

**Forest Service Manual
National Headquarters – Washington Office
Washington, DC**

**Forest Service Manual 6500 – Finance and Accounting
Chapter 6560 – Bonding Administration**

Amendment: 6500-2016-1

Effective date: April 07, 2016

Duration: This amendment is effective until superseded or removed.

Approved by: Thelma J. Strong, Chief Financial Officer (CFO)

Date approved: April 06, 2016

Last Change: Amendment 6500-2012-4 to FSM 6580

Superseded Document(s): 6560, Amendment 6500-2012-3, October 11, 2012

Digest: Following is an explanation of the changes throughout the directive by section.

6560: Makes editorial and technical changes throughout this chapter.

6560.41c: Establishes code, caption, and sets forth new direction for “Audit and Assurance”.

6561.5: Establishes code, caption, and sets forth new direction for “Long Term Trusts and Agreements”.

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6560.1 – Authority

Authorities for the legal requirements that are used by bond approving officers to obtain and administer bonds to protect the Government against financial damages include, but are not limited to:

1. The Act of June 30, 1914, Title 16, United States Code, section 498 (16 U.S.C. 498), as amended and Title 36, Code of Federal Regulations, section 221.6 (36 CFR 221.6). Provides authority to require payment bonds on collection agreements where the cooperators' total contribution is \$25,000 or more. (Federal Acquisition Regulation, part 28, subpart 28.1, section 28.102-1 (FAR 28.102-1)).
2. The Miller Act (40 U.S.C. 270a-270f) and Title 48, Code of Federal Regulations, section 28.102 (48 CFR 28.102). Provides authority to require performance bonds to protect the Government; and payment bonds to protect persons supplying labor or materials for public building, or working on contracts.
3. Title 31, Code of Federal Regulations, part 202 (31 CFR part 202). Provides authority to accept deposits of public money including, but is not limited to, revenue and funds of the United States, and any funds the deposit of which is subject to the control or regulation of the United States or any of its offices, agents, or employees.
4. Title 31, Code of Federal Regulations, parts 223 through 225 (31 CFR parts 223 through 225) and related Department of the Treasury Circulars 154 and 570. Provides authority to issue Certificates of Authority to surety companies that do business with the Government, accept bonds, notes, and other negotiable securities, and surety liability for non-performance.
5. Title 36, Code of Federal Regulations, parts 223, 228, and 251 (36 CFR parts 223, 228, and 251). Provides authority to require performance and advance payment bonds on timber sale contracts, minerals, oil and gas permits, and special-use authorizations.
6. Title 48, Code of Federal Regulations, part 28 (48 CFR part 28). Provides authority to accept bid, performance, and payment bonds and identifies the requirements for use of each.
7. Title 31, United States Code, chapter 93, Sureties and Surety Bonds (31 U.S.C. 9301-9309). Provides authority to approve sureties and revoke surety corporations.

6560.2 – Objective

The objective of bonding administration is to protect the Government from financial loss resulting from defaulted or terminated contracts, mining or other mineral extraction authorizations, licenses, special-use authorizations, timber collections, and grant agreements.

6560.3 – Policy

1. Obtain bonds of sufficient penal sum to protect the Government from financial loss if obligations of the principal are not met.
2. Obtain adequate security for bonds, including the use of long term trusts and agreements for post-reclamation (post-closure) activities.
3. Determine the required financial assurance amount for performance guarantee or long-term reclamation work, applying present value calculations as follows:
 - a. For Reclamation Bonds. Use the discount rates and Treasury rates prescribed in the Office of Management and Budget (OMB) Circular A-94, Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs.
 - b. For Post-Reclamation (post-closure) Bonds. Use a Long Term Trust Agreement that is supportable, justifiable, and replicable (reproducible); applied using cost estimates and other data elements consistent with published Agency directives (FSM 2400, FSM 2700, FSM 2800, FSM 6560, and so forth).
4. Use blanket bonds as appropriate for timber sale contracts and special use authorizations (for example, communications facilities owned or operated by the same individual or entity). Ensure that the standard bonding clause is added to the standard communications use lease.
5. Funds associated with bonds shall only be used for the fulfillment of the bonding obligation.

6560.4 – Responsibility

6560.41 – Washington Office

6560.41a – Director of Financial Policy

It is the responsibility of the Director of Financial Policy to:

1. Provide direction about the financial aspects of bonding and bond claims.
2. Provide advice and assistance to the Chief, Staff Directors, Albuquerque Service Center Budget & Finance (ASC B&F), field units, and the Forest Service bond-approving officers.
3. Coordinate with the ASC B&F, and other agency staff, concerning inquiries and referrals on legal questions or clarification to the Office of the General Counsel (OGC), and the U.S. Department of Treasury.

