

**Justification for Non-Substantive Change to
OMB 0596-0082: Special Use Administration**

We are requesting approval for a non-substantive change to OMB 0596-0082: Special Use Administration. The Forest Service is submitting this as a non-substantive change request to modify the following form:

FS-2700-14 - LEASE FOR FOREST SERVICE ADMINISTRATIVE SITES.

By adding the number 50 in paragraph C (page 5 of this justification) as follows:

C. TERM. This lease shall expire at midnight on #EXPIRATION_DATE#, [number of years up to 50 years]

This form is used by Forest Service to collect information and authorize the use of occupancy of National Forest System lands as a lease for administrative sites. The information collection requirements were addressed in 85 FR 57181 (September 15, 2020) and approved under OMB Control Number 0596-0082. Response to public comment to extend a 30-year term to 50 years was received and reviewed by program. The agency’s response to comments follows.

FS-2700-14, Lease for Forest Service Administrative Sites

Comment: A commenter recommended that the 30-year maximum term in the standard lease for Forest Service administrative sites be at least 60 years.

Response: The Agency has reconsidered its position on the maximum term for Forest Service administrative site leases issued under FSM 2750. The Agency has decided to retain a term of up to 30 years for all types of use and occupancy other than housing and to provide a term of up to 50 years for housing to facilitate financing for this type of use and occupancy, particularly in high-cost areas.

The associated burden being for this change request remains unchanged, and because this is a new program, it is based on analysis of similar of response rates for program authorities (including the Forest Service Facilities Realignment and Enhancement Act) and an examination of form data complexity. The table below lists the public burden, which was shared in the original Federal Register Notice:

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Description of the Collection Activity	Form Number	Number of Respondents Previous 3 years	Number of responses annually per Respondent	Average annual responses	Estimate of Burden Hours per response	Estimated Total Annual Burden Hours
		2021		(c x d)/3		(e x f)

(a)	(b)	(c)	(d)	(e)	(f)	(g)
Description of the Collection Activity	Form Number	Number of Respondents Previous 3 years	Number of responses annually per Respondent	Average annual responses	Estimate of Burden Hours per response	Estimated Total Annual Burden Hours
Lease for Forest Service Administrative Sites	FS-2700-14	33	1	33	14	462

This change is being made after hearing from our customers, partners, various congressional delegations and after a decision from USFS leadership, that the lease term of 30 years is not sufficient to meet capitalization requirements for the types of projects the Agency and our partners are contemplating using this authority to complete.

Authorization ID: #AUTH_ID#
XX/XX)

FS-2700-14 (VER.

Contact ID: #LESSEE_ID#
0082

OMB No. 0596-

Expiration Date: #EXPIRATION_DATE#
Use Code: #USE_CODE#

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

LEASE FOR FOREST SERVICE ADMINISTRATIVE SITES

<Delete all user notes before printing.>

<Use this form to lease Forest Service administrative sites under either the Forest Service Facility Realignment and Enhancement Act of 2005 (FSFREA) or section 8623 of the Agriculture Improvement Act of 2018 (the Farm Bill).>

<USER NOTES FOR AUTHORITY>

<Select the following authority for leases issued under FSFREA. Delete the remaining authority.>

AUTHORITY:

**Forest Service Facility Realignment and Enhancement Act of 2005, Title 5, the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-54, 119 Stat. 499, 561,
16 U.S.C. 580d note, as amended**

<Select the following authority for leases issued under section 8623 of the Farm Bill. Delete the preceding authority.>

AUTHORITY:

**Section 8623 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4853,
16 U.S.C. 580d note**

#LESSEE_NAME#, #LESSEE_ADD_LINE_1#, #LESSEE_ADD_LINE_2#, #LESSEE_ADD_LINE_3#, (the lessee) #LESSEE_CITY#, #LESSEE_STATE# #LESSEE_ZIP# is authorized to use and occupy property on National Forest System lands in the [name] National Forest, subject to the terms of this lease (the lease) and its appendices.

This lease is for a Forest Service administrative site called [property name], and its associated National Forest System lands, which cover #USE_ACRES# 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 lease area), as shown on the map in Appendix A, for purposes of [describe activities authorized].

The following are attached to and incorporated into this lease:

APPENDIX A: Map of the Lease Area

APPENDIX B: Construction or Improvement Plan Authorized by this Lease

APPENDIX C: Operating Plan

APPENDIX D: Initial and Follow-Up Environmental Site Assessments

APPENDIX E: In-Kind Consideration Agreement (optional)

APPENDIX F: Claim for In-Kind Consideration Costs (optional)

I. GENERAL TERMS

<USER NOTES FOR CLAUSE I.A.>

<Select the following clause I.A for leases issued under FSFREA. Delete the remaining clause I.A.>

A. **AUTHORITY.** This lease is issued pursuant to the Forest Service Facility Realignment and Enhancement Act of 2005, Title 5, the Department of the Interior, Environment, and Related Agencies Appropriations Act, 2006, Pub. L. No. 109-54, 119 Stat. 499, 561, 16 U.S.C. 580d note, as amended, and 36 CFR Part 251, Subpart B, as amended, and is subject to these provisions.

<Select the following clause I.A for leases issued under section 8623 of the Farm Bill. Delete the preceding clause I.A.>

A. **AUTHORITY.** This lease is issued pursuant to section 8623 of the Agriculture Improvement Act of 2018, Pub. L. No. 115-334, 132 Stat. 4853, 16 U.S.C. 580d note, and 36 CFR Part 251, Subpart B, as amended, and is subject to these provisions.

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.

C. **TERM.** This lease shall expire at midnight on #EXPIRATION_DATE#, [number of years up to 50 years] from the date of issuance. Expiration of this lease shall not require notice, a decision document, or any environmental analysis or other documentation. Upon revocation or termination of the lease, if the Forest Service determines that competitive interest exists in the use and occupancy authorized by this lease, issuance of a new lease will be subject to a competitive offering. If the Forest Service determines that no competitive interest exists, upon termination of the lease, a new lease may be issued to the lessee.

