

Authorization ID: #AUTH\_ID#  
Contact ID: #GRANTEE\_ID#  
Expiration Date: #EXPIRATION\_DATE#  
Use Code: #USE\_CODE#

FS-2700-31 (09/2020)  
OMB No. 0596-0082

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

**POWERLINE FACILITY EASEMENT**

**AUTHORITY:  
Title V of the Federal Land Policy and Management Act  
43 U.S.C. 1761-1772**

**<Delete all user notes before printing.>**

**<Use this form to authorize one or more powerline facilities that have a capacity of 115 kV or more, that are not operated by a non-federal entity deemed eligible for financing by the Rural Utilities Service under the Rural Electrification Act, and for which the regional forester has determined that an easement is appropriate.>**

This powerline facility easement for the [capacity and name of powerline facility or facilities] (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 existing rights, a non-exclusive linear right-of-way for one or more powerline facilities. The linear right-of-way, access roads and trails, and any hazard trees outside the linear right-of-way for each powerline facility authorized by this easement shall be referred to collectively as "the easement area." A legal description and a map of the easement area and applicable minimum vegetation clearance distance (MVCD) for each powerline facility authorized by this easement are contained in Appendix B, and the access roads and trails for each powerline facility authorized by this easement are listed and identified on the map in Appendix C. The powerline facility or facilities authorized by this easement shall be referred to collectively as "the powerline facilities."

The grantor further grants to the grantee:

1. The right of ingress to and egress from the linear rights-of-way for the powerline facilities along 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 drawings for development, layout, construction, reconstruction, or alteration of access roads and trails, as well as revisions to those drawings, must be prepared by a professional engineer (PE) 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.

(b) The grantor does not have an obligation to maintain the access roads and trails.

(c) The rights granted in paragraph 1 shall be subordinate to any right to use an access road or trail subsequently granted by the United States to a local public road authority for a public road, provided that the grantee shall continue to have access to that right-of-way to operate and maintain the powerline facilities and to address concerns of public safety in connection with the powerline facilities.

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 appendices are attached to and incorporated into this easement:

APPENDIX A: Definitions

APPENDIX B: Maps and Legal Description; Surveys, Plats, Site Plans, and Engineering Drawings of the Easement Area; and MVCD for Each Powerline Facility

APPENDIX C: List and Location of Access Roads and Trails and National Forest System Roads and National Forest System Trails Used by the Grantee

APPENDIX D: Operating Plan or Agreement

APPENDIX E: List and Location of Ancillary Structures Other Than Roads, Towers, Poles, and Lines

APPENDIX F: Environmental Site Assessments

## **I. GENERAL TERMS**

**A. AUTHORITY.** This easement is issued pursuant to Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761-1772, and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions, including definitions for terms used in this easement such as “hazard tree,” “powerline facility,” and “vegetation management.”

**B. AUTHORIZED OFFICER.** The authorized officer is the Regional Forester, the Forest or Grassland Supervisor, a District Ranger, or the Station, Institute, or Area Director with delegated authority pursuant to Forest Service Manual 2700.

### **<USER NOTES FOR CLAUSE I.C>**

**<Include the following clause I.C for powerline facilities operated under a FERC license. The easement term should expire on the date the grantee’s FERC license expires. Delete the remaining clause I.C.>**

**C. TERM.** This easement shall expire at midnight on #EXPIRATION\_DATE#, the date the grantee’s license from the Federal Energy Regulatory Commission expires. Expiration of this easement shall not require notice, a decision document, or any environmental analysis or other documentation.

**<Include the following clause I.C for powerline facilities that are not operated under a FERC license. The term should be up to 50 years, depending on application of the criteria in 36 CFR 251.56(b)(1). Delete the remaining clause I.C.>**

**C. TERM.** This easement shall expire at midnight on #EXPIRATION\_DATE#. Expiration of this easement shall not require notice, a decision document, or any environmental analysis or other documentation.

