

Authorization ID: #AUTH_ID#
Contact ID: #GRANTEE_ID#
Use Code: #USE_CODE#

FS-2700-9h (09/2020)
OMB No. 0596-0082

**U.S. DEPARTMENT OF AGRICULTURE
Forest Service**

PRIVATE ROAD EASEMENT

**AUTHORITY:
National Forest Roads and Trails Act, 16 U.S.C. 532-538**

<Delete all user notes prior to printing.>

<Use this form to issue a permanent easement for a private road when the grantee qualifies for an easement for a private road under the National Forest Roads and Trails Act per FSH 2709.12, Chapter 30.>

This private road easement (hereinafter "easement"), dated _____, is granted by the United States, acting through the United States Department of Agriculture, Forest Service (hereinafter "grantor"), to [name], of the State of _____ (hereinafter "grantee").

The grantor hereby grants to the grantee and its successors and assignees, subject to existing easements and other valid existing rights, a non-exclusive, permanent easement for use of a private road that accesses private property owned or controlled by the grantee (hereinafter "private road"). The grantee shall record this easement within 90 days of the date it is granted and shall provide a copy of the recorded easement to the authorized officer.

<USER NOTES FOR CONSIDERATION>

<Select the phrase, "a reciprocal road easement of substantially similar value," or the phrase, "a lump-sum payment of \$ _____," with the applicable amount filled in, as applicable. Delete the inapplicable phrase.>

In consideration of this permanent easement, the grantor has granted to the grantee [a reciprocal permanent road easement of substantially similar value/a lump-sum payment of \$ _____].

This easement is located on National Forest System lands in the County of State of . This easement is _____ feet wide and _____ feet long and covers approximately _____ acres in the #TOWNSHIP_SECT_RANGE# #FIRST_DIVISION# #FIRST_DIV_NAME_NUMBER#, #SECOND_DIVISION# #SECOND_DIV_NAME_NUMBER#, #THIRD_DIVISION# #THIRD_DIV_NAME_NUMBER# ("the easement area"), as shown on the map attached as Appendix A to this easement. This and any other appendices are hereby incorporated into this easement.

<USER NOTES FOR CENTERLINE DESCRIPTION>

<Include the following sentence if a centerline description is needed. Otherwise, delete it.>

The private road is more specifically delineated in a centerline description, which is attached as Appendix B to this easement.

This easement covers _____ feet on either side of the centerline of the private road, with additional width as required to accommodate and protect cuts and fills.

I. GENERAL TERMS

A. AUTHORITY. This easement is issued pursuant to the National Forest Roads and Trails Act, 16 U.S.C. 532-538, and 36 CFR Part 212, Subpart A, and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the Regional Forester or Forest or Grassland Supervisor with delegated authority pursuant to Forest Service Manual 2700.

C. AMENDMENT. This easement may be amended at any time by written agreement of the grantor and the grantee.

D. 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.

E. RESERVATIONS. All rights not specifically and exclusively 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 administer and dispose of all natural resources, including timber, in the easement area, subject to the grantee's right to cut vegetation under clause III.D.
3. The right to use or cross upon, over, or under the private road or allow others to use or cross upon, over, or under the private road in any way that is not inconsistent with the grantee's rights and privileges under this easement, after consultation with the grantee, provided that:
 - (a) When the grantor uses the private road for commercial hauling, other than removal of timber cut during construction or maintenance of the private road or other occasional incidental use, the grantor shall pay or perform its pro-rata share of maintenance and construction costs of the private road;
 - (b) The grantor shall require users to pay the grantee or perform their pro-rata share of the current replacement cost of the private road, less depreciation, to reconstruct the private road as necessary to accommodate their use and perform road maintenance commensurate with their use.

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

1. The assignee must have title to the non-National Forest System lands or improvements served by the private road.
2. The grantee must be in compliance with all the terms of this easement.
3. The grantee shall give the authorized officer written notice of the assignment, including documentation of the assignment and the name of and contact information for the assignee.
4. The authorized officer may modify the terms of this easement, and the assignee shall agree in writing to comply with the terms of the easement as modified.

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 and 251.61. Approval of such a proposed use through issuance of a new easement or easement amendment is at the sole discretion of the authorized officer.

B. DRAWINGS. All drawings for construction or reconstruction of the private road, as well as revisions to those drawings, must be prepared by a professional engineer, architect, landscape architect, or other qualified professional acceptable to the authorized officer. These drawings and drawing revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the grantee to furnish as-built drawings, 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 private road, 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. USE OF THE PRIVATE ROAD. The grantee shall have the right to use the private road without cost, other than the consideration provided for in this easement, for all purposes deemed necessary or desirable by the grantee in connection with the protection, administration, management, and utilization of the grantee's lands and other property.