4. Coordinate with the Office of the Chief Financial Officer (OCFO), the U.S. Department of Treasury, OGC, and staff areas to address new legislation and to update Agency policy directives as needed.

6560.41b – Albuquerque Service Center (ASC-B&F), Director of Budget and Finance

It is the responsibility of the Albuquerque Service Center (ASC-B&F), Director of Budget and Finance, to:

1. Designate a Point of Contact (POC) for bonding.
2. Develop internal controls to ensure processes are properly implemented to minimize unauthorized access to bond funding and bonding signatures.
3. Review individual sureties on a risk based approach, including Long Term Trusts and Agreements, to ensure each are acceptable and the interest of the Government remains protected.
4. Assist designated bond approving officers in understanding the role and responsibilities of serving the respective units.
5. Coordinate with staffs on issues related to revocation of sureties and other financial assurance concerns.
6. Ensure personal and sensitive information related to bonding within the control of the ASC B&F) is maintained and properly secured according to the Personally Identifiable Information (PII) guidelines. <http://www.dol.gov/dol/ppii.htm>.
7. Ensure all negotiable instruments under ASC B&F's custody, such as letters of credit, are secured in a fire-proof, locked safe.

6560.41c – Audit and Assurance

It is the responsibility of the Director, Audit and Assurance Staff, to:

1. Evaluate the effectiveness of internal controls to achieve the objectives of effective and efficient operations, reliable financial accounting and reporting, and compliance with applicable laws and regulations (OMB Circular A-123).
2. Evaluate and make recommendations to improve internal controls over the bond program and validate the effectiveness and operational adherence.

6560.42 – Field Units

6560.42a – Regions, Stations, Area, and Institute

It is the responsibility of the Regional Foresters, Station Directors, Area Director, and Institute Director to:

1. Serve as Bond-Approving Officer for their units. This authority may be re-delegated in writing (see section 6560.43).
2. Train and assist the designated Bond Approving Officers in their role in serving the respective units.
3. Provide necessary training and support in the day-to-day operations of the bonding process.
4. Ensure personal and sensitive information is maintained and properly secured according to Personally Identifiable Information (PII) guidelines.
<http://www.dol.gov/dol/ppii.htm>
5. Retain all documentation per direction found in FSH 6209.11, Records Management Handbook, chapter 40. Restrict access to all documents containing Personally Identifiable Information (PII).
6. Ensure all negotiable instruments such as cash or letters of credit are secured in a fire-proof, locked safe. In the absence of a secured, locked safe, send negotiable instruments to the ASC B&F Bonding POC.
7. Ensure funds associated with bonds are only used for the fulfillment of the bonding obligation.
8. The Northern Research Station is responsible for providing bonding services to the Northeastern Area.
9. The Southern Station is responsible for providing bonding services to the International Institute of Tropical Forestry.

6560.42b – National Forests

It is the responsibility of the Forest Supervisors to:

1. Ensure assistance on bonding and bond claims are provided to the bond-approving officer.
2. Coordinate with the ASC B&F POC as needed for approving and signing of documents and the authority to re-delegate.

3. Ensure personal and sensitive information is maintained and properly secured according to Personally Identifiable Information (PII) guidelines.
<http://www.dol.gov/dol/ppii.htm>
4. Provide necessary training and support in the day-to-day operations of the bonding process.
5. Ensure all negotiable instruments such as letters of credit are secured in a fire-proof, locked safe. In the absence of a secured, locked safe, send negotiable instruments to the ASC, B&F POC.

6560.43 – Bond-approving Officers

The titles bond-approving, authorizing, and contracting officers are generally synonymous in their responsibilities. It is the responsibility of the Bond-Approving Officers to:

1. Execute contracts, permits, licenses, special-use authorizations, or similar documents on behalf of the Forest Service.
2. Obtain bonds in the required penal sum as in accordance with Forest Service Handbook 6509.11k, chapter 80.
3. Approve and periodically review bonds and long term trusts for security sufficiency.
4. Administer bond terms and all Regions, Stations, Area, Institute, or Forest-wide blanket bonds.
5. Ensure personal and sensitive information is maintained and properly secured according to Personally Identifiable Information (PII) guidelines.
<http://www.dol.gov/dol/ppii.htm>
6. Ensure funds associated with bonds are only used for the fulfillment of the bonding obligation.
7. Review and approve all requests submitted by the units.
8. Respond to requests from ASC B&F for supporting documentation and vendor code information.
9. Ensure all negotiable instruments such as letters of credit are secured in a fire-proof, locked safe. In the absence of a secured, locked safe, send negotiable instruments to the ASC B&F POC.
10. Retain all documentation related to bonds managed per direction found in FSH 6209.11, Records Management Handbook, chapter 40. Restrict access to all documents containing Personally Identifiable Information (PII).