**D. CONTINUATION OF USE AND OCCUPANCY.** The use and occupancy authorized by this easement shall be renewed upon expiration, provided that (1) the grantee desires to renew the use and occupancy; (2) the use and occupancy are consistent with the standards and guidelines in the applicable land management plan; (3) the powerline facilities are still being used for the purposes authorized by this easement; and (4) the grantee is in compliance with all the terms of this easement. The authorized officer may prescribe new terms when a new easement is granted.

**E. AMENDMENT.** The terms 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 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 and powerline facilities 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 in the easement area other than the powerline 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 public health and safety, property, and the installation and operation of the powerline 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 must be in compliance with all the terms of this easement.
2. Assignments must have prior written approval of the authorized officer.
3. The authorized officer may modify the terms of this easement and the assignee must agree in writing to comply with the terms of the easement as modified.
4. Upon change in ownership of the powerline 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. Any transfer of title to the powerline facilities without an approved assignment of this easement shall result in termination of this easement.
  - (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 or 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 development, layout, construction, reconstruction, or alteration of improvements in the easement area, as well as revisions to those drawings, must be prepared by a PE, 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 powerline facilities, the relocation will be conducted by and at the expense of the grantee within a reasonable period specified by the authorized officer.

## **III. OPERATIONS**

<USER NOTES FOR CLAUSE III.A>

**<Accept an operating agreement from the grantee only if the grantee meets at least one of the eligibility criteria in clause III.A.>**

## **A. OPERATING PLAN OR AGREEMENT**

1. Preparation. The grantee shall prepare an operating plan or agreement independently or in consultation with the authorized officer or the authorized officer's designated representative. To qualify for an operating agreement, the grantee must not be subject to the mandatory reliability standards established by the Electric Reliability Organization or must have sold less than or equal to 1,000,000 megawatt hours of electric energy for purposes other than resale during each of the 3 calendar years immediately preceding March 23, 2018. The operating plan or agreement shall be submitted by the grantee and shall be 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 D. At least every 10 years from the approval date of the operating plan or agreement in Appendix D, the grantee shall review and, as necessary or appropriate, propose updates to the operating plan or agreement to address changed conditions. Proposed updates to the operating plan or agreement that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the grantee for review and approval by the authorized officer. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the grantee and the authorized officer.

2. Contents. The operating plan or agreement shall cover all operations authorized by this easement. The operating plan or agreement 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 of this easement. The contents of the operating plan or agreement shall meet all the requirements enumerated in 36 CFR 251.56(h)(5) and Forest Service Handbook 2709.11, Chapter 80, section 84.

## **B. VEGETATION MANAGEMENT**

1. Vegetation Management Activities. The grantee shall describe vegetation management activities as part of the operating plan or agreement in Appendix D. The description of vegetation management activities shall specify best management practices for felling, pruning, and destruction of trees, brush, shrubs, and other plants (hereinafter "vegetation"); the applicable MVCD for the powerline facilities; and procedures for designating, marking, and removing or pruning hazard trees and other vegetation. The description of vegetation management activities shall also provide for prevention and control of invasive species, including invasive plants, within the easement area. For purposes of this clause, invasive plants include non-native species recognized as such by the Forest Service, which are generally, but are not limited to, state-listed noxious weeds. The grantee shall follow invasive species prevention and control measures prescribed by the operating plan or agreement in Appendix D. In addition, the description of vegetation management activities shall provide for integration of native, non-invasive, low-growing vegetation that does not interfere with the powerline facilities and that promotes powerline facility reliability, reduces powerline facility maintenance costs, and is compatible with the aesthetics and health of the native plant and animal life in the easement area.

2. Routine and Emergency Vegetation Management and Planting of Vegetation. Routine and emergency vegetation management and planting of vegetation, both inside the linear right-of-way for a powerline facility and outside the linear right-of-way for a powerline facility to fell or prune hazard trees, must be conducted in accordance with Appendix D and clauses III.B. For purposes of vegetation management per Appendix D and clause III.B, the MVCD for each powerline facility is enumerated in Appendix B, and vegetation management outside the linear right-of-way for a powerline facility shall be limited to felling and pruning of hazard trees.

