

**Forest Service Handbook
National Headquarters - Washington Office
Washington, DC**

**Forest Service Handbook 2709.11 - Special Uses
Chapter 50 - Standard Forms and Supplemental Clauses**

Amendment: 2709.11-2024-1

Effective date: August 17, 2024

Duration: This amendment is effective until superseded or removed.

Approved by: Christopher French, Deputy Chief, National Forest System

Date approved: August 12, 2024

Responsible Staff: Recreation, Heritage, and Volunteer Resources (RHVR)

Last Change: 2709.11-2023-4 to Chapter 50

Superseded Document(s): 2709.11_50, 2709.11-2023-4, October 04, 2023

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

Section 51.1: Adds clause C-4, GT Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements; clause C-5, Minimum Wage Requirement; and clause C-6, Paid Sick Leave Requirement.

Section 51.2: Adds clause C-4, GT Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements; clause C-5, Minimum Wage Requirement; and clause C-6, Paid Sick Leave Requirement.

Section 51.3: Adds clause C-4, GT Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements; clause C-5, Minimum Wage Requirement; and clause C-6, Paid Sick Leave Requirement.

Section 52.3: Adds clause C-4, GT Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements; clause C-5, Minimum Wage Requirement; and clause C-6, Paid Sick Leave Requirement.

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50.1 - Authority

See FSM 2701.

50.2 - Objectives

To develop and utilize special use authorization documents that:

1. Are legally sufficient to protect the interests of the United States and National Forest System (NFS) lands and resources,
2. Provide clear, concise, and non-burdensome terms for the use authorized, and
3. Are consistent within the agency and, to the extent practicable and authorized by law, with corresponding documents used by other federal land management agencies.

50.3 - Policy

1. Use the appropriate national special use authorization form (sec. 53) and mandatory supplemental clauses, as applicable (sec. 53), for all special uses.
2. Use optional supplemental clauses (sec. 52) as needed to address the term of the authorization, land use fees, liability, bonding, safety, insurance requirements, and other issues.
3. Any changes to national special use authorization forms and national supplemental clauses, other than as provided in their instructions, must be reviewed by the national Office of the General Counsel (OGC) and approved by the Washington Office, Director of Lands, Minerals and Geology staff or the Washington Office, Director of the Recreation, Heritage, and Volunteer Resources staff, as appropriate. Only elevate cases to the Washington Office after the respective Regional Office finds that changes are appropriate and warrant national consideration.
4. Use regional supplemental clauses (sec. 50.42, para. 1) as directed in applicable regional supplements to sections 51.3 and 52.
5. Use regional special use authorization forms (sec. 50.42, para. 2) as directed in applicable regional supplements to section 53.
6. Prior to their inclusion in a regional supplement, regional supplemental clauses must be approved by the local OGC. Additionally, Regions must obtain concurrence from the Washington Office, Director of Lands, Minerals and Geology staff or the Washington Office, Director of the Recreation, Heritage, and Volunteer Resources staff, as appropriate, to avoid conflicts with national clauses in this chapter, and national special

use program objectives.

7. Prior to their inclusion in a regional supplement, regional special use authorization forms must be approved by the local OGC. Additionally, Regions must obtain concurrence from the Washington Office, Director of the Lands, Minerals and Geology staff or the Washington Office, Director of the Recreation, Heritage, and Volunteer Resources staff, as appropriate, to avoid conflicts with national special use authorization forms and national special use program objectives. Regional special use authorization forms that will be used more than 10 times must be approved and assigned a control number by the Office of Management and Budget.
8. Do not specify day-to-day operating procedures or standards or construction specifications in a special use authorization. If needed, include these procedures and standards in an operating plan or construction plan attached to the authorization.

50.4 - Responsibility

50.41 - Washington Office Director of Lands, Minerals and Geology and Washington Office Director of Recreation, Heritage, and Volunteer Resources

The Washington Office Director of Lands, Minerals and Geology and the Washington Office Director of Recreation, Heritage, and Volunteer Resources are responsible for:

1. Developing national special use authorization forms and supplemental clauses for agency-wide use and coordinating with the Washington Office Forms Manager and Directive Manager, on clearance and issuance of the forms and corresponding directives.
2. Approving requests to modify national special use authorization forms and supplemental clauses and coordinating with the Washington Office Forms Manager and Directive Manager, on clearance and issuance of the forms and corresponding directives.
3. Concurring with regional special use authorization forms; reviewing regional supplemental clauses for special use authorizations; and coordinating with the Washington Office Forms Manager and Directive Manager, on clearance and issuance of the forms and corresponding directives.