6560.5 – Definitions

Assignment of Savings Account or Certificate of Deposit. An irrevocable agreement between a contractor, permittee, special-use authorization holder, or licensee (principal), and the Forest Service, which assigns the Forest Service, all rights, title, and interest in the principal's savings account or certificate of deposit with a financial institution.

Assignor. A person who assigns or transfers a legal interest to another.

Bond. A written instrument executed by a bidder, contractor, permittee, special-use authorization holder, or licensee and a second party (surety or sureties) to ensure fulfillment of the principal's government obligation. If the principal does not meet the obligation, the bond ensures payment, to the extent stipulated, of any loss sustained by the Government. Some of the most commonly used Forest Service bonds are:

1. Annual Bid Bond. A single bond, furnished by a bidder in lieu of separate bid bonds, which secures all bids that the bidder submits during a fiscal year.

2. Annual Performance Bond. A single bond, furnished by a principal in lieu of separate performance bonds, which secures fulfillment of some or all of the principal's obligations on a Forest-wide, Region-wide, or contracting zone basis.

3. Bid Bond (Guarantee). A bond accompanying a bid or proposal that protects the Government from loss if the successful bidder fails to execute contractual documents and bonds as required.

4. Blanket Payment Bond – Timber Sale Contract. A single bond, furnished by a timber purchaser in lieu of separate payment bonds, which ensures payment for one or more timber sales on a Forest-wide, Region-wide, or contracting-zone basis.

5. Corporate Surety Bond. A bond executed by a corporate surety. The surety must appear on Treasury Circular 570 for it to be an acceptable Forest Service bond.

6. Payment Bond. A bond securing payments to all persons supplying labor and materials in the performance of work provided for in a contract.

(a) Payment Bond – Collection Agreement. A bond furnished by non-Government cooperators to guarantee reimbursement payment on collection agreements; written under the Act of June 30, 1914, when the total contribution is \$25,000 or more. (FAR 28.102-1).

(b) Payment Bond – Timber Sale Contract. A bond securing payments due and billed under contract terms, which permits a timber purchaser to cut timber before making cash deposits, if the purchaser makes deposits as billed.

7. Performance Bond. A bond securing performance and fulfillment of the principal's obligations under a contract, mineral extraction authorization, permit, special use authorization, or license.

8. Position Schedule Bond. A bond that guarantees the honesty of those holding named positions in the Forest Service, as opposed to a bond that refers to named individuals. It covers each for a designated amount, and covers any persons who may occupy any such position during the term of the bond.

Cash in Lieu of Sureties. Cash and cash equivalents collected by the Forest Service in lieu of a surety (or other security) covering the bond penal sum.

Grantor. A grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a transfer of property or cash to a trust. If a person creates or funds a trust on behalf of another person, both persons are treated as grantors of the trust.

Irrevocable Letter of Credit. An irrevocable authorization, issued by a financial institution on behalf of the principal, which allows the Forest Service to withdraw funds of a stated amount, within a specified time, in accordance with the terms stated within the Letter of Credit.

Long Term Trust Agreement. An agreement between the Agency and the Grantor to provide financial assurance for the benefit of the Government with respect to the performance of the Grantor's post closure operations, reclamation, monitoring, and maintenance obligations.

Mineral Extraction Authorization. General term to include permits, contracts, Plan of Operations, and operating plans related to mineral activities.

Penal Sum or Amount. The amount of money specified in a bond as the maximum payment for which the surety is obligated.

Principal. The bidder, contractor, mineral operator, permittee, special-use authorization holder, licensee, or comparable individual or entity primarily liable for an obligation as distinguished from a surety.

Project or Bonded Activity. All activities that are required or can be bonded by law or regulation. This includes contracts, mineral extraction authorizations, permits, special-use authorizations, and licenses.

Surety. An individual or corporation liable for the debt, default, or failure of a principal to satisfy an obligation.

a. Corporate Surety. A surety bond available for purchase from an independent surety institution, such as a corporation.

b. Individual Surety. An asset or group of assets set aside by the principal that are acceptable to the obligee (for example, Forest Service) in lieu of a corporate surety, such as "cash in lieu of bond", letter of credit, or a long-term trust.

c. Long Term Trust. A financial assurance for long-term, post-closure operations, reclamation, monitoring and maintenance obligations.

6561 – Bond Requirements

Sections 6561.1 through 6561.8 provide direction on bid guarantee, payment, and performance bonding requirements. If a performance or payment bond is required, a bid guarantee must also be required.

6561.1 – Construction Contract Bonds

Payment and performance bonds are required for construction contracts by the Miller Act (40 U.S.C. 270a-f). See part 28 of the Federal Acquisition Regulation (48 CFR 28.102) for the procedures related to construction contract bonds. Assignment of certificate of deposit is acceptable; however, assignment of savings account is unacceptable as security for construction contracts bonds.