D. **CONTINUATION OF USE AND OCCUPANCY.** Upon expiration of this lease, the use and occupancy authorized by this lease may not continue unless a new lease is issued. The authorized officer may prescribe new terms when a new lease is issued. Prior to expiration of this lease, the lessee may apply for a new lease that would renew the use and occupancy authorized by this lease. Applications for a new lease must be submitted at least 6 months prior to expiration of this lease. Continuation of the use and occupancy authorized by this lease shall be at the sole discretion of the authorized officer. At a minimum, before renewing the use and occupancy authorized by this lease, the authorized officer shall require that (1) the use and occupancy to be authorized by the new lease is consistent with the standards and guidelines in the applicable land management plan; (2) the type of use and occupancy to be authorized by the new lease is the same as the type of use and occupancy authorized by this lease; and (3) the lessee is in compliance with all the terms of this lease.

E. **AMENDMENT.** This lease may be amended in whole or in part by the Forest Service when, at the discretion of the authorized officer, such action is deemed necessary to incorporate new terms that may be required by law, regulation, directive, the applicable land management plan, or projects and activities implementing the land management plan pursuant to 36 CFR Part 218.

F. **COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS.** In exercising the rights and privileges granted by this lease, the lessee 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 lease area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service 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 lessee are reserved to the Forest Service, including:

1. The right of access to the lease area, including a continuing right of physical entry to the lease area and authorized facilities and improvements for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation.
2. The right to use, administer, and dispose of all natural resources and improvements other than the authorized improvements, including the right to use roads and trails and authorize others to use the lease area in any way that is not inconsistent with the lessee's rights and privileges under this lease, after consultation with all parties involved.
3. Except for any restrictions that the lessee and the authorized officer agree are necessary to protect the installation and operation of authorized improvements, the lands and waters covered by this lease shall remain open to the public for all lawful purposes.

H. ASSIGNABILITY. This lease is fully assignable, subject to the following conditions:

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

II. IMPROVEMENTS

A. LIMITATIONS ON USE. Nothing in this lease gives or implies permission to build or maintain any facility or improvement or to conduct any activity, unless specifically authorized by this lease per Appendix B. Any use not specifically authorized by this lease per Appendix B, including new construction and reconstruction, rehabilitation, and restoration of the authorized improvements, must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new lease or lease amendment is at the sole discretion of the authorized officer.

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

C. SITE DEVELOPMENT SCHEDULE. The lessee and the Forest Service jointly shall prepare a site development schedule, which shall become part of this lease, before any construction occurs in the lease area. The site development schedule shall list approved construction and improvement in the lease area in order of priority, the starting date for their construction, and the due date for their completion. All required plans and specifications for construction and improvement included in the site development schedule shall be properly certified and submitted to the authorized officer at least 45 days before the starting date for their construction. The lessee may accelerate the scheduled date for completion of any construction or improvement, as long as the other scheduled construction or improvement is completed on time and to the satisfaction of the authorized officer. Any other changes to the site development schedule must have prior written approval from the authorized officer. Pursuant to clause IV.K, the authorized officer may require a performance bond for improvements constructed under a site development schedule.

D. REQUIREMENTS FOR CONSTRUCTION, RECONSTRUCTION, AND ALTERATION. The lessee shall comply with all applicable state and local zoning laws, building codes, and permit requirements for any construction, reconstruction, or alteration of improvements in the lease area.

III. OPERATIONS

A. OPERATING PLAN. The lessee shall prepare and annually revise by [date] an operating plan. The operating plan shall be prepared in consultation with the authorized officer or the authorized officer's designated representative and shall cover all operations authorized by this lease. The operating plan shall outline steps the lessee 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 lessee's operations for compliance with the terms of this lease. The operating plan shall be submitted by the lessee and approved in writing by the authorized officer or the authorized officer's designated representative prior to commencement of operations and shall be attached to this lease as Appendix C. Any operating plan revisions shall be submitted by the lessee and approved in writing by the authorized officer or the authorized officer's designated representative before they are implemented. The authorized officer may require an annual meeting with the lessee to discuss the terms of the lease or operating plan, annual use reports, or other concerns either party may have.

B. PERIOD OF USE. Use or occupancy of the lease area shall be exercised in accordance with the following schedule [explain period of use as days of the week, operating hours, days per year, and/or a calendar incorporated by reference].

C. RESPONSIBILITY FOR DAY-TO-DAY ACTIVITIES. As a general rule, the lessee shall conduct the day-to-day activities authorized by this lease. A limited amount of activities may be conducted by a party other than the lessee, but only with prior written approval of the authorized officer. The lessee shall continue to be responsible for compliance with all the terms of this lease.

D. SUBLEASING. Subject to clause III.C, the lessee may sublease the authorized improvements that are located within the lease area with the prior written approval of the authorized officer. The Forest Service reserves the right to disapprove these subleases. The lessee shall remain responsible for compliance of the leased improvements with all the terms of this lease. The lessee shall not lease back the authorized improvements to the Forest Service.

E. REGULATION OF SERVICES AND RATES. The Forest Service shall have the authority to regulate the adequacy and type of services provided the public under this lease and to require that these services conform to satisfactory standards. The lessee may be required to furnish a schedule of prices for sales and services authorized by the lease. These prices may be regulated by the Forest Service, provided that the lessee shall not be required to charge prices significantly different from those charged by comparable or competing enterprises.

F. CONDITION OF OPERATIONS. The lessee shall maintain the authorized improvements and lease area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other provisions of this lease. 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.

G. ALTERATION OF FEDERALLY OWNED IMPROVEMENTS. If during the term of this lease any federally owned facilities or improvements are altered in any way, the material, equipment, fixtures or other appurtenances that are affixed to or made a part of those facilities or improvements in connection with the alteration shall become the property of the United States, regardless of whether the work is performed by the lessee or any other party. The lessee shall not be entitled to any compensation for that property.

