approval of the authorized officer. The Forest Service reserves the right to disapprove these leases. The grantee shall remain responsible for compliance of the leased transmission facilities with all the terms and conditions of this easement.

D. CONDITION OF OPERATIONS. The grantee shall maintain the transmission facilities and easement area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this easement. Standards are subject to periodic change by the authorized officer. The grantee shall comply with inspection requirements deemed appropriate by the authorized officer.

E. INSPECTION BY THE FOREST SERVICE. The grantor shall monitor the grantee's operations and reserves the right to inspect the easement area and transmission facilities at any time for compliance with the terms of this easement. The grantee's obligations under this easement are not contingent upon any duty of the grantor to inspect the easement area or transmission facilities. A failure by the grantor or other governmental officials to inspect is not a defense to noncompliance with any of the terms and conditions of this easement.

F. REMOVAL AND PLANTING OF VEGETATION

1. Non-Emergency Removal. Except as provided in emergencies pursuant to clause III.F.2, trees, shrubs, grasses, and other plants may be removed, destroyed, or trimmed only in accordance with the vegetation management plan in Appendix B and only after the authorized officer or the authorized officer's designated representative has marked or otherwise identified what may be removed, destroyed, or trimmed. Timber cut or destroyed shall be paid for at current stumpage rates for similar timber in the _____ National Forest. The grantor reserves the right to dispose of the merchantable timber to those other than the grantee at no stumpage cost to the grantee. Unmerchantable material shall be disposed of as directed by the authorized officer. Planting of trees, shrubs, and other plants in the easement area must have prior written approval from the authorized officer.

2. Emergency Removal. When power lines have been compromised by trees, shrubs, grasses, and other plants and there has been loss of power due to a fire or a fire-related loss of power is imminent, the grantee may remove, destroy, or trim trees, shrubs, grasses, and other plants in accordance with the vegetation management plan in Appendix B without the trees, shrubs, grasses, and other plants being marked or otherwise identified by the authorized officer or the authorized officer's designated representative.

IV. RIGHTS AND LIABILITIES

A. VALID OUTSTANDING RIGHTS. This easement is subject to all valid outstanding rights. Valid outstanding rights include those derived from mining and mineral leasing laws of the United States. The grantor is not liable to the grantee for the exercise of any such right.

B. ABSENCE OF THIRD-PARTY BENEFICIARY RIGHTS. The parties to this easement do not intend to confer any rights on any third party as a beneficiary under this easement.

C. SERVICES NOT PROVIDED. This easement is for the occupancy of land for the purposes stated in this easement and does not provide for the furnishing of road maintenance, water, fire protection, or any other such service by a government agency, association, or individual.

D. RISK OF LOSS. The grantee assumes all risk of loss to the transmission facilities. Loss to the transmission

facilities may result from but is not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and acts of God. If the transmission facilities are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the transmission facilities can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the easement shall terminate.

E. DAMAGE TO UNITED STATES PROPERTY. The grantee has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs, damage to government-owned improvements covered by this easement, and all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the grantee or the grantee's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this easement. For purposes of clause IV.E and section V, "hazardous material" shall mean any hazardous substance, pollutant, contaminant, hazardous waste, oil, and/or petroleum product, as those terms are defined under any federal, state, or local laws or regulations.

1. The grantee shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the grantee's use and occupancy of the easement area. If the environment or any government property covered by this easement becomes damaged during the grantee's use and occupancy of the easement area, the grantee shall immediately repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.
2. The grantee shall be liable for all injury, loss, or damage, including fire suppression or other costs associated with rehabilitation or restoration of natural resources, associated with the grantee's use and occupancy of the permit area. Compensation shall include but is not limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all associated administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.J.
3. The grantee shall be liable for damage caused by use of the grantee or the grantee's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.E.1, except that liability shall not include reasonable and ordinary wear and tear.

F. HEALTH, SAFETY, AND ENVIRONMENTAL PROTECTION. The grantee shall take all measures necessary to protect the environment, natural resources, and the health and safety of all persons affected by the use and occupancy authorized by this easement. The grantee shall promptly abate as completely as possible and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring before, during, or after the term of this easement, and arising out of or relating to any activity, event, or condition existing or occurring during the term of this easement, that causes or threatens to cause a hazard to workers' safety or to public health or safety or harm to the environment (including but not limited to areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources). The grantee shall immediately notify the authorized officer of all serious accidents that occur in connection with such activities. The responsibility to protect the health and safety of all persons affected by the use and occupancy authorized by this easement is solely that of the grantee. The grantor has no duty under the terms of this easement to inspect the easement area or operations and activities of the grantee for hazardous conditions or compliance with health and safety standards.