(a) Routine Vegetation Management. Routine vegetation management, either inside the linear right-of-way for a powerline facility or outside the linear right-of-way for a powerline facility to fell or prune hazard trees, requires prior written approval from the authorized officer, unless:

(1) The grantee has submitted an email or letter to the authorized officer requesting approval of a single routine vegetation management project or an annual schedule of work for routine vegetation management in accordance with the specified timeframe in Appendix D;

(2) The proposed routine vegetation management is covered by approval of the operating plan or agreement in Appendix D or by subsequent case-by-case environmental analysis and consultation; and

(3) The authorized officer has not responded to the request in accordance with the specified timeframe in Appendix D.

In conducting routine vegetation management, regardless of whether prior written approval is required, the grantee shall mark or otherwise identify the vegetation to be felled or pruned.

(b) Emergency Vegetation Management. Emergency vegetation management, either inside the linear right-of-way for a powerline facility or outside the linear right-of-way for a powerline facility to fell or prune hazard trees, does not require prior written approval from the authorized officer or marking or other identification of the vegetation to be felled or pruned. The grantee shall notify the authorized officer by email of the location and type of emergency vegetation management as soon as practicable, but no later than 24 hours after completion. Within 30 days of completion, the grantee shall submit to the authorized officer a written report detailing at a minimum the location, type, and scope of the emergency vegetation management conducted, the reason it was conducted, the methods used to conduct it, and the resulting benefit.

3. Disposal of Felled Trees and Planting of Vegetation. The grantee shall notify the authorized officer when approved felling, pruning, or destruction 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.

**C. USE OF NATIONAL FOREST SYSTEM ROADS AND NATIONAL FOREST SYSTEM 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 or agreement. Over-snow vehicle use shall be consistent with designations made under 36 CFR Part 212, Subpart C, unless specifically provided otherwise in the operating plan or agreement.

**D. RESERVATION AND LEASING OF EXCESS CAPACITY**

1. Reservation of Excess Capacity. The grantee may reserve the powerline facilities for the grantee's expansion and may utilize the reserved powerline facilities during the term of this easement without additional approval from the authorized officer. Leasing of the powerline facilities by third parties is not authorized by this easement, except as provided in clause III.D.2.

2. Leasing of the Grantee's Fiber Optic Cable. Leasing of the grantee's fiber optic cable to any third party or parties must have prior written approval from the authorized officer. The Forest Service reserves the right to disapprove the grantee's requests to lease fiber optic cable. The grantee shall remain responsible for any third party's compliance with all the terms of this easement. The grantee shall include in a third-party lease provisions requiring the third party to obtain liability insurance for the third party's use of the grantee's fiber optic cable that includes the United States as an additional insured under the policy. The grantee shall pay in advance a single, additional annual land use fee for leasing fiber optic cable, regardless of the grantee's eligibility for a land use fee waiver or exemption and regardless of the number of third parties, in accordance with the linear right-of-way fee schedule in Forest Service Handbook 2709.11, Chapter 30. Determine the single, additional annual land use fee for leasing fiber optic cable using the length of the authorized linear right-of-way and a width of 10 feet. The authorized officer may request any information from the grantee deemed necessary for proper administration of the leased fiber optic cable.

3. Leases Involving Communications Uses and Other Third-Party Uses Involving the Powerline Facilities. Leases involving communications uses that are owned by third parties (such as antennas or other communications uses owned by third parties that are attached to a tower, pole, or other structure authorized by this easement) must have prior written approval from the authorized officer and must be authorized under a communications use authorization issued to the grantee. Other third-party uses involving the powerline facilities, such as conductors attached to the powerline facilities by a third party (an underbuild) or installation of fiber optic cable on the powerline facilities solely for use by third parties, must have prior written approval from the authorized officer and must be authorized under a separate special use authorization issued to the third party.

**E. CONDITION OF OPERATIONS**. The grantee shall maintain the powerline 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 when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest

resources.

**F. GROUND SURFACE PROTECTION AND RESTORATION.** The grantee shall prevent and control soil erosion and gully on National Forest System lands in and adjacent to the easement area resulting from construction, operation, maintenance, and termination of the powerline facilities. The grantee shall construct powerline facilities so as to avoid accumulation of excessive amounts of water in the easement area and encroachment on streams. The grantee shall revegetate or otherwise stabilize (e.g., by constructing a retaining wall) all ground where the soil has been exposed as a result of the grantee's construction, maintenance, operation, or termination of the powerline facilities.