B. TRAFFIC CONTROL RULES AND OTHER REQUIREMENTS FOR RESIDENTIAL ACCESS. The rights conveyed by this easement do not include the right to use the private road for access to developments for short- or long-term residential purposes, unless and until the grantor and the grantee agree upon traffic control rules and other provisions to accommodate that use of the private road.

C. RESOURCE PROTECTION DURING ROAD MAINTENANCE. The grantee shall conduct any maintenance of the private road so as to avoid damaging adjacent National Forest System lands. The grantee shall construct and maintain lead-off drainage and water barriers as necessary to prevent erosion.

D. CUTTING, DISPOSAL, AND PLANTING OF VEGETATION. This easement does not authorize the cutting of trees, brush, shrubs, and other plants ("vegetation"). Vegetation may be cut, destroyed, or trimmed only after the authorized officer or the authorized officer's designated representative has approved in writing and marked or otherwise identified what may be cut, destroyed, or trimmed. The grantee shall notify the authorized officer when approved cutting, destruction, or trimming of vegetation has been completed. The Forest Service shall determine in advance of felling the method of disposal of trees felled in the easement area that meet utilization standards. Disposal may be by sale or without charge per 36 CFR Part 223, as may be most advantageous to the United States. Debris from felling that does not meet utilization standards shall also be disposed of according to methods determined by the Forest Service. Planting of vegetation in the easement area must have prior written approval from the authorized officer.

E. PESTICIDE USE

1. **Authorized Officer Concurrence.** Pesticides may not be used in the easement area to control pests, including undesirable woody and herbaceous vegetation (including aquatic plants), insects, birds, rodents, or fish without prior written concurrence of the authorized officer. Only those products registered or otherwise authorized by the U.S. Environmental Protection Agency and appropriate State authority for the specific purpose planned shall be authorized for use within areas on National Forest System lands.

2. **Pesticide-Use Proposal.** Requests for concurrence of any planned uses of pesticides shall be provided in advance using the Pesticide-Use Proposal (form FS-2100-2). Annually the grantee shall, on the due date established by the authorized officer, submit requests for any new, or continued, pesticide usage. The Pesticide-Use Proposal shall cover a 12-month period of planned use. The Pesticide-Use Proposal shall be submitted at least 60 days in advance of pesticide application. 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 a Pesticide-Use Proposal was submitted.

3. **Safety Plan.** Before applying pesticides in the easement area, the grantee shall submit to the authorized officer a safety plan that includes, at a minimum, a precise statement of the treatment objectives; a description of equipment, materials, and supplies to be used, including pesticide formulation, quantities, and application methods; a description of the lines of responsibility for project planning, project monitoring, and after-action review; a description of any necessary interagency coordination; a copy of the current Pesticide-Use Proposal for the easement; a description of the process by which treatment effectiveness will be determined; and a spill plan, communications plan, security plan, and, when required by applicable local requirements, a provision for prior notification to sensitive individuals.

4. **Reporting.** By September 30th annually, the grantee shall submit to the authorized officer a written report of each pesticide application project completed during the previous 12-month period. The report shall contain information pertaining to the pesticide application projects as requested by the authorized officer.

5. **Labeling, Laws, and Regulations.** Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials, or containers shall be disposed of in any area administered by the Forest Service.

F. MONITORING BY THE FOREST SERVICE. The Forest Service shall monitor the grantee's operations and reserves the right to inspect the easement area and authorized facilities and improvements at any time for compliance with the terms of this easement. The grantee shall comply with inspection requirements deemed appropriate by the authorized officer. The grantee's obligations under this easement are not contingent upon any duty of the Forest Service to inspect the easement area or authorized facilities or improvements. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms of this easement.

IV. RIGHTS AND LIABILITIES

A. VALID EXISTING RIGHTS. This easement is subject to all valid existing rights. Valid existing 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. NO WARRANTY OF ACCESS, AREA SUITABILITY, OR SERVICES. This easement authorizes the use and occupancy of National Forest System lands for the purposes identified in this easement. The Forest Service does not make any express or implied warranty of access to the easement area, of the suitability of the easement area for the authorized uses, or for the furnishing of road or trail maintenance, other than as expressly provided for in this easement; water; fire protection services; search and rescue services; or any other services by a government agency, utility, association, or individual.

D. RISK OF LOSS. The grantee assumes all risk of loss to the easement area, in whole or in part, due to public health and safety or environmental hazards. Loss of use and occupancy of the easement area may result from but is not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), environmental contamination, avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If the authorized officer determines that any portions of the easement area cannot be safely occupied due to a public health or safety or environmental hazard, this easement shall terminate as to those portions of the easement area. Termination under this clause shall not give rise to any claim for damages, including lost profits, by the grantee against the Forest Service.

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 associated with the use and occupancy authorized by this easement. Damage includes but is not limited to destruction of or damage to National Forest System lands, fire suppression costs, and destruction of or damage to federally owned improvements.