50.42 - Regional Foresters

Regional Foresters are responsible for:

1. Establishing, as needed, regional supplemental clauses for special use authorizations through issuance of a regional supplement to sections 51.3 and 52. This authority may

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not be delegated.

2. Establishing, as needed, regional special use authorization forms through issuance of a regional supplement to section 53. This authority may not be delegated.

51 - Clause Indices

51.1 - Index by Title

Index by Title

Title	Category and Number
Access to Records	A-7
Accounting Records	A-8
Advertising	X-30
Airport Use	X-35, X-36, X-38, X-39
Amendment	E-8
Archaeological-Paleontological Discoveries	X-17
Audit of Natural Resource-Based Recreational Facilities	C-17
Boating Safety	B-4
Bonding	C-3
Coast Guard Licensing and Inspection Requirements	B-5
Communications Uses	X-49 through X-52
Cooperative Utility Expenses	X-14
Corporation Status Notification	X-46
Cutting, Disposal, and Planting of Vegetation	D-5
Dam Safety (when State regulations do apply)	B-36
Dam Safety (when State regulations do not apply)	B-37
Damage Restoration	X-21
Disputes	X-96
Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars	C-18
Drawings, Specifications, and Records for Natural Resource-Based Recreational Facilities	C-16
Drinking Water Systems	B-38
Equal Access to Federal Programs	B-2
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Fire Equipment	F-7
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GT - Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements	C-4
GT – Fee Offset	A-20
GT – Managing Land Use Fees Retained Under Offset Agreement	A-21
GT – Partial Land Use Fee Waiver for States	A-22
GT – Property Insurance	B-9
GT – Risk of Loss	B-8
GT – Use of Site or Facility Name by Existing Holder	C-30
GT – Use of Site or Facility Name by New Holder	C-31
Indemnification and Insurance Requirements for States	B-12
Inspection of Ropeways	C-19
Insurance – Commercial General Liability	B-10
Invasive Species Prevention and Control	D-10
Land Markers and Monuments	D-4
Land Use Fees – Consolidated Payment	A-14
Land Use Fees – Consolidated Payment, GT Concessions	A-15
Land Use Fees During Construction (pre GRFS)	A-2
Land Use Fees – Exemption and Waivers	A-10
Land Use Fees – Flat Fee for Small Concessions	A-3
Land Use Fees – Graduated Rate Fee System	A-1
Land Use Fees – Indexed	A-11
Land Use Fees – Leasing of the Holder’s Fiber Optic Cable	A-19
Land Use Fees – Non-Indexed	A-12
Land Use Fees – Organizational Camps	A-16
Late Payments	A-6
Leasing	X-42
Master Development Plan	C-7
Minimum Wage Requirement	C-5
National Recreation Reservation Service	X-23
Nondiscrimination	B-1
Operating Plan	C-8
Operating Plan for Supervision of Children	C-14
Operating Plan for Supervision of Children (for Ski Area)	C-15
Paid Sick Leave Requirement	C-6
Partnership Representative	X-45
Partnership Status Notification	X-44
Payment for Timber and Slash Disposal	D-17

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Pipelines, Crude Oil (Export Administration Act)	X-1
Pipelines, Oil and Gas Standards and Practices	C-24
Powerline Facility Change Application	X-48
Powerline Facility, Right-of-Way Clearing	F-15
Powerline Facility, Operating Plans and Agreements and Vegetation Management for Powerline Facilities authorized by Form FS-2700-4j	C-25
Powerline Facility, Operating Plans and Agreements and Vegetation Management for Powerline Facilities authorized by Form FS-2700-4 Issued to a Non-Federal Entity	C-26
Powerline Facility, Operating Plans and Agreements and Vegetation Management for Powerline Facilities authorized by an Easement	C-27
Powerline Facility, Operating Plans and Vegetation Management for Powerline Facilities authorized by Form FS-2700-4k Issued to a Federal Entity	C-28
Powerline Facility, Operating Plans and Vegetation Management for Powerline Facilities authorized by a Special Use Permit or Other Type of Special Use Authorization Issued to a Federal Entity	C-29
Preliminary Report Required	X-86
Protection of Habitat of Threatened and Endangered Species, Sensitive Species and Species of Conservation Concern and Their Habitat	D-11
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Leasing of the Holder's Fiber Optic Cable	A-19
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Right-of-Way Width, Oil and Gas Pipeline	C-23
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Wind Energy – Operating Plan, Construction Phase	C-11
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51.2 - Alphanumeric Index to Clauses