**G. MONITORING BY THE FOREST SERVICE.** The grantor shall monitor the grantee's operations and reserves the right to inspect the easement area and powerline facilities 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 grantor to inspect the easement area or powerline facilities. A failure by the grantor 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, SITE SUITABILITY, OR SERVICES.** This easement authorizes the use and occupancy of National Forest System lands by the grantee 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, 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 powerline facilities and all risk of loss of use and occupancy of the easement area, in whole or in part, due to public health and safety or environmental hazards. Loss to the powerline facilities and 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 all or part of the powerline facilities are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the affected portions of the powerline facilities can be safely used in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the easement shall terminate as to those portions of the powerline facilities. If the authorized officer determines that all or part 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 and the value of the improvements, 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. 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 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.K.

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, assigns, agents, employees, contractors, or lessees 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 AND SAFETY.** The grantee shall take all measures necessary to protect 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 in connection with the authorized use and occupancy during the term of this easement that causes or threatens to cause a hazard to the health or safety of the public or the grantee's employees, agents, or contractors. The grantee shall as soon as practicable notify the authorized officer of all serious accidents that occur in connection with these procedures, activities, events, or conditions. The grantor has no duty under the terms of this easement to inspect the easement area or operations of the grantee for hazardous conditions or compliance with health and safety standards.

### **G. 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.*, 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.*

2. Definition of Hazardous Material. For purposes of clause IV.G and section V, "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. Environmental Site Assessment (SA). The grantee shall conduct an initial SA prior to use and occupancy of the easement area for any new authorized powerline facilities and a follow-up SA prior to termination or upon revocation of this easement. The initial and follow-up SAs shall be incorporated into this easement as Appendix F.

(a) Purposes. The purpose of the initial and follow-up SAs is to identify Recognized Environmental Conditions in the easement area, that is, the presence or likely presence of any hazardous substances or petroleum products in the easement area: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment. A comparison of the initial and follow-up SAs shall assist the authorized officer in determining whether any environmental cleanup or restoration is required as a result of the use and occupancy. Any cleanup or restoration shall be completed promptly by the grantee in accordance with all applicable federal, state, and local laws and regulations, to the satisfaction of the authorized officer and at no expense to the Forest Service.

(b) Standard. All SAs must be conducted by the grantee's environmental professional with the requisite certification and experience and must meet the objectives and performance factors of 40 CFR Part 312, Innocent Landowners, *Standards for Conducting All Appropriate Inquiries*. The grantee may use The American Society for Testing and Materials (ASTM) guideline E1527-13, entitled *Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process*, or the most recent version (40 CFR 312.11(b)), or select an alternate practice that constitutes all appropriate inquiries consistent with good commercial and customary practices.

(c) Exceptions. If a new easement will be issued to the same grantee upon expiration of this easement, the follow-up SA shall satisfy the requirement for an initial SA for the new easement. Initial and follow-up SAs are not required when this easement is revoked at the request of the grantee and a new easement is granted to the grantee for the balance of this easement's term or when this easement is reissued for the balance of its term to the grantee due to a modification pursuant to 36 CFR 251.61(a), provided that an initial SA shall be completed in either of these scenarios if one has not been done by the grantee.

(d) Cleanup or Other Remedial Action Based on the Initial SA. If the initial SA shows that a hazardous substance release is present in the easement area, the grantee shall be responsible for any cleanup or other remedial action

that the Forest Service determines to be required in the easement area based on the initial SA. The level of cleanup or other remedial action shall be commensurate with the grantee's intended use and occupancy of the easement area for the new authorized powerline facilities and shall be completed before that use and occupancy commence.

4. **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.

5. **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, contractors, or lessees 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 site to the Forest Service in compliance with all applicable laws and regulations and free and clear of contamination.