G. INDEMNIFICATION OF THE UNITED STATES. The grantee shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the grantee in connection with the use and occupancy authorized by this easement. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the grantee or the grantee's heirs, assigns, agents, employees, contractors, or lessees in connection with the use and occupancy authorized by this easement which result in (1) violations of any laws and regulations which are now or which may in the future become applicable, and including but not limited to those environmental laws listed in clause V.A of this easement; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the grantee to replace, repair, restore, or

otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

<USER NOTES FOR CLAUSE IV.H>

<The amount of strict liability in tort must be determined by a risk assessment and may not exceed \$1 million. Insurance may be appropriate to cover strict liability in tort, as well as liability based on negligence.>

H. STRICT LIABILITY. The grantee shall be strictly liable (liable without proof of negligence) to the United States for \$[amount up to \$1 million] per occurrence for any injury, loss, or damage arising in tort under this easement. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.

<USER NOTES FOR CLAUSE IV.I>

<If the grantee is a state or a political subdivision of a state that has shown that state law limits its liability or obligation to indemnify, follow the direction in FSH 2709.11, Chapter 50.>

I. INSURANCE. The grantee shall furnish proof of insurance, such as a certificate of insurance, to the authorized officer prior to issuance of this easement and each year thereafter that this easement is in effect. The grantor reserves the right to review and approve the insurance policy prior to issuance. The grantee shall send an authenticated copy of any insurance policy obtained pursuant to this clause to the authorized officer immediately upon issuance of the policy. Any insurance policies obtained by the grantee pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause. Such policies also shall specify that the insurance company shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the policies. The certificate of insurance, the authenticated copy of the insurance policy, and written notice of cancellation or modification of insurance policies should be sent to [mailing address of administering office]. Minimum amounts of coverage and other insurance requirements are subject to change at the sole discretion of the authorized officer on the anniversary date of this easement.

<Select the following clause IV.I.1 for insurance policies with separate limits of coverage for personal injury or death and third-party property damage.>

1. The grantee shall have in force liability insurance covering losses associated with the use and occupancy authorized by this easement arising from personal injury or death and third-party property damage in the minimum amount of:

\$[amount] for injury or death to one person per occurrence;

\$[amount] for injury or death to more than one person per occurrence; and

\$[amount] for third-party property damage per occurrence.

<Select the following clause IV.I.1 for insurance policies with combined single limits of coverage for personal injury or death and third-party property damage.>

1. The grantee shall have in force liability insurance covering losses associated with the use and occupancy authorized by this easement arising from personal injury or death and third-party property damage in the minimum amount of \$[amount] as a combined single limit per occurrence.

2. Depending on the grantee's operations, the Forest Service may require the grantee to demonstrate the availability of funds to address any release or threatened release of hazardous materials that may occur in connection with the grantee's use and occupancy. Any requirements imposed would be established case by case by the authorized officer based on the degree of environmental risk from the grantee's operations. The use and storage of normal maintenance supplies in nominal amounts generally would not trigger financial assurance requirements.

J. BONDING. The authorized officer may require the grantee to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this easement or any applicable law, regulation, or order.

<USER NOTES FOR CLAUSES IV.J.1, IV.J.2, and IV.J.3>

<Delete clauses IV.J.1, IV.J.2, and IV.J.3 when a bond is not required.>

1. As a further guarantee of compliance with the terms and conditions of this easement, the grantee shall deliver and maintain a surety bond or other acceptable security, such as cash deposited and maintained in a federal depository or negotiable securities of the United States, in the amount of bond amount for specify obligations covered. The authorized officer may periodically evaluate the adequacy of the bond or other security and increase or decrease the amount as appropriate. If the bond or other security becomes unsatisfactory to the authorized officer, the grantee shall within 30 days of demand furnish a new bond or other security issued by a surety that is solvent and satisfactory to the authorized officer. If the grantee fails to meet any of the requirements secured under this clause, money deposited pursuant to this clause shall be retained by the United States to the extent necessary to satisfy the obligations secured under this clause, without prejudice to any other rights and remedies of the United States.