6561.2 – Procurement Contract Bonds

Generally, performance and payment bonds are not required for these contracts. See part 28 of the Federal Acquisition Regulation (48 CFR part 28) for the requirements for bond protection against damages under advertised and negotiated procurement contracts. Assignment of certificate of deposit is acceptable; however, assignment of savings account is unacceptable as security for procurement contract bonds.

6561.3 – Timber Sale Contract Bonds

Timber sale contracts may require purchasers to provide bid, performance, and/or payment bonds.

Annual bid and payment bonds covering some or all of the purchaser's contracts are acceptable. Annual performance bonds are unacceptable for timber sale contracts. Secure timber sale contract bonds with cash, corporate surety, deposited securities, an irrevocable letter of credit, or assignment of savings account or certificate of deposit. Individual sureties are unacceptable. For cash or cash-like transactions, electronic payment and collections mechanisms must be maximized by requesting the use of credit/debit cards or electronic check processing. See the following for minimum penal sums for timber sale bonds:

1. Bid Bonds (Guarantee). The penal sum at least equals the minimum bid guarantee as specified in the published sale advertisement.
2. Performance Bonds. The penal sum is based on the standards set forth in FSM 2432.43.
3. Payment Bonds. The minimum penal sum at least equals the advance payment amount as specified in the contract. The maximum penal sum equals the value of the greatest volume of timber, which is prudent to cut, before payment to the Forest Service.

6561.4 – Reclamation Bonds

Obtain bonds to cover the estimated reclamation costs for prospecting, mining, and other mineral operations on National Forest System lands. Bonds guarantee repair of surface resource disturbance, equipment removal, waste disposal, and similar actions. If the U.S. Department of the Interior holds a reclamation bond for mineral activities on National Forest System lands, the Forest Service does not need to hold a separate bond if the bond amount adequately covers reclamation costs. If deemed inadequate, the Forest Service may require and hold additional bonds. Where more than one agency, Federal and/or State, has jurisdiction over a mineral operation, the role of each agency should be defined in a cooperative agreement (FSM 2846).

Reclamation performance bonds may be secured with cash as a last resort, but preferably credit/debit cards or electronic check processing, corporate surety, deposited securities, an irrevocable letter of credit, or assignment of savings account or certificate of deposit. Individual sureties are unacceptable as reclamation bonds; however, individual sureties can be used for post-reclamation long term work. The penal sum of the bond must at least equal the estimated reclamation cost.

6561.5 – Long Term Trusts and Agreements

Long Term Trusts must be established under a Long-Term Agreement as a financial assurance for activities that are required to prevent post-reclamation damage. Post-reclamation (post-closure) activities may include water treatment, dam maintenance, and care and maintenance of infrastructure, which may be required for many years (or centuries) beyond a planned or unplanned closures. Periodic review of the mineral extraction authorizations should include review of performance requirements and an assessment of the need for such financial guarantees.

When establishing a Long Term Trust, the Agency accepts responsibility that the assets provided by the principal will protect the Government from loss. Such responsibility includes oversight of the trust management services and conservative portfolio management. The use of Long-Term Trusts does not replace the current requirement for reclamation performance bonds for ongoing project work. The Agency may be required to hold a combination of financial assurance, such as reclamation bonds for short term liabilities and Long Term Trusts for long term liabilities, to protect the Government.

The Trustee may invest the assets of the Trust Estate, subject to limitations established by, and in accordance with the written direction of the Forest Service (Beneficiary) in the Long Term Trust Agreement (exhibit 01) and the following investments:

1. U.S. Treasury and other U.S. Government agency negotiable securities;
2. Bank time deposits, banker acceptances, certificates of deposit; and money market funds issued by the Trustee; and
3. With the prior approval of the Beneficiary, bank time deposits, banker acceptances, certificates of deposit; and money market funds issued by other Federal depositories.

6561.5 – Exhibit 01

Irrevocable Long Term Trust Agreement

THIS TRUST AGREEMENT (Agreement) shall be effective between the following parties upon execution as provided in Article 8 of this Agreement:

1. [Insert Grantor Name], a _____ corporation, as the grantors (referred to collectively as the Grantor);
2. The United States of America, acting by and through the Forest Service, an agency of the United States Department of Agriculture, as the beneficiary (Beneficiary); and
3. _____ as trustee (Trustee).

The name of the trust created by this Agreement is the _____ Irrevocable Trust (Trust).

ARTICLE 1: PURPOSE AND LIMITATION OF THE AGREEMENT

1.01 Purpose of the Trust. The purpose of this Trust is to provide financial assurance for the benefit of the United States of America with respect to the performance of Grantor's post closure operations, reclamation, monitoring, and maintenance obligations. "Project Name" (Long-Term Maintenance Plan) provides for the formulation of this Trust. A copy of the Long-Term Maintenance Plan is attached as [Appendix 1]. Grantor's post closure operations, reclamation, monitoring, and maintenance obligations are specified in the "Reclamation and Closure Plan" and the Long-Term Maintenance Plan, previously approved by the Beneficiary. The Reclamation and Closure Plan applicable to this Agreement is attached as [Appendix 2].