**H. 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, 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; (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 CLAUSE IV.I>**

**< Include the following clause IV.I if the grantee has an operating plan, and delete the remaining clause IV.I.>**

**I. STRICT LIABILITY.** The grantee shall be strictly liable (liable without proof of negligence) to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this easement, provided that strict liability in tort may not be imposed on the grantee for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of the operating plan or unreasonably failing to adhere to an applicable schedule in the approved operating plan. 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.

**<Include the following clause IV.I if the grantee has an operating agreement, and delete the remaining clause IV.I.>**

**I. STRICT LIABILITY.** The grantee shall be strictly liable (liable without proof of negligence) to the United States up to \$500,000 per occurrence until March 23, 2028, after which time the grantee shall be strictly liable to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this easement, provided that strict liability in tort may not be imposed on the grantee for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of the operating agreement or unreasonably failing to adhere to an applicable schedule in the approved operating agreement. 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.J>**



**<Include the first clause IV.J, and delete the second clause IV.J, unless the grantee is unable to provide coverage for the United States under a commercial general liability insurance policy and the grantee meets all the insurance requirements in the second clause IV.J. In those circumstances, include the second clause IV.J, and delete the first clause IV.J.>**

**J. 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 the insurance policy and require any changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy. 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 include the United States as an additional insured in an endorsement to the policy, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause and to the extent of the full limits of insurance available to the grantee. The grantee shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the insurance policy. 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.

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.

**<Select the following clause IV.J only if (1) the grantee is unable to provide coverage for the United States under a commercial general liability insurance policy; and (2) the grantee meets all the insurance requirements in the following clause IV.J. Delete the preceding clause IV.J.>**

**J. INSURANCE**

1. Source of Funding for Insurance. The grantee is required to obtain approval for the rates it charges the public for electricity in a manner that ensures that the grantee is provided the opportunity to recover its costs, plus a fair return on capital investment. Included in the grantee's recovery of costs are liabilities that the grantee may incur under this easement, including indemnification and self-insurance requirements for third-party liability claims and related claims and legal expenses incurred by the grantee.
2. Self-Insurance and Procured Insurance. As part of its cost recovery, the grantee self-insures for third-party liability for up to \$#AMOUNT# million for non-wildfire claims and up to \$#AMOUNT# million for wildfire claims. The grantee has a commercial general liability (CGL) insurance policy for [non-wildfire claims above \$2 million and] wildfire claims above \$#AMOUNT# million. The grantee shall self-insure for 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 \$2 million per occurrence and \$5 million in the aggregate for each of the powerline facilities authorized by this easement. The minimum amounts of self-insurance specified in this clause do not limit or otherwise affect in any way the grantee's obligation under this easement to indemnify the United States for injury, loss, or damage. The grantee's self-insurance and CGL insurance policy above the minimum amounts of insurance specified in this clause may need to be utilized to meet the grantee's indemnification obligation under this easement. Minimum amounts of insurance coverage and other insurance requirements are subject to change at the sole discretion of the authorized officer on the anniversary date of this easement. The grantee shall furnish proof of its self-insurance and CGL insurance policy, 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 grantee shall send an authenticated copy of its CGL insurance policy to the authorized officer before issuance of this easement. The Forest Service reserves the right to review the self-insurance and CGL insurance policy and require any changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy.
3. Notice of Cancellation or Modification. The grantee shall give 30 days prior written notice to the authorized

officer of cancellation or modification of the grantee's self-insurance or CGL insurance policy. Written notice of cancellation or modification of the self-insurance or CGL insurance policy should be sent to [mailing address of administering office].

4. **Release of Hazardous Materials.** 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.

**K. 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 of this easement or any applicable law, regulation, or order.

**<USER NOTES FOR CLAUSES IV.K.1 THROUGH IV.K.3>  
<Delete clauses IV.K.1 through IV.K.3 when a bond is not required.>**

1. As a further guarantee of compliance with the terms 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 \$#AMOUNT# for [specify obligations covered, e.g., to secure the grantee's obligation to restore the easement area after construction or upon revocation or termination of the easement without issuance of a new easement]. 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. The grantee may be required to obtain additional bonding or security prior to undertaking additional construction or alteration not covered by the bond or other security or when the powerline facilities are to be removed and the easement area restored.

