

Appendix H – Sample Category 6 Cost Recovery Agreement

FS-2700-26 (v.05/09)
USDA Forest Service
OMB No. 0596-0082
Exp. (10/31/2012)

CATEGORY 6 MAJOR COST RECOVERY AGREEMENT

**Between USDA, FOREST SERVICE, [name] National Forest,
and [name of applicant]**

This agreement is entered into between the UNITED STATES DEPARTMENT OF AGRICULTURE, FOREST SERVICE, [name] National Forest (the Forest Service), and the [name of entity or individual] (the applicant) under 36 CFR 251.58.

A. RECITALS

1. On [date], the Forest Service accepted the applicant's application for use and occupancy of National Forest System lands (hereinafter "the application"), which is enumerated in Appendix A. The Forest Service shall assess the applicant a cost recovery fee for the agency's costs to process the application.
2. The Forest Service has determined that the fee for processing the application falls within category 6 under the applicable Forest Service processing fee schedule and/or that the fee for monitoring the applicant's special use authorization falls within category 6 under the applicable Forest Service monitoring fee schedule.
3. A special use authorization ("the authorization") may be issued to the applicant. The authorization is enumerated in Appendix A and subject to assessment of monitoring fees by the Forest Service.
4. The geographic area to be covered by this agreement is [describe geographic area]. See Appendix B.
5. The application has been submitted or the applicant's special use authorization is being issued under the Mineral Leasing Act, or under other authorities and the applicant has waived payment of reasonable costs. Therefore, the Forest Service is entitled to recover its full actual costs incurred in processing the application or monitoring the authorization.
5. The application has been submitted or the applicant's special use authorization is being issued under an authority other than the Mineral Leasing Act, and the applicant has not waived payment of reasonable costs. Therefore, the Forest Service is entitled to recover its full reasonable costs incurred in processing the application or monitoring the authorization.
6. Payment of a processing fee by the applicant does not obligate the Forest Service to authorize the applicant's proposed use and occupancy. If the application is denied or withdrawn in writing, the applicant is responsible for costs incurred by the Forest Service in processing the application up to and including the date the agency denies the application or receives written notice of the applicant's withdrawal. If the applicant withdraws the application, the applicant also is responsible for any costs subsequently incurred by the Forest Service in terminating consideration of the application.
- 7 The Forest Service shall determine the appropriate level of environmental analysis for the application and inform the applicant prior to initiating the environmental analysis.
8. Information associated with this agreement may be released to the public in accordance with the provisions of the Freedom of Information Act and Privacy Act.

Processing fees for the application are based upon the direct and indirect costs that the Forest Service incurs in reviewing the application, conducting environmental analyses of the effects of the proposed use, reviewing any applicant-generated environmental documents and studies, conducting site visits, evaluating the applicant's technical and financial qualifications, making a decision on whether to issue the authorization, and preparing documentation of analyses, decisions, and authorizations for the application. The processing fee for the application shall be based only on costs that are necessary for processing the application. "Necessary for" means that but for the application, the costs would not have been incurred. The processing fee shall not include costs for studies for programmatic planning or analysis or other agency management objectives, unless they are necessary for processing the application. Proportional costs for analyses, such as capacity studies, that are necessary for the application may be included in the processing fee.

C. AGREEMENT

In consideration of the foregoing, the parties agree as follows:

1. **Scope of Work.** The Forest Service shall develop a scope of work for processing the application and an estimate of the agency's costs to process the application, which will be incorporated into this agreement as Appendix C. This scope of work shall report direct costs in categories that correspond to those in the agency's accounting system, e.g., job code, personnel compensation based upon the cost to the government (salary and benefits), travel, and other direct services, materials, and supplies. In addition, the estimate of the agency's processing costs shall include the agency's indirect costs based upon the approved annual indirect cost rate. Classification of costs as direct or indirect shall be in accordance with the published Forest Service budget for the applicable fiscal year.
2. **Environmental Analysis.** The Forest Service shall supervise the preparation of the environmental analysis associated with the application in compliance with applicable legal requirements, including public review of the analysis, analysis of public comments, and decision documentation. In exercising this responsibility, the Forest Service shall endeavor to foster cooperation among other agencies involved in the process, and to integrate National Environmental Policy Act requirements and other environmental review and consultation requirements to avoid, to the fullest extent possible, duplication of efforts by those agencies. However, the Forest Service shall not delegate to any other agency its authority over the scope and content of the environmental analysis, or approval or denial of the application.
3. **Billing.** The Forest Service shall bill the applicant prior to commencement of work. The applicant agrees to pay the estimated processing fee of \$ _____. The bill for the estimated processing fee is attached.
4. **Payment.** The applicant shall pay the estimated processing fee within 30 days of the date the bill for the fee is issued. The Forest Service shall not initiate processing the application until the estimated processing fee is paid. If the applicant fails to pay the estimated processing fee or the fee is late, the Forest Service shall cease processing the application until the fee is paid.
5. **Statement of Costs.** The Forest Service shall [annually or upon completion of the project] report costs incurred for processing the application by providing a financial statement from the agency's accounting system to the applicant.
6. **Underpayment.** When the estimated processing fee is lower than the full actual costs of processing an application submitted under the Mineral Leasing Act, or lower than the full reasonable costs (when the applicant has not waived payment of reasonable costs) of processing an application submitted under other authorities, the applicant shall pay the difference between the estimated and full actual or reasonable processing costs within 30 days of billing.

7. Overpayment. If payment of the processing fee exceeds the full actual costs of processing an application submitted under the Mineral Leasing Act, or the full reasonable costs (when the applicant has not waived payment of reasonable costs) of processing an application submitted under other authorities, the Forest Service shall either (a) refund the excess payment to the applicant or (b) at the applicant's request, credit it towards monitoring fees due.

8. Disputes

a. If the applicant disagrees with the estimated dollar amount of the processing costs, the applicant may submit a written request before the disputed fee is due for substitution of alternative estimated costs to the immediate supervisor of the authorized officer who determined the estimated costs. The written request must include supporting documentation.

b. If the applicant pays the full disputed processing fee, the Forest Service shall continue to process the application during the supervisory officer's review of the disputed fee, unless the applicant requests that the application processing cease.

c. If the applicant fails to pay the full disputed processing fee, the Forest Service shall suspend further processing of the application pending the supervisory officer's determination of an appropriate processing fee and the applicant's payment of that fee.

d. The authorized officer's immediate supervisor shall render a decision on a disputed processing fee within 30 calendar days of receipt of the written request from the applicant. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the applicant if the supervisory officer does not respond to the written request within 30 days of receipt.

9. Lack of Administrative Appeal. A decision by an authorized officer to assess a processing fee or to determine the estimated costs is not subject to administrative appeal. A decision by an authorized officer's immediate supervisor in response to a request for substitution of alternative estimated costs likewise is not subject to administrative appeal.

10. Amendment. Modifications to this agreement shall be made in writing and shall be signed and dated by both parties.

11. Expiration and Termination. This agreement expires on [date]. Either party, in writing, may terminate this agreement in whole or in part at any time before it expires. The applicant is responsible for all Forest Service costs covered by this agreement that are incurred up to the date of expiration or termination.

12. Principal Point of Contact. The Forest Service and the applicant shall each establish a principal point of contact for purposes of this agreement.

The Forest Service's contact is [name, title and telephone number].

The applicant's contact is [name, title and telephone number]

This agreement is accepted subject to all terms and conditions.

[name of applicant] Date

[title of applicant]

[name of authorized officer] Date

[title of authorized officer]

USDA, Forest Service

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0596-0082.. The time required to complete this information collection is estimated to average 8 hours per

response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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PART II – MONITORING FEES

B. BASIS FOR MONITORING FEES

The Forest Service shall assess the applicant a monitoring fee based upon the agency's estimated costs to ensure compliance with the terms and conditions of the authorization during all phases of its term, including but not limited to monitoring to ensure compliance with the authorization during the construction or reconstruction of temporary or permanent facilities and rehabilitation of the construction or reconstruction site.