2. The bond shall be released or other security returned 30 days after (a) the authorized officer certifies that the obligations covered by the bond or other security are met and (b) the grantee establishes to the satisfaction of the authorized officer that all claims for labor and material for the secured obligations have been paid or released.

3. Prior to undertaking additional construction or alteration not covered by the bond or other security, or when the transmission facilities are to be removed and the easement area restored, the grantee may be required to obtain additional bonding or security.

V. RESOURCE PROTECTION

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The grantee shall in connection with the use and occupancy authorized by this easement comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*, the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 *et seq.*, the Oil Pollution Act, as amended, 33 U.S.C. 2701 *et seq.*, the Clean Air Act, as amended, 42 U.S.C. 7401 *et seq.*, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 *et seq.*, the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 *et seq.*, and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f *et seq.*

B. WATER POLLUTION. No waste or by-product shall be discharged into water if it contains any substance in concentrations which will result in harm to fish and wildlife, or to human water supplies. Storage facilities for materials capable of causing water pollution, if accidentally discharged, shall be located so as to prevent any spillage into waters or channels leading into water that would result in harm to fish and wildlife or to human water supplies.

C. ESTHETICS. The grantee shall protect the scenic esthetic values of the easement area and the adjacent land to the greatest extent possible during construction, operation, and maintenance of the transmission facilities.

D. VANDALISM. The grantee shall take reasonable measures to prevent and discourage vandalism or disorderly conduct and when necessary shall contact the appropriate law enforcement officer to address these problems.

E. PESTICIDE USE. Pesticides may not be used outside of buildings to control undesirable woody and herbaceous vegetation (including aquatic plants), insects, rodents, or fish without the prior written approval of the authorized officer. A request for approval of planned uses of pesticides shall be submitted annually by the grantee on the due date established by the authorized officer. The report shall cover a 12-month period of planned use beginning 3 months after the reporting date. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only

when unexpected outbreaks of pests require control measures which were not anticipated at the time an annual report was submitted. Only those materials registered by the U.S. Environmental Protection Agency for the specific purpose planned shall be authorized for use on National Forest System lands. Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers.

F. ARCHAEOLOGICAL AND PALEONTOLOGICAL DISCOVERIES. The grantee shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this easement. The grantee shall leave these discoveries intact and in place until directed otherwise by the authorized officer. Protective and mitigative measures specified by the authorized officer shall be the responsibility of the grantee.

G. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION. If the grantee inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on federal or tribal lands, the grantee shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The grantee shall immediately notify the forest archaeologist by telephone of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the forest archaeologist certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, except that a recovery plan adopted as a binding agreement between the grantor and the affected Indian tribes may provide for earlier resumption of the activity.

H. PROTECTION OF HABITAT OF THREATENED, ENDANGERED, AND SENSITIVE SPECIES. The location of sites within the easement area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 531 *et seq.*, as amended, or as sensitive by the Regional Forester under Forest Service Manual (FSM) 2670, pursuant to consultation conducted under section 7 of the ESA, may be identified on the ground or shown on a separate map. The map shall be attached to this easement as an appendix. The grantee shall take any protective and mitigative measures specified by the authorized officer. If protective and mitigative measures prove inadequate, if other sites within the easement area containing threatened, endangered, or sensitive species are discovered, or if new species are listed as threatened or endangered under the ESA or as sensitive by the Regional Forester under the FSM, the authorized officer may specify additional protective and mitigative measures. Discovery of these areas by the grantee or the grantor shall be promptly reported to the other party.

I. CONSENT TO STORE HAZARDOUS MATERIALS. The grantee shall not store any hazardous materials in the easement area without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this easement shall include, or in the case of approval provided after this easement is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the grantee and are subject to approval by the authorized officer.

<USER NOTES FOR CLAUSES V.I.1 AND V.I.2>

<Add clauses V.I.1 and V.I.2 when consenting to store hazardous materials. Otherwise, omit them.>

1. If the grantee receives consent to store hazardous material, the grantee shall identify to the authorized officer any hazardous material to be stored in the easement area. Such identification information shall be consistent with column (1) of the table of hazardous materials and special provisions enumerated at 49 CFR 172.101 whenever the hazardous material appears in that table. For hazard communication purposes, the grantee shall maintain Material Safety Data Sheets for any stored hazardous chemicals, consistent with 29 CFR 1910.1200(c) and (g). In addition, all hazardous materials stored by the grantee shall be used, labeled, stored, transported, and disposed of in accordance with all applicable federal, state, and local laws and regulations.