1.02 Agreement Limitations. The creation of this Trust does not release the Grantor or its successors from the responsibility to perform its post-closure operation, reclamation, monitoring, and maintenance obligations. No provision of this Agreement shall be construed as limiting or precluding the United States from taking, or from requiring Grantor to take, any action relating to the "Project Name" as may be allowed or required by applicable law, including, but not limited to the following statutes, and any regulations promulgated thereunder:

- A. The federal mining laws, 30 U.S.C. §§ 21 et seq.;
- B. The Organic Administration Act, 16 U.S.C. §§ 473 et seq.;
- C. The Federal Water Pollution Control Act, 33 U.S.C. §§ 1251 et seq.;
- D. The Comprehensive Environmental Response Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601 et seq.; and
- E. The Solid Waste Disposal Act, 42 U.S.C. §§ 6901 et seq.

6561.5 – Exhibit 01--Continued

ARTICLE 2: TRUST ESTATE

2.01 Trust Estate. As provided in this Agreement, the Trustee shall hold in trust for the designated purpose legal title to all assets forming the Trust Estate. The Trustee shall, to the extent practicable, segregate the Trust's assets from other funds under the Trustee's control. The Trust's assets shall be collectively referred to as the Trust Estate and shall include:

- A. Grantor's initial contribution of \$____, which shall be placed in the Trust within 10 days of the effective date of this Agreement;
- B. Subsequent assets placed in the Trust by the Grantor as provided in Article 7.04;
- C. Subsequent assets placed in the Trust by the Grantor with the approval of the Beneficiary;
- D. Any other assets placed in the Trust with the approval of the Beneficiary;
- E. Any investments acquired by the Trustee as provided in this Agreement form the "The List of Approved Trust Investments." The List of Approved Trust Investments may include:
 - i. U.S. Treasury and other U.S. Government agency negotiable securities;
 - ii. Bank time deposits, banker acceptances, certificates of deposit; and money market funds issued by the Trustee; and
 - iii. With the prior approval of the Beneficiary, bank time deposits, banker acceptances, certificates of deposit; and money market funds issued by other Federal depositories.
- F. Any income derived in any manner from the Trust's assets.

2.02 Tax Treatment. The Grantor and Beneficiary contemplate that the Grantor will not be liable for any income tax attributable to income earned by the Trust and the Trust will not be considered to be a "grantor trust" under federal, state, or local income tax law. The Grantor agrees not to take any deduction from income tax purposes with respect to any expense incurred by the Trust. This Article, however, does not address the tax treatment of any disbursement to the Grantor under Article 3.01E.

ARTICLE 3: ADMINISTRATION

3.01 Distributions from the Trust Estate. All distributions from the Trust Estate must be made in accordance with this Agreement and shall only be available for the following items unless the Grantor and Beneficiary (or the Beneficiary alone if the Grantor no longer exists) agree in writing to disbursements for additional items:

6561.5 – Exhibit 01--Continued

A. Disbursements to pay costs and expenses incurred by the Trustee in the administration of this Trust at the rate of _____ per year as adjusted under

Article 7.03. Any additional requests for reimbursement of costs and expenses incurred shall be reviewed and approved by Beneficiary prior to payment.

Approval of reasonably incurred expenses shall not be unreasonably withheld.

B. Disbursements to pay all taxes levied with respect to the Trust.

C. Disbursement for expenses for post closure operations, reclamation, monitoring, and maintenance obligations set forth in the Reclamation and Closure Plan, Long-Term Maintenance Plan, or otherwise required of the Grantor, which the Grantor has failed to perform after the Beneficiary's written notification to the Grantor of the need to undertake such activities. For these expenses, the Beneficiary shall submit to the Trustee, with a copy to the Grantor (if the Grantor still exists): (1) a copy of such written notification; (2) a statement by the Beneficiary that expenses were incurred in the amount identified as the result of the failure of the Grantor to perform these duties; and (3) directions for routing this distribution. Upon the presentation of such items, the Trustee shall, within 10 business days, disburse the amount specified in such statement. In the event that Grantor no longer exists, the Beneficiary may provide this documentation in lieu of written notification.

D. Disbursements for the Beneficiary's expenses to recalculate the Discounted Cost Projection, as approved in Article 7.04. For these expenses, the Beneficiary shall submit to the Trustee, with a copy to the Grantor (if the Grantor still exists): (1) a statement by the Beneficiary that expenses were incurred in the amount identified; and (2) directions for routing this distribution. Upon the presentation of such items, the Trustee shall, within 10 business days, disburse the amount specified in such statement.