C. AGREEMENT

In consideration of the foregoing, the parties agree as follows:

1. Scope of Work. The Forest Service shall develop a scope of work for monitoring the authorization and an estimate of the agency's costs to monitor the authorization, which will be incorporated into this agreement as Appendix C. This scope of work shall report direct costs in categories that correspond to those in the agency's accounting system, e.g., job code, personnel compensation based upon the cost to the government (salary and benefits), travel, and other direct services, materials, and supplies. In addition, the scope of work shall include the agency's indirect costs based upon the approved annual indirect cost rate. Classification of costs as direct or indirect shall be in accordance with the published Forest Service budget for the applicable fiscal year.
2. Billing. The Forest Service shall bill the applicant prior to commencement of construction, reconstruction, rehabilitation, or any other activity subject to a monitoring fee. The applicant shall pay an estimated monitoring fee of \$_____ before or at the same time the authorization is issued. The bill for the estimated monitoring fee is attached.
3. Payment. The applicant shall pay the estimated monitoring fee within 30 days of the date the bill for the fee is issued. The Forest Service shall not initiate monitoring the authorization until the estimated monitoring fee is paid. If the applicant fails to pay the estimated monitoring fee or the fee is late, the Forest Service shall not issue the authorization or shall suspend or revoke the authorization in whole or in part.
2. Billing. The Forest Service shall bill the applicant prior to commencement of construction, reconstruction, rehabilitation, or any other activity subject to a monitoring fee. The applicant

shall pay an initial estimated monitoring fee of \$_____ before or at the same time the authorization is issued and a subsequent [monthly or quarterly] estimated monitoring fee of \$_____, for a total of \$_____. The bill for the initial estimated monitoring fee is attached.

3. Payment. The applicant shall pay the initial estimated monitoring fee and any subsequent estimated monitoring fees within 30 days of the date the bill for the fee is issued. The Forest Service shall not initiate monitoring the authorization until the estimated monitoring fee is paid. If the applicant fails to pay the initial or any subsequent estimated monitoring fee or the fee is late, the Forest Service shall not issue the authorization or shall suspend or revoke the authorization in whole or in part.

4. Statement of Costs. The Forest Service shall [annually or upon completion of the project] report costs incurred for monitoring the authorization by providing a financial statement from the agency's accounting system.

5. Underpayment. When the estimated monitoring fee is lower than the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or lower than the full reasonable costs (when the applicant has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the applicant shall pay the difference in the next periodic payment or the Forest Service shall bill the applicant for the difference between the estimated and full actual or reasonable monitoring costs. Payment shall be due within 30 days of receipt of the bill.

6. Overpayment. If payment of the monitoring fee exceeds the full actual costs of monitoring an authorization issued under the Mineral Leasing Act, or the full reasonable costs (when the applicant has not waived payment of reasonable costs) of monitoring an authorization issued under other authorities, the Forest Service shall either (a) adjust the next periodic payment to reflect the overpayment or (b) refund the excess payment to the applicant.

7. Disputes

a. If the applicant disagrees with the estimated dollar amount of the monitoring costs, the applicant may submit a written request before the disputed fee is due for substitution of alternative estimated costs to the immediate supervisor of the authorized officer who determined the estimated costs. The written request must include supporting documentation.

b. If the applicant pays the full disputed monitoring fee, the Forest Service shall issue the authorization and/or allow the use and occupancy to continue during the supervisory officer's review of the disputed fee, unless the applicant elects not to exercise the authorized use and occupancy of National Forest System lands during the review period.

c. If the applicant fails to pay the full disputed monitoring fee, the Forest Service shall not issue the applicant an authorization for any new uses or shall suspend or revoke the applicant's existing authorization in whole or part pending the supervisory officer's determination of an appropriate monitoring fee and the applicant's payment of that fee.

d. The authorized officer's immediate supervisor shall render a decision on a disputed monitoring fee within 30 calendar days of receipt of the written request from the applicant. The supervisory officer's decision is the final level of administrative review. The dispute shall be decided in favor of the applicant if the supervisory officer does not respond to the written request within 30 days of receipt.

8. Lack of Administrative Appeal. A decision by an authorized officer to assess a monitoring fee or to determine estimated costs is not subject to administrative appeal. A decision by an authorized officer's immediate supervisor in response to a request for substitution of alternative estimated costs likewise is not subject to administrative appeal.

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11. Principal Point of Contact. The Forest Service and the applicant shall each establish a principal point of contact for purposes of this agreement.

The Forest Service's contact is [name, title and telephone number].

The applicant's contact is [name, title and telephone number].

This agreement is accepted subject to all its terms and conditions.

[name of applicant] Date

[title of applicant]

[name of authorized officer] Date

[title of authorized officer]

USDA, Forest Service

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APPENDIX A

Applications and Authorizations Subject to this Agreement

APPENDIX B

Description and Map of the Geographic Area

APPENDIX C

Scope of Work