The following table lists the clauses in section 53.

Category and Number	Title
A	LAND USE FEES AND PAYMENTS
A-1	Graduated Rate Fee System
A-2	Land Use Fees During Construction (pre GRFS)
A-3	Land Use Fees – Flat Fee for Small Concessions
A-6	Late Payments
A-7	Access to Records
A-8	Accounting Records
A-9	Ski Area Permit Fees
A-10	Land Use Fees – Exemptions and Waivers
A-11	Land Use Fees – Indexed
A-12	Land Use Fees – Non-Indexed
A-14	Land Use Fees – Consolidated Payment
A-15	Land Use Fees – Consolidated Payment for GT Concessions
A-16	Land Use Fees – Organizational Camps
A-19	Land Use Fees – Leasing of the Holder’s Fiber Optic Cable
A-20	GT – Fee Offset
A-21	GT – Managing Land Use Fees Retained Under Offset Agreement
A-22	GT – Partial Land Use Fee Waiver for States
A-23	National Forest System Trails Stewardship Act Fee Offset
B	SAFETY, HEALTH, LIABILITY, AND NONDISCRIMINATION
B-1	Nondiscrimination
B-2	Equal Access to Federal Programs
B-4	Boating Safety
B-5	Coast Guard Licensing and Inspection Requirements
B-8	GT – Risk of Loss
B-9	GT – Property Insurance
B-10	Insurance, Commercial General Liability
B-11	Strict Liability
B-12	Indemnification and Insurance Requirements for States
B-29	Storage and Use of Explosives and Magazine Security
B-36	Dam Safety (when State regulation do apply)
B-37	Dam Safety (when State regulations do not apply)
B-38	Drinking Water Systems

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Category and Number	Title
C	DEVELOPMENT, CONSTRUCTION, OPERATIONS, AND PERFORMANCE BONDS
C-1	Site Development Schedule
C-2	Site Plan
C-3	Bonding
C-4	GT- Minimum Wage and Davis Bacon Requirements
C-5	Minimum Wage Requirement
C-6	Paid Sick Leave Requirement
C-7	Master Development Plan
C-8	Operating Plan
C-9	Wind Energy – Site Feasibility Study
C-10	Wind Energy – Improvements
C-11	Wind Energy – Operating Plan for the Construction Phase
C-12	Wind Energy – Operating Plan for the Operational Phase
C-13	Wind Energy – Monitoring Plan
C-14	Operating Plan for Supervision of Children
C-15	Operating Plan for Supervision of Children (For Ski Areas)
C-16	Drawings, Specifications, and Records for Natural Resource-Based Recreational Facilities
C-17	Audit of Natural Resource-Based Recreational Facilities
C-18	Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars
C-19	Inspection of Ropeways
C-23	Right-of-Way Width, Oil and Gas Pipeline
C-24	Pipelines – Oil and Gas Standards and Practices
C-25	Operating Plans and Agreements and Vegetation Management for Powerline Facilities authorized by Form FS-2700-4j
C-26	Operating Plans and Agreements and Vegetation Management for Powerline Facilities authorized by Form FS-2700-4 Issued to a Non-Federal Entity
C-27	Operating Plans and Agreements and Vegetation Management for Powerline Facilities authorized by an Easement
C-28	Operating Plans and Vegetation Management for Powerline Facilities authorized by Form FS-2700-4k Issued to a Federal Entity
C-29	Operating Plans and Vegetation Management for Powerline Facilities authorized by a Special Use Permit or Other Type of Special Use Authorization Issued to a Federal Entity