**<USER NOTES FOR STATES>**

**<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.>**

**V. RESOURCE PROTECTION**

**A. WATER POLLUTION.** No waste or by-product shall be discharged into water in connection with the use and occupancy authorized by this easement except in full compliance with all applicable federal, state, and local environmental and other laws. 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 except in full compliance with all applicable federal, state, and local environmental and other laws.

**B. SCENIC VALUES.** The grantee shall protect the scenic values of the easement area and the adjacent land to the greatest extent possible during construction, operation, and maintenance of the powerline facilities.

**C. 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.

**D. PESTICIDE USE**

1. **Authorized Officer Concurrence.** Pesticides may not be used outside of buildings 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 the 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.

**E. ARCHAEOLOGICAL AND PALEONTOLOGICAL DISCOVERIES.** The grantee shall immediately notify the authorized officer of any 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 otherwise directed by the authorized officer.

**F. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA).** In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the grantee inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the grantee shall immediately cease work in the area of the discovery and shall leave the discoveries intact and in place. The grantee shall follow the applicable NAGPRA protocols for the undertaking provided in the NAGPRA plan of action or the NAGPRA comprehensive agreement; if there are no such agreed-upon protocols, the grantee shall as soon as practicable notify the authorized officer 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 authorized officer certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a NAGPRA plan of action has been executed by the Forest Service following tribal consultation and any preconditions have been met.

**G. PROTECTION OF THREATENED, ENDANGERED SPECIES, SENSITIVE SPECIES, AND SPECIES OF CONSERVATION CONCERN AND THEIR HABITAT**

1. **Threatened and Endangered Species and Their Habitat.** 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. 1531 *et seq.*, as amended, or within designated critical habitat shall be shown on a map in an appendix to this easement and may be shown on the ground. The grantee shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on listed species or designated critical habitat affected by the authorized use and occupancy. Discovery by the grantee or the grantor of other sites within the easement area containing threatened or endangered species or designated critical habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

2. **Sensitive Species and Species of Conservation Concern and Their Habitat.** The location of sites within the easement area needing special measures for protection of plants or animals designated by the Regional Forester

as sensitive species or as species of conservation concern pursuant to FSM 2670 shall be shown on a map in an appendix to this easement and may be shown on the ground. The grantee shall take any protective and mitigation measures specified by the authorized officer as necessary and appropriate to avoid or reduce effects on sensitive species or species of conservation concern or their habitat affected by the authorized use and occupancy. Discovery by the grantee or the Forest Service of other sites within the easement area containing sensitive species or species of conservation concern or their habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

**H. 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 or release prevention and control plan. Such terms shall be proposed by the grantee and are subject to approval by the authorized officer.

**<USER NOTES FOR CLAUSES V.H.1 THROUGH V.H.3>**  
**<Add clauses V.H.1 through V.H.3 when consenting to store hazardous materials.**  
**Otherwise, omit them.>**

1. The grantee shall identify to the authorized officer any hazardous material to be stored in the easement area. This identifying 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. Any hazardous material transportation and disposal manifests shall clearly identify the grantee as the generator of the hazardous waste.

2. If hazardous materials are used or stored at the site, the authorized officer may require the grantee to deliver and maintain a surety bond in accordance with clause IV.K.

3. The grantee shall not release any hazardous material onto land or into rivers, streams, impoundments, or natural or artificial 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

4. If the grantee uses or stores hazardous materials at the site, upon revocation or termination of this easement the grantee shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service 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 applicable federal, state, and local laws and regulations.

## **VI. LAND USE FEE AND DEBT COLLECTION**

**<Calculate the land use fee using the linear right-of-way fee schedule in FSH 2709.11, Chapter 30, section 36.41, exhibits 01 and 02.>**

**A. LAND USE FEE FOR GRANTEE'S USE AND OCCUPANCY.** Per 42 U.S.C. 15925, the grantee shall pay in advance an annual land use fee as determined in accordance with the Per Acre Rent Schedule established by 43 CFR 2806.20. The initial annual land use fee shall be prorated if less than 6 months in the calendar year remain on the date this easement is issued. Otherwise, the grantee shall pay the entire initial annual land use fee.