E. Final disbursement of the remaining Trust Estate shall be made to the Grantor upon written notification from the Beneficiary that the terms and conditions of Article 3.04 have been met. The Beneficiary reserves the right to direct the final disbursement of funds received from other sources pursuant to Article 2.01D.

3.02 Termination of Grantor's Rights. The Grantor has no interest in the Trust Estate except as provided in Article 3.01E and no creditor of the Grantor, other than the Beneficiary, shall have any right to acquire or attach any interest in the Trust Estate.

3.03 Notifications. The Trustee, five business days prior to any disbursement under this Article, shall notify the Grantor and Beneficiary of the amount of any disbursement to be made, for what purposes, and to whom the payment will be made.

3.04 Termination of the Trust. Unless otherwise terminated by written agreement of the Beneficiary and the Grantor, this Trust shall terminate when the Beneficiary determines the Trust is no longer needed to insure Grantor's performance of its long-term post mine closure monitoring and maintenance responsibilities. Upon making such determination, the Beneficiary shall provide written notice of its determination to the Trustee, at which time the Trustee shall distribute any remaining assets of the Trust Estate to the Grantor.

6561.5 – Exhibit 01--Continued

ARTICLE 4: TRUSTEE DUTIES, POWERS, AND RESPONSIBILITIES

4.01 General Duties. The Trustee acknowledges that it is under a duty to exercise reasonable care with respect to the custody of the Trust Estate; provided, however, that the Trustee's duty shall be to deal with such property in a similar manner as the Trustee deals with similar property, subject to the protections and limitations on liability afforded to the Trustee under this Agreement. The Trustee further acknowledges that, in performing its duties under this Agreement, it is a fiduciary to the Trust and at all times shall act in a fiduciary capacity in the exercise of its duties and responsibilities under this Trust Agreement. Notwithstanding any state law to the contrary, the Trustee, however, shall be permitted to qualify without giving a bond or other undertaking in any jurisdiction for the performance of its duties.

4.02 Power to Act. The Trustee shall have the power to act only as provided in this Agreement. The Trustee is expressly authorized:

- A. To hold and retain all or any part of the Trust Estate without any liability for any loss of principal or income by reason of such retention, subject to the obligation to distribute the Trust Estate as set forth in Article 3, and to invest the Trust Estate only in those investments set forth in "The List of Approved Trust Investments" [Appendix 3];
- B. To make, execute, acknowledge, and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary to appropriate to carry out the powers granted to the Trustee by this Agreement;
- C. To invest funds of the Trust in those investments set forth in "The List of Approved Trust Investments" [Appendix 3];
- D. To compromise or otherwise adjust claims in favor of or against the Trust, but only as may be provided for in written direction from the Beneficiary;
- E. To engage employees and professional persons to assist the Trustee with respect to its responsibilities under this Agreement and;
- F. To prepare and file tax returns.

4.03 Prohibited Acts. The Trustee is expressly prohibited from:

- A. Instituting any litigation or collection or other proceeding with respect to the Trust or the Trust Estate;
- B. Engaging in any business activity utilizing the Trust Estate except as provided in this Agreement.

6561.5 – Exhibit 01—Continued

4.04 Release of Liability.

- A. The Trustee shall not be liable for any application or the use of the Trust Estate when such funds are distributed at the direction of the Beneficiary as provided in Article 3.
- B. The Trustee shall not be liable for any instruction, direction, notice, demand, certificate, or document given or delivered by or on behalf of the Grantor or the Beneficiary. The Trustee may rely upon any document it reasonably believes to be genuine and to have been signed or presented by the proper person on behalf of the Grantor or the Beneficiary. The Trustee need not investigate any fact or matter stated in any such document. The Trustee shall not be accountable for the use or application of any funds paid from the Trust Estate pursuant to any direction given under this Agreement.
- C. If the Trustee is served with any judicial or administrative order, judgement, decree, writ, or other form of judicial or administrative process that affects the Trust Estate, including orders of attachment or garnishment or other forms of levies or injunctions or stays relating to the transfer of any of the Trust Estate, the Trustee is authorized to comply therewith. In complying, the Trustee shall not be liable to the Grantor or the Beneficiary even though the order, judgement, decree, writ, or process may be subsequently modified or vacated or otherwise determined to have been without legal force or effect.

4.05 Reports. Before February 1 of each calendar year, the Trustee shall provide an annual report to the Beneficiary and the Grantor showing the Trust Estate and all receipts, disbursements, and distributions during the prior year. Upon written request from the Beneficiary or Grantor, and at the expense of the requesting party, the Trustee shall make available for inspection and copying all Trust records maintained by the Trustee.