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Category and Number	Title
C	DEVELOPMENT, CONSTRUCTION, OPERATIONS, AND PERFORMANCE BONDS
C-30	GT – Use of Site or Facility Name by Existing Holder
C-31	GT – Use of Site or Facility Name by New Holder
D	RESOURCE PROTECTION
D-4	Land Markers and Monuments
D-5	Cutting, Disposal, and Planting of Vegetation
D-9	Ground Surface Protection and Restoration
D-10	Invasive Species Prevention and Control
D-11	Protection of Habitat of Threatened and Endangered Species, Sensitive Species and Species of Conservation Concern and Their Habitat
D-16	GT – Alteration of Federally Owned Improvements
D-17	Timber Payment
D-18	Pesticide Use
D-23	Water Wells and Associated Pipelines
D-24	Water Facilities and Water Rights in the Name of the United States
D-25	Water Facilities and Water Rights in the Name of the Holder
D-26	Nullification or Modification of Water Rights
D-27	Minor Water Uses
D-28	Water Facilities and Water Rights (permit for Recreation Residence)
D-29	Water Facilities and Water Rights (permit for Recreation Residence Association)
D-30	Water Facilities and Water Rights (Ski Areas, Prior Appropriation)
D-31	Water Facilities and Water Rights (Ski Areas, Riparian)
E	TENURE, TERMINATION, REVOCATION, AND LIMIT OF USE
E-1	Continuation of Use and Occupancy in Conservation System Units in Alaska
E-2	Wind Energy – Site Testing/Feasibility, Term/Continuation of Use and Occupancy
E-3	Wind Energy – Construction/Operation, Term
E-5	Definite Tenure
E-7	Oil and Gas Pipeline Authorization
E-8	Amendment
E-11	Termination For the Development of Hydroelectric Power or Reclamation Purposes

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Category and Number	Title
E	TENURE, TERMINATION, REVOCATION, AND LIMIT OF USE
E-17	Floodplain, Executive Order 11988
F	FIRE
F-7	Fire Equipment
F-15	Powerline Facility, Right-of-Way Clearing
F-20	Fire-Control Plan
G	ROADS
G-1	Secondary Use
X	MISCELLANEOUS
X-1	Crude Oil Pipelines
X-2	Common Carrier, Oil and Gas Pipelines
X-14	Cooperative Utility Expenses
X-16	Use by Other Groups
X-17	Archaeological-Paleontological Discoveries
X-18	Superseded Authorization
X-20	Reservoir Storage Increase
X-21	Damage Restoration
X-22	Regulating Services and Rates
X-23	National Recreation Reservation Service
X-24	Gambling
X-25	Sale of Alcoholic Beverages, Prohibited
X-26	Sale of Alcoholic Beverages, Allowed
X-29	Signs
X-30	Advertising
X-33	Relocation of Improvements
X-35	Airport Authorization Area, Federal Government Use
X-36	Airport Authorization Area, Public Use
X-38	Airport Capacity
X-39	Federal Airport Act, Forest Service Use
X-42	Leasing
X-44	Partnership Status Notification
X-45	Partnership Representative
X-46	Corporation Status Notification
X-48	Powerline Facility Change Application

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Category and Number	Title
X	MISCELLANEOUS
X-49	Communications Use – Communications Site Management Plan
X-50	Communications Use – Compliance with Applicable Communications Requirements
X-51	Communications Use – Operation of Communications Equipment
X-52	Communications Use – Technical Information
X-63	Treasure Trove
X-96	Disputes

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51.3 - Index of Mandatory Supplemental Clauses and Appendices

1. The following table lists mandatory supplemental clauses and appendices by topic. If a mandatory supplemental clause is already included in the applicable special use authorization form, do not repeat the clause.