**B. MODIFICATION OF THE LAND USE FEE.** The land use fee for the grantee's use and occupancy and for leasing of the grantee's fiber optic cable may be revised whenever necessary to reflect the market value of the authorized use and occupancy or when the fee system used to calculate the land use fee is modified or replaced.

### **C. LAND USE FEE PAYMENTS**

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 Land Use Fees. Land use fees are due and payable by the due date. Disputed land use fees, other than land use fees recalculated pursuant to an audit, 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 land use fee 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 United States 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 land use fee 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 land use fees and other charges associated with this easement 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 90 days, referral to the United States 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**. This easement shall terminate if the grantee fails to pay any land use fee, interest, or any other charges within 90 calendar days of the due date. The grantee shall remain responsible for the delinquent charges.

### **VII. REVOCAION, SUSPENSION, AND TERMINATION**

**A. GROUND FOR REVOCAION 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; or

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.

**B. PREREQUISITES FOR REVOCAION AND SUSPENSION**. Except for immediate suspension under clause VII.B, the authorized officer may not revoke or suspend this easement unless:

1. The authorized officer has given the grantee written notice of the grounds for revocation or suspension and, in the case of revocation of suspension under clause VII.A.1 or VII.A.2, a reasonable period, not to exceed 90 days, to cure any noncompliance; and

2. After an administrative appeal conducted pursuant to 7 CFR Part 1, Subpart H, as amended, the authorized officer makes a finding that grounds for revocation or suspension exist and that revocation or suspension is justified.

**C. 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.

**D. 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 and suspension of this easement, including immediate suspension under clause VII.C, 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.

**E. 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 or upon the written agreement of the grantor and the grantee. 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 upon the written agreement of the grantor and the grantee.

**F. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT ISSUANCE OF A NEW EASEMENT.** Upon revocation of this easement or termination of this easement without issuance of a new easement, the grantee to 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 shall restore the easement area to the satisfaction of the authorized officer. If the grantee fails to 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. 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.

**G. CONTINUATION OF OBLIGATIONS AND LIABILITIES BEYOND TERMINATION OR REVOCATION.** Notwithstanding the termination or revocation of this easement, its terms 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.

**USER NOTES FOR CLAUSE VII.H>**

**<Include clause VII.H when the lands authorized for use are withdrawn for hydroelectric power or reclamation purposes. Delete clause VII.H if the lands authorized for use are not withdrawn for hydroelectric power or reclamation purposes.>**

**H. TERMINATION FOR THE DEVELOPMENT OF HYDROELECTRIC POWER OR RECLAMATION PURPOSES.** Any lands covered by this easement which have been withdrawn for hydroelectric power under the act of March 3, 1879, or the act of June 25, 1910, or are covered by an application or license governed by the Federal Power Act of June 10, 1920, are subject at any time to use for the development of hydroelectric power. Any lands covered by this easement which have been withdrawn under the Reclamation Act of June 17, 1902, are subject at any time to use for reclamation purposes. This easement is granted with the specific understanding that (1) the use and occupancy authorized by this easement shall not interfere with such development of hydroelectric power or reclamation and that (2) this easement shall terminate after 90 days written notice as to any lands covered by this easement when, in the judgment of the Federal Power Commission, those lands are needed for the development of hydroelectric power or, in the judgment of the Bureau of Reclamation, those lands are needed for reclamation purposes. The grantee shall have 90 days to remove or realign segments of the powerline facilities located on those lands. Termination under this clause shall not give rise to any claim by the grantee against the Federal Power Commission, the Bureau of Reclamation, the Forest Service, or hydroelectric power licensees for damages, including lost profits and damage to improvements, due to such development of hydroelectric power or reclamation.

**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 and occupancy 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 powerline 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.

**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 and conditions of the easement.

\_\_\_\_\_  
[NAME AND TITLE OF PERSON SIGNING ON BEHALF OF GRANTEE,  
IF GRANTEE IS AN ENTITY]  
#GRANTEE\_NAME#

DATE

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 the easement as the grantee.

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 OF AMERICA

\_\_\_\_\_  
#AUTHORIZED OFFICER NAME#  
#TITLE#

DATE

[ ] National Forest

STATE OF [ ]  
[ ] 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 or agreement, 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. 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.