H. MONITORING BY THE FOREST SERVICE. The Forest Service shall monitor the lessee's operations and reserves the right to inspect the lease area and authorized facilities and improvements at any time for compliance with the terms of this lease. The lessee shall comply with inspection requirements deemed appropriate by the authorized officer. The lessee's obligations under this lease are not contingent upon any duty of the Forest Service to inspect the lease 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 lease.

I. REMOVAL AND PLANTING OF VEGETATION. This lease does not authorize the cutting of trees, brush, shrubs, and other plants ("vegetation"). Vegetation may be removed, 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 removed, destroyed, or trimmed. Timber meeting utilization standards that is cut or destroyed shall be disposed of in accordance with and for the

purposes set forth in 36 CFR 223.2. Specifically, trees, portions of trees, or other forest products in any amount on National Forest System lands may be disposed of for Forest Service administrative use per 36 CFR 223.2(a)-(e), by sale, or without charge, as may be most advantageous to the United States, as determined by the Forest Service, subject to the maximum cut fixed in accordance with established policies for management of the national forests. Planting of vegetation in the lease area must have prior written approval from the authorized officer.

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J. USE OF NATIONAL FOREST SYSTEM ROADS AND NATIONAL FOREST SYSTEM TRAILS. The lessee'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. 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.

K. SIGNAGE. Signage posted on National Forest System lands must have prior written approval of the authorized officer.

L. REFUSE DISPOSAL. The lessee shall comply with all applicable federal, state, and local requirements related to the disposal of refuse resulting from the use and occupancy authorized by this lease. -

M. SANITATION. The operation and maintenance of all sanitation, food service, and water-supply methods, systems, and facilities shall comply with applicable standards set by state and local health departments.

<USER NOTES FOR CLAUSE III.N.>

<Select the following clause III.N if the sale of alcoholic beverages is prohibited in the lease area, and delete the remaining clause III.N.>

N. SALE OF ALCOHOLIC BEVERAGES. The sale of alcoholic beverages is prohibited in the lease area.

<Select the following clause III.N if the sale of alcoholic beverages is allowed in the lease area. Select the types of alcoholic beverages that may be sold under the lessee's liquor license and delete the inapplicable beverages; move the word "and" as necessary; and delete the brackets. Delete the remaining clause III.N.>

N. SALE OF ALCOHOLIC BEVERAGES. The sale of [liquor, beer, wine, and other types of alcoholic beverages] is allowed in the lease area, provided the lessee has a valid state liquor license. However, in the event of a violation of any liquor law or regulation, the authorized officer may require that the sale of alcoholic beverages shall cease. The lessee shall be informed in writing by the authorized officer if the sale of alcoholic beverages must cease.

O. GAMBLING. Gambling and gambling machines and devices are prohibited on National Forest System lands, regardless of whether they are lawful under state or local law.

P. NONDISCRIMINATION

1. The lessee and its employees shall not discriminate against any person on the basis of race, color, sex (in educational and training programs), national origin, age, or disability or by curtailing or refusing to

furnish accommodations, facilities, services, or use privileges offered to the public generally. In addition, the lessee and its employees shall comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended, Section 504 of the Rehabilitation Act of 1973, as amended, Title IX of the Education Amendments of 1972, as amended, and the Age Discrimination Act of 1975, as amended.

2. The lessee shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this lease.
3. The Forest Service shall furnish signs setting forth this policy of nondiscrimination. These signs shall be conspicuously displayed at the public entrance to the premises and at other exterior or interior locations, as directed by the Forest Service.
4. The Forest Service shall have the right to enforce the foregoing nondiscrimination provisions by suit for specific performance or by any other available remedy under the laws of the United States or the state in which the violation occurs.

Q. EQUAL ACCESS TO FEDERAL PROGRAMS. In addition to the above nondiscrimination policy, the lessee agrees to ensure that its programs and activities are open to the general public on an equal basis and without regard to any non-merit factor.

R. PROHIBITION OF TIME-SHARE ARRANGEMENTS. The authorized facilities and improvements shall not be operated under a time-share or interval-ownership arrangement. All authorized improvements, for recreational purposes, shall be made available to the general public on a short-term rental basis.

S. LESSEE'S REPRESENTATIVE. The lessee or the lessee's designated representative shall be within the lease area at all times when the authorized facilities and improvements are open to the public. The lessee shall notify the authorized officer in writing who the lessee's representative will be.

T. LESSEE'S AND USERS' CONDUCT. Disorderly or otherwise objectionable conduct by the lessee or those occupying the lease area with the lessee's permission shall be cause for revocation or suspension of this lease.

USER NOTES FOR CLAUSE III.U.>

<Include the following clause III.U if there is a need for invasive species prevention and control.>

U. INVASIVE SPECIES PREVENTION AND CONTROL. The lessee shall be responsible for the prevention and control of invasive species, including invasive plants, within the lease 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 lessee shall follow invasive species prevention and control measures prescribed by the operating plan.

IV. RIGHTS AND LIABILITIES

A. LEGAL EFFECT OF THE LEASE AND APPEAL RIGHTS. This lease is not real property and may not be used as collateral for a loan. The benefits and requirements conferred by this lease are reviewable solely under the procedures set forth in 36 CFR Part 214 and 5 U.S.C. 704.

B. VALID EXISTING RIGHTS. This lease is subject to all valid existing rights. Valid existing rights include those derived under mining and mineral leasing laws of the United States. The United States is not liable to the lessee for the exercise of any such right.

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

D. NO WARRANTY OF ACCESS, SITE SUITABILITY, OR SERVICES. This lease authorizes the use and occupancy of National Forest System lands by the lessee for the purposes identified in this lease. The Forest Service does not make any express or implied warranty of access to the lease area, of the suitability of the site 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.