ARTICLE 5: RESIGNATION OR TERMINATION OF THE TRUSTEE

5.01 Resignation. The Trustee may resign at any time by providing written notice to the Beneficiary and the Grantor. The resignation shall be effective upon acceptance by the Beneficiary. Upon the resignation of the Trustee, the assets in the Trust Estate shall be disbursed as directed by the Beneficiary as provided in Articles 5.04 and 5.05.

5.02 Removal. The Beneficiary may at any time and at its sole discretion remove the Trustee for any reason. Upon notification of removal, the Trustee shall disburse the assets in the Trust Estate as directed by the Beneficiary as provided in 5.04 and 5.05.

5.03 Merger or Other Cessation of Business of the Trustee. If the Trustee consolidates, merges, or converts into, or transfers all or substantially all of its corporate trust business to, an entity that is subject to the supervision of the Comptroller of the Currency of the Federal Reserve System, such entity shall automatically become the successor trustee.

6561.5 – Exhibit 01--Continued

5.04 Successor Trustee. If the Trustee resigns or is removed, a successor trustee shall be appointed pursuant to the following methods, applied in the following order of priority:

A. The Beneficiary shall have the right after: (1) removing the Trustee or; (2) upon receipt of the Trustee's resignation; to appoint a successor trustee by written notice of appointment delivered to the successor trustee. The appointment shall be effective upon the successor trustee's written acceptance of the appointment or on such later date as may be specified in the written notice of appointment. The terms of this Trust Agreement shall apply to the successor trustee until such time as the Beneficiary, the Grantor (if Grantor still exists), and the successor trustee execute a new trust agreement; or

B. If a successor trustee has not accepted an appointment within 90 days after the resignation or removal of a Trustee, the Trustee may apply to a federal court of competent jurisdiction for the appointment of a successor trustee or for other appropriate relief.

5.04 Delivery of Trust Estate to Successor Trustee. Upon notification of the identity of the successor trustee, the Trustee shall deliver to the successor trustee copies of all Trust records and all remaining assets of the Trust Estate.

ARTICLE 6: NOTICES

6.01 Notices. Any notice or other communication under this Agreement shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if sent by electronic or overnight delivery service, or if deposited postage prepaid in a post office or letter box addressed to the person for whom such notice is intended, to the name and address of specified in Article 6.02.

6.02 Addresses. Written notices and communications shall be provided to the parties to this Agreement at the following addresses. If a party desires to change the address for the delivery of a written document, such party shall notify the other parties in a written notification through a delivery service that provides proof of delivery:

A. Grantor:

B. Beneficiary:

C. Trustee:

ARTICLE 7: GENERAL PROVISIONS

7.01 Waiver of Jury Trial. The Grantor, Beneficiary, and Trustee waive any right to trial by jury.

7.02 Choice of Law. This Agreement will be governed by, interpreted, and enforced in accordance with Federal law.

6561.5 – Exhibit 01--Continued

7.03 Adjustment of Trustee Compensation. At the end of each three year period beginning with the effective date of this Agreement, the Beneficiary shall notify the Grantee and the Trustee of any increase in the rate of compensation for the Trustee that is necessary to maintain the value of the Trustee's compensation at the initial rate of compensation as provided in Article 3.01. This adjustment shall be based upon changes in the Department of Labor's "All Items Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average 1982-84 = 100" and shall be applicable for the following three years.

7.04 Adjustment of Trust Estate. Not less than three years from the effective date of this Agreement, the Beneficiary will recalculate the cost estimate for potential post closure operations, reclamation, monitoring and maintenance, and the discounted present value of funds necessary to assure long term performance at that time (the Discounted Cost Projection). When calculating the cost estimate, the Beneficiary may include 1) the costs of preparing these cost estimates; and 2) potential post closure operations, reclamation, monitoring, and maintenance costs not addressed in a previous cost estimate, such as the estimated cost of a CERCLA response to a newly discovered Clean Water Act violation. The Beneficiary will also review the investment performance of the Trust Estate, and compare the current value of the Trust Estate to the Discounted Cost Projection. If the funds in the Trust Estate fall below 95 percent of the Discounted Cost Projection, the Grantor will transfer sufficient funds to bring the Trust to an amount that is equal to the Discounted Cost Projection, as directed by the Beneficiary. Thereafter, the Beneficiary may periodically review and recalculate the Discounted Cost Projection in the same manner and require the Grantor to transfer additional funds to the Trust. With respect to any such required transfer, the Grantor shall transfer such funds to the Trust within 60 days of receipt of written direction from the Beneficiary.

7.05 Amendments and Waivers. Any provision of this Agreement may be amended or waived by mutual written consent of the Trustee, the Beneficiary and the Grantor, if the Grantor still exists.

7.06 Severability. If any provision of this Agreement or its application is determined to be invalid or unenforceable, the remainder of the Agreement shall not be affected, and shall be valid to the fullest extent permitted by law.