1. The grantee shall be liable for all injury, loss, or damage, including fire suppression costs, prevention and control of the spread of invasive species, and the costs of rehabilitation or restoration of natural resources, resulting from the grantee's use and occupancy of the easement area. Compensation shall include but not be

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 administrative, legal (including attorney's fees), and other costs.

2. The grantee shall be liable for damage to all roads and trails of the United States caused by use of the grantee or the grantee's heirs, assignees, agents, employees, or contractors to the same extent as provided under clause IV.E.1, except that liability shall not include reasonable and ordinary wear and tear.

F. ENVIRONMENTAL PROTECTION

1. 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 Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, 42 U.S.C. 9601 *et seq.*, 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 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.*

2. Definition of Hazardous Material. For purposes of clause IV.F, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of CERCLA, 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

3. Oil Discharges and Release of Hazardous Materials. The grantee shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer or the authorized officer's designated representative, of any oil discharge or of the release of a hazardous material in the easement area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153 and 40 CFR Part 302. For the purposes of this requirement, "oil" is as 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 or the authorized officer's designated representative of any release or threatened release of any hazardous material in or near the easement area which may be harmful to public health or welfare or which may adversely affect natural resources on federal lands.

4. Remediation of Release of Hazardous Materials. The grantee shall remediate any release, threat of release, or discharge of hazardous materials that occurs in connection with the grantee's activities in the easement area, including activities conducted by the grantee's agents, employees, or contractors and regardless of whether those activities are authorized under this easement. The grantee shall perform remediation in accordance with applicable law immediately upon discovery of the release, threat of release, or discharge of hazardous materials. The grantee shall perform the 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 Forest Service in compliance with all applicable laws and regulations and free and clear of contamination.

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, assignees, agents, employees, or contractors 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; (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 hazardous material 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 combination with or as an alternative to monetary indemnification.

<USER NOTES FOR STATE ENTITIES>

<If the state has shown that state law limits its liability or obligation to indemnify, follow the direction in FSH 2709.11, Chapter 50, section 52.2, clause B-12.>

V. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION. The authorized officer may revoke all or part of this easement:

1. By condemnation; or
2. Based on a finding of abandonment of the easement after a continuous 5-year period of non-use, provided:
 - (a) The easement or segment of the easement is not being preserved for prospective future use;
 - (b) The authorized officer gives the grantee written notice of the revocation; and
 - (c) If the grantee administratively appeals the revocation within 60 days of receipt of the notice, the revocation is upheld on appeal.

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 onsite review with the authorized officer's superior of the adverse conditions prompting the suspension. The authorized officer's superior shall grant this request within 48 hours. Following the onsite review, the authorized officer's superior 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 214, as amended. Revocation of this easement for non-use is subject to administrative appeal pursuant to 7 CFR Part 1, Subpart H, as amended, provided the grantee files an appeal within 60 days of receipt of the notice of revocation. Immediate suspension under clause V.B is 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. 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. This easement shall terminate:

1. If the grantee does not record this easement in each county where the lands underlying this easement are located within 90 days of the date this easement is granted;
2. All or in part, upon the written agreement of the grantor and the grantee;
3. If a subsequent easement is granted by the United States to a public road agency for operation of the private road as a public highway; or
4. If the grantor assumes jurisdiction over the private road. The grantor shall issue a replacement easement to the grantee for the road using the appropriate standard Forest Service form. If the private road was constructed by the grantee under a special use authorization, the grantor shall pay its pro rata share of the current replacement cost of the road, less depreciation, to the grantee.

VI. 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.

C. 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.

THIS EASEMENT IS GRANTED SUBJECT TO ALL ITS TERMS.

BEFORE THIS 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 OF THIS EASEMENT.

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

[NAME AND TITLE OF PERSON SIGNING ON BEHALF OF GRANTEE, DATE
IF GRANTEE IS AN ENTITY]
#GRANTEE_NAME#

STATE OF [_____] COUNTY

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

Notary Public for the State of [_____] My commission expires [_____]

On [date], the United States, through the United States Department of Agriculture, Forest Service, has executed this easement pursuant to delegations of authority in 7 CFR 2.60(a)(2), 36 CFR 251.52, and FSM 2732.04c.

UNITED STATES OF AMERICA

#AUTHORIZED OFFICER NAME# DATE
#TITLE#

[_____] National Forest
USDA Forest Service

STATE OF [_____] COUNTY

On [date], before me, a notary public in the State of [____], personally appeared [name of Forest Service authorized officer], known to me to be the person who signed this easement as the grantor.

Notary Public for the State of [____]
My commission expires [_____]

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. Response to this collection of information is mandatory. The authority to collect the information is the Organic Administration Act, 16 U.S.C. 551. 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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To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at How to File a Program Discrimination Complaint and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: program.intake@usda.gov.

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