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotape, American Sign Language, etc.) should contact the responsible agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

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](mailto:program.intake@usda.gov).

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The Privacy Act of 1974, 5 U.S.C. 552a, and the Freedom of Information Act, 5 U.S.C. 552, govern the confidentiality to be provided for information received by the Forest Service.



## APPENDIX A

### DEFINITIONS

The following definitions apply to this easement and all its appendices.

#### A. Powerline Facility Infrastructure

1. Conductor. Cable or wire that transmits electricity.
2. Linear Right-of-Way. An authorized right-of-way for a linear facility such as a road, trail, pipeline, powerline facility, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description.
3. Powerline Facility. One or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the grantee; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.

#### B. Powerline Facility Maintenance

1. Emergency Maintenance. Immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
2. Non-Routine Maintenance. Realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.
  - (a) Realignment. Moving structures and associated supported cables outside the linear alignment for a powerline facility due to environmental conditions (see clause II.C of the easement).
  - (b) Rebuild. Replacement of existing cables as well as the majority of structures typically in the same linear alignment.
  - (c) Re-conductor. Replacement of existing conductor and other cables as applicable, where only very few structures are replaced, moved, or raised.
  - (d) Upgrade. Increasing the transfer capability of an existing powerline facility, which may also include a few structure replacements, adding intermediate structures or raising one or more structures, or ground removal to ensure conductor clearance.
3. Routine Maintenance. Repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (e.g., insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

#### C. Vegetation Management

1. Emergency Vegetation Management. Unplanned pruning or felling of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned pruning or felling of hazard trees on National Forest System lands adjacent to either side of the linear right-of-way that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
2. Flashover. An electric discharge over or around the surface of an insulated conductor that may result in fire through the ignition of surrounding objects.

3. Hazard Tree. For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter "vegetation" (whether located on National Forest System lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the grantee to be:

(a) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and

(b) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.

4. Maximum Operating Sag. The theoretical position of a conductor when operating at 100 degrees Celsius, which must be accounted for when determining the MVCD.

5. Minimum Vegetation Clearance Distance (MVCD). A calculated minimum distance that is stated in feet or meters to prevent flashover between conductors and vegetation for various altitudes and operating voltages and that is measured from a conductor at maximum operating sag to vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the grantee uses to determine whether vegetation poses a system reliability hazard to the powerline facility.

6. Non-Emergency (Routine) Vegetation Management. Planned actions as described in an approved operating plan or agreement periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

#### **D. Roads and Trails**

1. Access Road or Trail. For purposes of this easement, a road or trail constructed, operated, and maintained by an owner or operator that is necessary to access a powerline facility or its linear right-of-way.

2. Road or Trail Construction. Building a road or trail where no road or trail has previously existed.

3. Road or Trail Reconstruction. Rebuilding an existing road or trail to increase its capacity, upgrade drainage crossings, or provide improved access, which may involve increasing the road or trail prism.

4. Road or Trail Maintenance. The upkeep of an entire road or trail within the existing road or trail prism, including surface and shoulders, parking and side areas, structures, and traffic control devices, that is necessary to maintain or restore the road or trail in accordance with its original design standards.

**APPENDIX B**

**MAPS AND LEGAL DESCRIPTION; SURVEYS, PLATS, SITE PLANS, AND ENGINEERING DRAWINGS OF  
THE EASEMENT AREA; AND MVCD FOR EACH POWERLINE FACILITY**

**APPENDIX C**

**LIST AND LOCATION OF ACCESS ROADS AND TRAILS AND  
NATIONAL FOREST SYSTEM ROADS AND NATIONAL FOREST SYSTEM TRAILS  
USED BY THE GRANTEE**

**APPENDIX D**  
**OPERATING PLAN OR AGREEMENT**

**APPENDIX E**

**LIST AND LOCATION OF ANCILLARY STRUCTURES OTHER THAN  
ROADS, TOWERS, POLES, AND LINES**

**APPENDIX F**  
**ENVIRONMENTAL SITE ASSESSMENTS**