7.07 Appendices. The following Appendices are attached and incorporated into this Agreement:

- A. Appendix 1 – Long-Term Care and Maintenance Plan
- B. Appendix 2 – Reclamation and Closure Plan

To the extent reasonably possible, the provisions of these Appendices shall be interpreted by the Parties in a manner consistent with this Agreement. Where provisions of an Appendix are irreconcilable with the provisions of this Agreement the provisions of this Agreement shall prevail.

7.08 Authority. The signatories to this Agreement each represent that they have authority to sign this Agreement.

6561.5 – Exhibit 01--Continued

ARTICLE 8: EFFECTIVE DATE

This Agreement is effective upon the date this Agreement is signed by all of the parties.

[Insert Grantor Name]

Grantor

By: _____
Name: _____
Title: _____
Date: _____

[Insert Grantor Name]

Grantor

By: _____
Name: _____
Title: _____
Date: _____

UNITED STATES OF AMERICA

Beneficiary

By: _____
Name: _____
Title: _____
Date: _____

[Insert Trustee Name]

Trustee

By: _____
Name: _____
Title: _____
Date: _____

6561.6 – Licensee Bonds

Performance and/or payment bonds may be required to secure licensee's obligations and to guarantee payment of royalties. Licensee bonds may be secured with cash as a last resort, but preferably credit/debit cards or electronic check processing, corporate surety, deposited securities, an irrevocable letter of credit, or assignment of savings account or certificate of deposit. Individual sureties are unacceptable. The penal sum of the bond must at least equal the anticipated total royalty over the life of the license.

6561.7 – Special-Use Authorizations

A performance and/or payment bond may be required to secure obligations imposed on a special-use authorization holder by the authorization terms or any applicable law, regulation, or order. A bond must not be used to enforce general conditions of the permit; rather it applies only to those requirements which are readily identifiable and which are specified in the clause requiring the bond (FSM 2713.13). Blanket bonds may be used for special use authorization. Some bonds may be required only for the period needed to satisfy particular situations. For instance, a bond covering the construction of special-use authorization facilities should remain in force only during construction. Bond security would be necessary to return the site to an acceptable condition if the construction plans fail. Special-use authorization bonds may be secured with cash as a last resort, but preferably credit/debit cards or electronic check processing, corporate surety, deposited securities, an irrevocable letter of credit, or assignment of savings account. The penal sum of the bond must at least equal the estimated reclamation cost or financial loss.

6561.8 – Collection Agreement Bonds

A payment bond is required when non-Government cooperators agree to contribute \$25,000 or more to the Forest Service on a reimbursable basis (FSH 1509.11, sec. 40.4).

Secure collection agreement payment bonds with corporate sureties, deposited securities, or irrevocable letters of credit.

6562 – Bond Security

The funds associated with the bond(s) should be treated as custodial funds and are not accessible to the Forest Service, except for fulfilling the bonding obligation. If the bond requirements are not met, the funds become available for transfer to an appropriate spending account to cover any related losses sustained by the Government. Any remaining funds after the fulfillment must be returned to Treasury as miscellaneous receipts.

6562.1 – Corporate Sureties

Corporate sureties offered for bonds must qualify as a surety on Federal bonds. Qualified sureties appear on the "Department of the Treasury Circular 570, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and Acceptable Reinsuring Companies", published annually on July 1. Periodic supplements list newly approved and terminated corporate sureties.

The penal sum may exceed the surety's underwriting limit stated in the circular only if the amount that exceeds the specified limit is coinsured or reinsured by a Treasury acceptable re-insurer, and the amount of coinsurance or reinsurance does not exceed the underwriting limit of each coinsurer or re-insurer.

6562.2 – Individual Sureties

Individual sureties may include:

1. Procurement Contracts. Individual sureties are acceptable security for all types of procurement contract bonds except position schedule bonds. For the requirement to use individual sureties see the Federal Acquisition Regulation (48 CFR part 28).
2. Other Contractual Arrangements. Individual sureties are unacceptable as bond security on timber sale contracts, special use authorizations, licenses, collection and grant agreements.
3. Long Term Trust Agreements. (See section 6561.5).

6562.3 – Options in Lieu of Sureties

The principal may provide the following types of security in lieu of furnishing corporate or individual sureties:

1. Negotiable Treasury bills, notes, bonds, and other public-debt obligations, in which both principal and interest are unconditionally guaranteed by the Government.
2. Irrevocable letter of credit.
3. Cash and cash equivalents, deposited securities, or assignment of savings account or certificate of deposit

6563 – Small Business Administration

6563.1 – Surety Bond Guarantee Program for Small Timber Sale Vendors

Small businesses that have difficulty or are unable to obtain bonding to bid on timber sale contracts may obtain assistance from Small Business Administration (SBA) to bid on applicable timber sale contracts.