E. WATER FACILITIES AND WATER RIGHTS

1. Water Facilities. No ditch, reservoir, well, spring, seepage, or other facility to pump, divert, store, or convey water (hereinafter “water facilities”) for which the point of diversion, storage, or withdrawal is on National Forest System (NFS) lands may be initiated, developed, certified, or adjudicated by the lessee unless expressly authorized in this lease. The authorization of any water facilities in the lease area is granted to allow use of water only in connection with the administrative site authorized by this lease. If the use of any water facilities in connection with this administrative site ceases, the authorization to use any associated water facilities terminates. The United States may place conditions on installation, operation, maintenance, and removal of water facilities that are necessary to protect public property, public safety, and natural resources on NFS lands in compliance with applicable law. Any change in a water facility, including a change in the ownership or beneficial use of water or location of use of water from a water facility, that is not expressly authorized in this lease shall result in termination of the authorization for that water facility.

2. Water Rights. This lease does not confer any water rights on the holder. The term “water rights” includes all authorizations, such as certificates, reservations, decrees, or permits, for water use issued under state law. Any necessary water rights must be acquired and maintained by the lessee in accordance with State law and the terms of this lease. After this lease is issued, all water rights obtained by the lessee for facilities that divert or pump water from sources located on NFS lands for use on NFS lands, whether authorized or unauthorized, are for the benefit of the United States and shall be acquired in the name of the United States. Any expenses for acquiring and maintaining water rights shall be the responsibility of the lessee and not the responsibility of the United States. The United States reserves the right to take all actions necessary to maintain and protect any right to divert and use water on site.

WATER RIGHTS HELD IN THE NAME OF THE UNITED STATES (if none, so state)

State ID #	Owner	Purpose of Use	Decree, License, or Certificate #	Point of Diversion	Location of Use

F. RISK OF LOSS. The lessee assumes all risk of loss to the authorized improvements and all risk of loss of use and occupancy of the lease area, in whole or in part, due to public health and safety or environmental hazards. Loss to the authorized improvements and of use and occupancy of the lease 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 any authorized improvements in the lease area are destroyed or substantially damaged, the authorized officer shall conduct an analysis to determine whether the improvements can be safely occupied in the future and whether rebuilding should be allowed. If rebuilding is not allowed, this lease shall terminate. If the authorized officer determines that the lease area cannot be safely occupied due to a public health or safety or environmental hazard, this lease shall terminate. Termination under this clause shall not give rise to any claim for damages, including lost profits, by the lessee against the Forest Service.

G. DAMAGE TO UNITED STATES PROPERTY. The lessee has an affirmative duty to protect from damage the land, property, and other interests of the United States that are associated with the use and occupancy authorized by this lease. 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 lessee shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, and the costs of rehabilitation or restoration of natural resources, resulting from the lessee's use and occupancy of the lease 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. Such costs may be deducted from a performance bond required under clause IV.K.

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

H. HEALTH AND SAFETY. The lessee shall take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this lease. The lessee 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 lease that causes or threatens to cause a hazard to the health or safety of the public or the lessee's employees, agents, contractors, or sublessees. The lessee 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 Forest Service has no duty under the terms of this lease to inspect the lease area or operations of the lessee for hazardous conditions or compliance with health and safety standards.

I. ENVIRONMENTAL PROTECTION

1. Compliance with Environmental Laws. The lessee shall in connection with the use and occupancy authorized by this lease 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.I 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 Assessments (SAs). Except as provided in clause IV.H.3.c, the lessee is required to submit for written approval by the authorized officer an initial SA prior to use and occupancy under this lease and a follow-up SA prior to termination or upon revocation of this lease. The initial and follow-up SAs shall be incorporated into this lease as Appendix D.

(a) Purposes. The purpose of initial and follow-up SAs is to identify Recognized Environmental Conditions in the lease area, that is, the presence or likely presence of any hazardous substances or petroleum products in, on, or at the lease 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 lessee 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 United States.

(b) Standard. All SAs must be conducted by the lessee'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 lessee 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 lease will be issued to the same lessee upon expiration of this lease, the follow-up SA shall satisfy the requirement for an initial SA for the new lease. Initial and follow-up SAs are not required when this lease is revoked with the consent of the lessee and a new lease is issued to the lessee for the balance of this lease's term or when this lease is reissued for the balance of its term to the lessee 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 lessee. When this lease is assigned, the lessee may rely on the initial SA performed by the future lessee, provided that it is accepted by the authorized officer prior to assignment of this lease.

(d) Cleanup or Other Remedial Action Based on the Initial SA. If the initial SA shows that a hazardous material release is present in the lease area, and cleanup or other remedial action is required to accommodate the lessee's intended use, then the lessee shall be responsible for any cleanup or other remedial action that the Forest Service determines to be required in the lease area based on the initial SA. The level of cleanup or other remedial action shall be commensurate with the lessee's intended use and occupancy of the lease area and shall be completed before the lessee's use and occupancy commence.

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

<USER NOTES FOR CLAUSE IV.J>

<If the lessee 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.>

J. INDEMNIFICATION OF THE UNITED STATES. The lessee 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 lessee in connection with the use or occupancy authorized by this lease. This indemnification provision includes but is not limited to acts and omissions of the lessee or the lessee's heirs, assignees, agents, employees, contractors, or sublessees in connection with the use or occupancy authorized by this lease 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 solid waste, hazardous waste, hazardous materials, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the lessee to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

<USER NOTES FOR CLAUSE IV.K>

<Guidance on the use of performance bonds and specific bonding requirements is found at
FSM 2713.3 and 6165.6. A performance bond should not be used to enforce the general terms of the lease, but rather to protect the federal government from resource damage or particular circumstances regarding the lessee's performance, when needed and for specified time periods.>

K. BONDING. The authorized officer shall require the lessee to furnish a surety bond or other security for any construction or improvement authorized by this lease at a minimum to cover restoration of the lease area upon completion of the work.