2. The grantee shall not release any hazardous material as defined in clause IV.E onto land or into rivers, streams, impoundments, or natural or man-made channels leading to them. All prudent and safe attempts must be made to contain any release of these materials. The authorized officer may specify conditions that

must be met, including conditions more stringent than federal, state, and local regulations, to prevent releases and protect natural resources

J. CLEANUP AND REMEDIATION

1. The grantee shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer, of any oil discharge or of the release of a hazardous substance in the easement area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The grantee shall immediately notify the authorized officer upon knowledge of any release or threatened release of any hazardous material at or in the vicinity of the easement area which may be harmful to public health or welfare or which may adversely affect natural resources under the management of the United States.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the grantee shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the easement area or in connection with the grantee's activities, whether or not those activities are authorized under this easement. The grantee shall perform cleanup or remediation immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The grantee shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this easement, the grantee shall deliver the easement area to the grantor free and clear of contamination.

K. CERTIFICATION UPON REVOCATION OR TERMINATION. If the grantee uses or stores hazardous materials in the easement area, upon revocation or termination of this easement the grantee shall provide the authorized officer with a report certified by a professional or professionals acceptable to the authorized officer that the easement area is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the easement area, into surface water at or near the easement area, or into groundwater below the easement area during the term of the easement. If a release or discharge has occurred, the professional or professionals shall document and certify that the release or discharge has been fully remediated and that the easement area is in compliance with all federal, state, and local laws and regulations.

VI. LAND USE FEE AND DEBT COLLECTION

Calculate the land use fees using the linear right-of-way fee schedule in FSH 2709.11, section 36.41, Exhibits 01 and 02.>

A. LAND USE FEE. The grantee shall pay an initial annual land use fee of \$ for the period from to , and thereafter on , shall pay an annual land use fee of \$. The land use fee shall be adjusted annually by the percentage of change in the Implicit Price Deflator-Gross Domestic Product (IPD-GDP) from the second quarter of the previous year to the second quarter of the current year.

B. MODIFICATION OF THE LAND USE FEE. The land use fee may be revised whenever necessary to reflect the market value of the authorized use or when the fee system used to calculate the land use fee is modified or replaced.

C. FEE PAYMENT ISSUES

1. Crediting of Payments. Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. Disputed Fees. Fees are due and payable by the due date. Disputed fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

3. Late Payments

(a) Interest. Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any fee amount not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the *Federal Register* and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the fee amount is due.

(b) Administrative Costs. If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

(c) Penalties. A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the permit shall be subject to all rights and remedies afforded the United States pursuant to 31 U.S.C. 3711 *et seq.* and common law. Delinquencies are subject to any or all of the following:

(a) Administrative offset of payments due the grantee from the grantor.

(b) If in excess of 60 days, referral to the Department of the Treasury for appropriate collection action as provided by 31 U.S.C. 3711(g)(1).

(c) Offset by the Secretary of the Treasury of any amount due the grantee, as provided by 31 U.S.C. 3720 *et seq.*

(d) Disclosure to consumer or commercial credit reporting agencies.

D. NONPAYMENT. Failure of the grantee to make timely payments, pay interest charges, or any other charges when due shall be grounds for revocation of this easement.

VII. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION. The authorized officer may revoke or suspend this easement in whole or in part:

1. For noncompliance with applicable federal, state, or local laws and regulations.

2. For noncompliance with the terms of this easement.

3. For abandonment of the easement. Failure of the grantee to use the easement area for a continuous 5-year period shall constitute a rebuttable presumption of abandonment of the easement, except that where the failure to use the easement area for a continuous 5-year period is due to circumstances that were not within the grantee's control, this easement shall terminate pursuant to clause VII.D.2.

Prior to revocation or suspension under clause VII.A, other than immediate suspension under clause VII.B, the authorized officer shall give the grantee written notice of the grounds for revocation or suspension and a reasonable period, not to exceed 90 days, to cure any noncompliance.

B. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this easement in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The grantee may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

C. APPEALS AND REMEDIES. Written decisions by the authorized officer relating to administration of this easement, other than revocation or suspension decisions, are subject to administrative appeal pursuant to 36 CFR Part 251, Subpart C, as amended. Revocation and suspension of this easement are subject to

administrative appeal pursuant to 7 CFR Part 1, Subpart H, as amended. Revocation or suspension of this easement shall not give rise to any claim for damages by the grantee against the grantor.

D. TERMINATION. This easement shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. For example, this easement terminates upon expiration. Termination of this easement shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this easement is not subject to administrative appeal and shall not give rise to any claim for damages by the grantee against the grantor.

1. Termination upon Agreement of the Grantor and the Grantee. This easement shall terminate upon the written agreement of the grantor and the grantee.

2. Termination upon Abandonment for Reasons not within the Grantee's Control. This easement shall terminate if the grantee fails to use the easement area for a continuous 5-year period and the failure is due to circumstances that are not within the grantee's control.

E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT RENEWAL. Upon revocation of this easement or termination of this easement without renewal of the authorized use, the authorized officer has the discretion to require the grantee to sell or remove all structures and improvements in the easement area, except those owned by the United States, within a reasonable period prescribed by the authorized officer and to restore the easement area to the satisfaction of the authorized officer. If the grantee fails to sell or remove all structures or improvements in the easement area within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the grantee shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the easement area.

F. CONTINUATION OF OBLIGATIONS AND LIABILITIES BEYOND TERMINATION OR REVOCATION. Notwithstanding the termination or revocation of this easement, its terms and conditions shall remain in effect and shall be binding on the grantee and the grantee's personal representative, successors, and assignees until all the grantee's obligations and liabilities accruing before or as a result of termination or revocation of this easement have been satisfied.

VIII. MISCELLANEOUS PROVISIONS

A. MEMBERS OF CONGRESS. No member of or delegate to Congress or resident commissioner shall benefit from this easement either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

B. CURRENT ADDRESSES. The grantor and the grantee shall keep each other informed of current mailing addresses, including those necessary for payment of land use fees.

<USER NOTES FOR CLAUSE VIII.C>

<Include the following clause VIII.C for easements that are superseding an authorization. Delete the remaining clause VIII.C.>

C. SUPERSEDED AUTHORIZATION. This easement supersedes an authorization designated [name or authorization ID], dated _____.

<Include the following clause VIII.C when the transmission facilities have been severed from a FERC license. Delete the remaining clause VIII.C.>

C. SEVERENCE FROM A FEDERAL ENERGY REGULATORY COMMISSION LICENSE. Per a decision issued by the Federal Energy Regulatory Commission, the transmission facilities have been severed from Federal Energy Regulatory Commission license [license number], dated _____.

D. SUPERIOR CLAUSES. If there is any conflict between any of the preceding printed clauses and any of the following clauses, the preceding printed clauses shall control.

<If necessary, add clauses to address site-specific circumstances.>

THIS EASEMENT IS GRANTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.

BEFORE ANY EASEMENT IS GRANTED TO AN ENTITY, DOCUMENTATION MUST BE PROVIDED TO THE AUTHORIZED OFFICER OF THE AUTHORITY OF THE SIGNATORY FOR THE ENTITY TO BIND IT TO THE TERMS AND CONDITIONS OF THE EASEMENT.

On **[date]**, I, the grantee, have read, understood, and accepted the terms and conditions of the easement.

| | | |
|--|-----------|------|
| GRANTEE NAME, PRECEDED BY NAME AND TITLE OF PERSON SIGNING ON BEHALF OF GRANTEE, IF GRANTEE IS AN ENTITY | SIGNATURE | DATE |
| STATE OF <u> </u> <u> </u> COUNTY | | |

On **[date]**, the United States, through the United States Department of Agriculture, Forest Service, has executed the easement pursuant to delegations of authority in 7 CFR 2.60(a)(2), 36 CFR 251.52, and FSM.2733.04a and 2733.04b, paragraph 1.

UNITED STATES

| | | |
|--|-----------|------|
| NAME AND TITLE OF AUTHORIZED OFFICER | SIGNATURE | DATE |
| STATE OF <u> </u> <u> </u> COUNTY | | |

On **[date]**, before me, a notary public in the State of , personally appeared **[name of grantor]**, known to me to be the person who signed the easement as the grantor.

Notary Public for the State of
My commission expires

<Attach operating plan, maps, and other appendices.>

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082. The time required to complete this information collection is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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