1. As a further guarantee of compliance with the terms of this lease, the lessee 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 holder's obligation to restore the permit area after construction or upon revocation or termination of the permit without issuance of a new permit]. The authorized officer may periodically evaluate the adequacy of the bond or other security and increase or decrease the amount when there is a change in scope of the authorized facilities or ancillary improvements. If the bond or other security becomes unsatisfactory to the authorized officer, the lessee 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 lessee 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 lessee 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 lessee may be required to obtain additional bonding or security at the discretion of the authorized officer prior to undertaking additional construction or alteration not covered by the bond or other security or when the authorized improvements are to be removed and the lease area restored.

<USER NOTES FOR CLAUSE IV.L>

<If the lessee 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.>

L. INSURANCE. The lessee shall furnish proof of insurance, such as a certificate of insurance, to the authorized officer prior to issuance of this lease and each year thereafter that this lease is in effect. The Forest Service reserves the right to review and approve 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 lessee 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 lessee pursuant to this clause shall name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause and to the extent of the full limits of insurance available to the lessee. The lessee 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 lease.

1. **Liability**. The lessee shall have in force liability insurance covering losses associated with the use or occupancy authorized by this lease 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. **Property**. The lessee shall have in force property insurance for the authorized improvements in the minimum amount of \$#AMOUNT#. The types of loss to be covered by clause IV.K.2 shall include but not be limited to damage to the authorized improvements. At the discretion of the authorized officer, the Forest Service may require the lessee to use all proceeds from property damage insurance policies to repair, rebuild, restore, or replace damaged federally owned property covered by the policy, or may obtain payment of those proceeds from the lessee or the insurance company.
3. **Hazardous Materials**. Depending on the lessee's operations, the Forest Service may require the lessee to demonstrate the availability of funds to address any release or threatened release of hazardous materials that may occur in connection with the lessee's use or occupancy. Any requirements imposed would be established on a case-by-case basis by the authorized officer based on the degree of environmental risk from the lessee's operations. The storage and use of normal maintenance supplies in nominal amounts generally would not trigger financial assurance requirements.

V. RESOURCE PROTECTION

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

B. SCENIC VALUES. The lessee shall protect the scenic values of the lease area and the adjacent land to the greatest extent possible during operation and maintenance of the authorized improvements.

C. VANDALISM. The lessee shall take reasonable measures to prevent and discourage vandalism and disorderly conduct and when necessary shall contact the appropriate law enforcement officer.

D. PESTICIDE USE

1. **Authorized Officer Concurrence**. Pesticides may not be used outside of buildings in the lease 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 lessee 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 an annual Pesticide-Use Proposal was submitted.

3. Safety Plan. Before applying pesticides in the lease area, the lessee 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 lease; 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. The lessee shall promptly report in writing to the authorized officer completion of each pesticide application project. The report shall contain information requested by the authorized officer and shall be submitted no later than [month and day] of each year.

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 lessee 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 lease. The lessee 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 lessee inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the lessee shall immediately cease work in the area of the discovery and shall leave the discoveries intact and in place. The lessee 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 lessee 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 AND 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 lease 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 lease and may be shown on the ground. The lessee 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 lessee or the Forest Service of other sites within the lease 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 lease 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 lease and may be shown on the ground. The lessee 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 lessee or the Forest Service of other sites within the lease 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 lessee shall not store any hazardous materials at the site without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this lease shall include or, in the case of approval provided after this lease 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 lessee and are subject to approval by the authorized officer.

<USER NOTES FOR CLAUSES V.H.1 THROUGH V.H.4>

<Add clauses V.H.1 through V.H.4 when consenting to store hazardous materials. Otherwise, omit them.>

1. The lessee shall identify to the authorized officer any hazardous materials to be stored in the lease 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 lessee 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 lessee 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 lessee as the generator of the hazardous waste.

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

3. The lessee shall not release any hazardous materials 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 lessee uses or stores hazardous materials at the site, upon revocation or termination of this lease the lessee shall provide the Forest Service with a report certified by a professional or professionals acceptable to the Forest Service that the lease area is uncontaminated by the presence of hazardous materials and that there has not been a release or discharge of hazardous materials upon the lease area, into surface water at or near the lease area, or into groundwater below the lease area during the term of the lease. 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 lease area is in compliance with all applicable federal, state, and local laws and regulations.

I. WATER WELLS AND ASSOCIATED PIPELINES

1. Other Jurisdictional Requirements. The lessee shall obtain all required state and local water permits, licenses, registrations, certificates, or rights and shall provide a copy of them to the authorized officer. For new wells, this information shall be provided prior to disturbing National Forest System lands for the purpose of water use or development.

2. Well Construction or Development. For new or reconstruction of existing wells, the lessee shall prepare a well construction and development plan and submit it to the authorized officer for approval. The well development and construction plan must have prior written approval from the authorized officer before well construction or development is initiated. The lessee shall follow applicable federal, state, and local standards for design, construction, and development of new wells or reconstruction of existing wells. If such standards do not exist, the lessee shall follow applicable standards issued by the American Society for Testing and Materials (ASTM), American Water Works Association (AWWA), or National Ground Water Association (NGWA). The construction and development plan must identify all potential sources for any proposed water injection during well construction or development. Only non-chlorinated, potable water may be injected during construction or development of wells to be used for monitoring or water withdrawal. Copies of all documentation for drilling, constructing, or developing wells, including all drilling, boring, and well construction logs, shall be provided to the authorized officer within 60 days of completion of work.

3. Well Decommissioning. The lessee shall properly decommission and abandon all wells that are no longer needed or maintained in accordance with applicable federal, state, and local standards for water well abandonment. If such standards do not exist, the lessee shall follow applicable standards issued by the ASTM, AWWA, or NGWA. At least 30 days prior to initiation of well decommissioning, the lessee shall submit a well decommissioning plan to the authorized officer. The well decommissioning plan shall have written approval from the authorized officer before well decommissioning is initiated. All documentation of well decommissioning shall be provided to the authorized officer within 60 days of completion of the work.

<USER NOTES FOR CLAUSE V.J>

<Include clause V.J if lead-based paint or building materials containing asbestos are present at the administrative site. Delete paragraph 1 or 2 of clause V.J if it does not apply. Omit clause V.J in its entirety if no lead-based paint or building materials containing asbestos are present at the administrative site.>

J. LEAD-BASED PAINT AND BUILDING MATERIALS CONTAINING ASBESTOS

1. Lead-Based Paint. Pursuant to a lead paint risk assessment, the Forest Service has determined that lead-based paint is present in the lease area at the following locations, concentrations, and quantities and in the following condition:

<u>Location</u>	<u>Concentration</u>	<u>Quantity</u>	<u>Condition</u>
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[insert as applicable]

Notwithstanding any provision of law relating to the mitigation or abatement of lead-based paint, the Forest Service is not required to mitigate or abate lead-based paint in the lease area before issuance of this lease. Future construction in the lease area may trigger regulations issued by the United States Department of Housing and Urban Development at 24 CFR Part 35, by the United States Department of Environmental Protection Agency at 40 CFR Part 261, and by the Occupational Safety and Health Administration at 29 CFR 1926.62.

2. Building Materials Containing Asbestos. Pursuant to an asbestos survey, the Forest Service has determined that the following types of building materials containing asbestos are present in the lease area at the following locations and quantities and in the following condition:

<u>Type</u>	<u>Location</u>	<u>Quantity</u>	<u>Condition</u>
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[insert as applicable]

Notwithstanding any provision of law relating to the mitigation or abatement of building materials containing asbestos, the Forest Service is not required to mitigate or abate building materials containing asbestos in the lease area before issuance of this lease. Future construction in the lease area, including renovation or demolition, may trigger EPA regulations at 40 CFR 61.145 and OSHA regulations at 29 CFR 1926.1101.

VI. RENT AND DEBT COLLECTION

A. DEFINITIONS

1. Government Maintenance, Repair, Improvement, Restoration, or Reconstruction. Maintenance, repair, improvement, restoration, or reconstruction that arrests deterioration, improves and upgrades facilities, and appreciably prolongs the life of the property, including but not limited to installing a new roof, new floor, or new siding; rebuilding boilers; replacing pipes, pumps, and motors; repairing or maintaining the paths, lands, walks, walls, or landscaping adjacent to federally owned structures; paving interior roads, sidewalks, curbs and gutters, storm drain systems, upgrading facilities, and installing utilities; and performing exterior painting and refinishing (other than repair of unsightly visual marks caused by everyday use) and that is performed at the sole discretion of the authorized officer.

2. Lessee Maintenance, Repair, or Restoration. Maintenance, repair, or restoration that neither materially adds to the value of the property nor appreciably prolongs its life and that serves only to keep a facility in an ordinary, efficient operating condition, such as, from an accounting or tax perspective, work that may be expensed, but not capitalized, including but not limited to interior decorating, interior painting,

vandalism repair, repair of broken windows, light bulb replacement, cleaning, unplugging drains, drive belt replacement, preventive maintenance, lubrication of motors, greasing, servicing, inspecting, oiling, adjusting, tightening, aligning, watering, weeding, sweeping, waxing, routine housekeeping, and general snow removal.

3. Improvement. Advancing a fixed asset to a better quality or state or adding a new fixed asset to the property, including replacement, such as substitution of a fixed asset or any of its components with one having essentially the same capacity and purpose. Improvement is always the responsibility of the Government rather than the lessee.

4. Maintenance or Repair. An action taken to keep a fixed asset in an acceptable condition, including preventive maintenance, normal repairs, replacement of parts and structural components, and other activities needed to preserve a fixed asset so that it continues to provide acceptable service and achieves its expected life, and work needed to comply with laws, regulations, codes, and other legal requirements as long as the original intent or purpose of the fixed asset is not changed, but not including activities aimed at expanding the capacity of an asset or otherwise upgrading it to serve needs different from or significantly greater than those originally intended, such as construction of new facilities.

5. Restoration or Reconstruction. A type of maintenance, other than construction of new facilities, that rehabilitates an existing fixed asset or any of its components to restore the functionality or life of the asset.

<USER NOTES FOR CLAUSE VI.A.6>

<Select the following clause VI.A.6 for leases issued under section 8623 of the Farm Bill. Delete the following clause VI.A.6 for leases issued under FSFREA.>

6. Service Relating to Activities that Occur in the Lease Area. A service performed by the lessee that relates directly to the use and occupancy authorized by this lease and that provides a direct benefit to the Forest Service, including where the lessee retains title to new facilities or improvements upon their completion and offers space in those new facilities or improvements for Forest Service employee housing at a discount or free of charge.

<USER NOTES FOR CLAUSES VI.B THROUGH VI.E>

<Select the following clauses VI.B through VI.E for leases issued under FSFREA. Delete the remaining clauses VI.B through VI.E.>

B. MARKET VALUE RENT. The lessee shall pay rent for this lease that is at least market value. The market value rent for this lease shall be based on:

1. The market value of the existing facilities and improvements in the lease area; and
2. The market value of any new facilities or improvements to be constructed and the market value of any existing facilities or improvements that have been subject to Government maintenance, repair, improvement, restoration, or reconstruction. The rental rate for federal improvements shall be based on the market rental rate used for improvements, as determined by the Forest Service. If the Forest Service is unable to determine a market rate using local market information, the rate of 6% of the value of the federal improvements shall be used as a minimum rate.

C. OPTION FOR PROVIDING FOREST SERVICE EMPLOYEE HOUSING. Space for Forest Service employee housing may be reserved in constructed, reconstructed, or improved facilities or improvements in the lease area. The Forest Service shall decrease the rent charged for these facilities or improvements proportionate to the space reserved for Forest Service employee housing.

D. RENTAL PAYMENTS. The lessee shall pay an initial rent of \$[amount] from [date] to [date] by [date] and thereafter shall pay an annual rent of \$[amount]. The lessee shall pay rent for this lease entirely in cash.

E. EXPENDITURE OF PROCEEDS FROM RENT. At its sole discretion and subject to its own plans, specifications, and site development schedules, the Forest Service may spend without further appropriation the proceeds from the rent charged for this lease for acquisition, improvement, maintenance, reconstruction, or construction of a facility or improvement, as defined in the Forest Service Facility Realignment and Enhancement Act of 2005, for the National Forest System. The Forest Service shall have access to the lease area for this work. The Forest Service shall give the lessee notice of this work and shall coordinate with the lessee regarding the timing of this work.

<Select the following clauses VI.B through VI.E for leases issued under section 8623 of the Farm Bill. Delete the preceding clauses VI.B through VI.E.>

B. MARKET VALUE RENT. The lessee shall pay rent for this lease that is at least market value. The market value rent for this lease shall be based on:

1. The market value of the existing facilities and improvements in the lease area; and
2. The market value of any new facilities or improvements to be constructed and the market value of any existing facilities or improvements that have been subject to Government maintenance, repair, improvement, restoration, or reconstruction. The rental rate for federal improvements shall be based on the market rental rate used for improvements, as determined by the Forest Service. If the Forest Service is unable to determine a market rate using local market information, the rate of 6% of the value of the federal improvements shall be used as a minimum rate.

C. RENTAL PAYMENTS. The lessee shall pay an initial rent of \$[amount] from [date] to [date] by [date] and thereafter shall pay an annual rent of \$[amount]. The lessee may pay rent:

1. Entirely in cash;
2. Entirely in kind, based on the market value of the following types of eligible work:
 - (a) Construction of new facilities or improvements in the lease area;
 - (b) Government maintenance, repair, improvement, or restoration of facilities or improvements in the lease area; and
 - (c) Services relating to activities that occur in the lease area; or
3. Any combination of cash or the types of eligible in-kind work specified in clause VI.C.2.

Lessee maintenance, repair, or restoration shall not be eligible for in-kind consideration for this lease.

Any rent paid in cash for this lease shall be deposited into the U.S. Treasury as miscellaneous receipts. Rent paid in cash under this lease may not be retained and spent by the Forest Service.

D. OPTIONS FOR PROVIDING FOREST SERVICE EMPLOYEE HOUSING USING IN-KIND CONSIDERATION

1. Existing Facilities or Improvements. Space for Forest Service employee housing may be reserved in existing facilities or improvements that are improved or restored as in-kind consideration. The Forest Service shall decrease the rent charged for these facilities or improvements proportionate to the space reserved for Forest Service employee housing.

2. New Facilities or Improvements

(a) Lessee Retains Title Upon Completion. If the lessee retains title to the new facilities or improvements upon completion and offers space in the new facilities or improvements for Forest Service employee housing at a discount or free of charge, there are two types of in-kind consideration: (1) the value of construction costs, including the costs of removing any existing facilities or improvements at the administrative site so that the new facilities or improvements can be constructed; and (2) the value of the discounted or free use of space for Forest Service employee housing, which is a service relating to activities that occur in the lease area. If the use and occupancy of the administrative site will be reauthorized, before or upon revocation or termination of this lease, title to the new facilities or improvements shall be transferred to the United States per clause VII.E of this lease.

(b) Lessee Transfers Title Upon Completion. If the lessee transfers to the United States title to the new facilities or improvements upon completion and offers space in the new facilities or improvements for Forest Service employee housing, there is only one type of in-kind consideration: the value of construction costs, including the costs of removing any existing facilities or improvements at the administrative site so that the new facilities or improvements can be constructed. Since the lessee does not have title to the new facilities or improvements, the lessee cannot charge rent for them and therefore cannot offer space in them for Forest Service employee housing at a discount or free of charge as a form of in-kind consideration. The Forest Service shall decrease the rent charged for the new facilities or improvements proportionate to the space reserved for Forest Service employee housing.

E. DOCUMENTATION AND ACCEPTANCE OF IN-KIND CONSIDERATION

1. Documentation of In-Kind Consideration. In-kind consideration must be documented in advance using form FS-2700-452, In-Kind Consideration Agreement for Leasing Forest Service Administrative Sites.

2. Acceptance of In-Kind Consideration. Before acceptance of any in-kind consideration:

(a) The Forest Service shall determine that the work or service was satisfactorily performed by the lessee;

(b) The costs of the in-kind consideration must be documented by the lessee; and

(c) The costs of the in-kind consideration must be certified by the lessee using form FS-2700-453, Claim for In-Kind Consideration Costs.

3. Limit on the Amount of In-Kind Consideration. Annual in-kind consideration for an administrative site may not exceed the amount of annual market value rent for the site.

4. Consolidation of Rent for Multiple Years to Increase the Value of In-Kind Consideration. The authorized officer may consolidate rent for multiple years to increase the value of in-kind consideration that may be provided for large-scale projects.

5. Forest Service-Performed In-Kind Consideration. The Forest Service may perform work approved as in-kind consideration that is funded by the lessee under a collection agreement executed by the lessee and the authorized officer under section 5 of the Granger-Thye Act, 16 U.S.C. 572. The Forest Service must document the cost of work performed by the agency as in-kind consideration under a collection agreement.

6. Reconciliation of Annual Rent Against Costs of In-Kind Consideration. At the end of each year of operations, the Forest Service shall reconcile the annual rent against approved costs of in-kind consideration. The lessee shall pay any additional rent owed for the past year's operations within 30 days of billing. Any overpayment of annual rent shall be reimbursed by the Forest Service.

<END OF USER NOTES FOR CLAUSES VI.B THROUGH VI.E>

F. REVISION OF THE RENT. The rent for this lease may be revised whenever necessary to reflect the market value of the authorized use or occupancy, for example, to reflect increases in the market value of the authorized administrative site based on construction or improvement in the lease area. Upon expiration of this lease and before issuance of a new lease, the Forest Service shall reassess and revise the market value rent for the new lease based on any additional construction or Government maintenance, repair, improvement, restoration, or reconstruction of facilities and improvements in the lease area.

G. RENTAL PAYMENTS

1. Due Date. Rent is due and payable on [date] of each calendar year after the first year of this lease.

2. 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.

3. Late Payments

(a) Interest. Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any rent 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 rent 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.

(d) Termination for Nonpayment. This lease shall terminate if the lessee fails to pay any rent, interest, or any other charges within 90 calendar days of the due date. The lessee shall remain responsible for the delinquent charges.

4. Administrative Offset and Credit Reporting. Delinquent rent and other charges associated with this lease 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 lessee from the Forest Service.

(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 lessee, as provided by 31 U.S.C. 3720 *et seq.*

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

H. PROHIBITION ON LEASEBACKS. The authorized officer may not pay rent to lease back any of the authorized facilities and improvements from the lessee.

VII. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION

1. The authorized officer may revoke or suspend this lease in whole or in part:

(a) For noncompliance with federal, state, or local law;

(b) For noncompliance with the terms of this lease;

(c) For abandonment or other failure of the lessee to exercise the privileges granted; or

(d) At the discretion of the authorized officer, for specific and compelling reasons in the public interest.

2. The authorized officer may revoke this lease in its entirety at the request of the lessee. Revocation at the request of the lessee must be agreed to in writing by the authorized officer. As a condition of revocation of this lease at the request of the lessee, the authorized officer has discretion to impose any terms deemed appropriate as provided for in this lease.

3. Prior to revocation or suspension, other than revocation at the request of the lessee under clause VII.A.2 and immediate suspension under clause VII.B, the authorized officer shall give the lessee written notice of the grounds for revocation or suspension and a reasonable period, typically not to exceed 90 days, to cure any noncompliance.

B. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this lease in whole or in part when necessary to protect public health or safety or the environment. The suspension decision

shall be in writing. The lessee 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 lease are subject to administrative appeal pursuant to 36 CFR Part 214, as amended. Revocation or suspension of this lease shall not give rise to any claim for damages by the lessee against the Forest Service.

D. TERMINATION. This lease shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer, such as expiration of the lease by its terms on a specified date. Termination of this lease shall not require notice, a decision document, or any environmental analysis or other documentation. Termination of this lease is not subject to administrative appeal and shall not give rise to any claim for damages by the lessee against the Forest Service.

<USER NOTES FOR CLAUSE VII.E>

<Include clause VII.E in leases issued under section 8623 of the Farm Bill. Otherwise omit it, and re-letter the remaining clauses in this section.>

E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WHEN A NEW LEASE WILL BE ISSUED. Before or upon revocation or termination of this lease when a new lease will be issued, the lessee shall transfer title to any new facilities or improvements constructed by the lessee as in-kind consideration to the United States in compliance with United States Department of Justice title standards.

F. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WHEN A NEW LEASE WILL NOT BE ISSUED. Upon revocation or termination of this lease when a new lease will not be issued, the authorized officer may accept title to any new facilities or require the lessee to remove any authorized facilities and improvements and restore the site to the satisfaction of the authorized officer. If the lessee fails to remove the facilities and improvements within the prescribed period, the lessee shall be liable for all costs associated with their removal by the Forest Service, including costs of sale and impoundment, cleanup, and restoration of the site.

G. CONTINUATION OF OBLIGATIONS AND LIABILITIES BEYOND EXPIRATION OR REVOCATION. Notwithstanding the termination or revocation of this lease, its terms shall remain in effect and shall be binding on the lessee and the lessee's personal representative, successors, and assignees until all the lessee's obligations and liabilities accruing before or as a result of termination or revocation of this lease 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. Otherwise, delete it.>

H. TERMINATION FOR THE DEVELOPMENT OF HYDROELECTRIC POWER OR RECLAMATION PURPOSES. Any lands covered by this lease 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 lease which have been withdrawn under the Reclamation Act of June 17, 1902, are subject at any time to use for reclamation purposes. This lease is issued with the specific understanding that (1) the use and occupancy authorized by this lease shall not interfere with such development of hydroelectric power or reclamation and that (2) this lease shall terminate after 90 days written notice when, in the judgment of the Federal Power Commission, the lands in question are needed for the development of hydroelectric power or, in the judgment of the Bureau of Reclamation, the lands in question are needed for reclamation purposes. The lessee shall have 90 days to remove the authorized improvements. Termination under this clause shall not give rise to any claim by the lessee 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 lease either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

B. CURRENT ADDRESSES. The lessee and the Forest Service shall keep each other informed of current mailing addresses, including those necessary for billing and payment of rent.

<USER NOTES FOR CLAUSE VIII.C>

<If there was no previous lease for the authorized use, delete clause VIII.C and re-letter the remaining clause.>

C. SUPERSEDED LEASE. This lease supersedes a lease designated #PREV_REISSUE_LESSEE#, #PREV_AUTH_ID#, dated #PREV_REIS_ISSUE_DATE#.

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

THIS LEASE IS ACCEPTED SUBJECT TO ALL ITS TERMS.

BEFORE THIS LEASE IS ISSUED 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 LEASE.

ACCEPTED:

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

APPROVED:

#AUTHORIZED OFFICER NAME# DATE
#TITLE#

National Forest
USDA Forest Service

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

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with an information collection subject to the requirements of the Paperwork Reduction Act of 1995, unless the information collection has a currently valid OMB Control Number. The approved OMB Control Number for this information collection is 0596-0082. Without this approval, we could not conduct this information collection. Public reporting for this information collection is estimated to be approximately 14 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. All responses to this information collection are required to obtain benefits. Send comments regarding this burden estimate or any other aspect of this information collection, including suggestions for reducing this burden, to the U.S.D.A. Forest Service email address SM.FS.InfoCollect@usda.gov and include the OMB Control Number in the subject line.