Mandatory Supplemental Clauses and Appendices by Topic

Topic	Clause Number	Mandatory In:
Audit of Natural Resource- Based Recreational Facilities	C-17	All authorizations that authorize natural resource-based recreational facilities consistent with (FSM 2343.03(4) and 7330.5).
Corporations	X-46	All authorizations issued to corporations.
Communications Uses:		
1. In or on a Federally Owned Facility Under Forest Service Jurisdiction	A-20 or A-21, A-22 (if applicable), B-8, B-9, D-16, X-14, X-33 (if applicable), and X-49 through X-52	Form FS-2700-4 when authorizing a communications use in or on a federally owned facility under Forest Service jurisdiction.
2. Privately Owned Communications Improvements	X-49, X-50 through X-52 (if applicable)	Form FS-2700-4 when authorizing a privately owned communications improvement (e.g., generator and propane tank only).
Disputes	X-96	All authorizations except noncommercial group use permits.
Drinking Water – Federally Owned Facilities	FS-2700-4h, Appendix F	All authorizations with federally owned drinking water systems.
Drinking Water – Privately Owned Facilities	B-38	All authorizations with privately owned drinking water systems.
Leasing of the Holder’s Fiber Optic Cable	A-19	All authorizations issued for fiber optic cable.
FLPMA Road Authorizations	E-8	All FLPMA authorizations with no stated expiration date.
Graduated Rate Fee System (GRFS)	A-1	All authorizations where the fee is determined using GRFS.

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Topic	Clause Number	Mandatory In:
GT– Alteration of Federally Owned Improvements	D-16	All authorizations with federally owned improvements, other than Form FS-2700-4h.
GT – Fee Offset	A-20	All GT authorizations when the holder will perform fee offset work, other than Form FS-2700-4h.
GT Fee Offset Agreement	FS-2700-4h, Appendix B	All FS-2700-4 authorizations when the holder will perform fee offset work.
GT – Management of Land Use Fees Retained Under an Offset Agreement	A-21	All permits where the FS will perform or contract with a third party to perform fee offset work.
GT – Minimum Wage and Davis Bacon Requirements	C-4	All new GT fee-offset agreements for commercial special use authorizations with non-governmental entities.
Inspection of Ropeways	C-19	All authorizations that authorize aerial tramways, aerial and surface lifts, tows, conveyors, and funiculars.
Late Payments	A-6	All authorizations with land use fees, other than noncommercial group use permits. Do not use for permits under GRFS.
Minimum Wage Requirement	C-5	All new commercial service special use authorizations, all existing campground concession permits when they are unilaterally extended by the authorized officer, and all existing priority use outfitting and guiding permits when they are unilaterally extended by the authorized officer.
National Recreation Reservation Service	X-23	All authorizations that use national recreation reservation service for government owned improvements.
Operating Plan for Supervision of Children	C-14	All organization camp permits.
Operating Plan for Supervision of Children (For Ski Areas)	C-15	All Ski Area Term Permits (FS-2700-5b) that provide ski schools and/or day care for children.

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Topic	Clause Number	Mandatory In:
Organizational Camp Fee	A-16	All organizational camp permits that qualify under the National Forest Organizational Camp Fee Improvement Act of 2003 (16 U.S.C. 6231 <i>et seq.</i>).
Paid Sick Leave Requirement	C-6	All new commercial service special use authorizations.
Partnerships	X-44, X-45	All permits issued to partnerships.
Plans, Specifications and Records for Natural Resource-Based Recreational Facilities	C-16	All authorizations that authorize natural resource-based recreational facilities as defined in FSM 7330.5.
Plans, Specifications and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars	C-18	All authorizations that authorize aerial tramways, aerial and surface lifts, tows, conveyors, and funiculars.
Public Services – Nondiscrimination	B-1, B-2	All authorizations that authorize direct services to the public on National Forest System lands.
Ski Area Permit Fees	A-7 through A-9	All winter recreation special use authorizations subject to the ski area permit fee established by 16 U.S.C. 497c.
Storage and Use of Explosives and Magazine Security	B-29	All authorizations that allow the storage and use of explosives for avalanche mitigation, snow slope stability testing, or other purposes. Examples include winter sports resorts, resorts, marinas, outfitter and guiding, and highway department avalanche mitigation permits.
Superseded Authorization	X-18	All authorizations that supersede an authorization for the same use.
Water Facilities and Water Rights – Ski Areas, Prior Appropriation	D-30	All Ski Area Term Permits FS-2700-5b in prior appropriation doctrine states.
Water Facilities and Water Rights – Ski Areas, Riparian	D-31	All Ski Area Term Permits FS-2700-5b in riparian doctrine states.

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Topic	Clause Number	Mandatory In:
Wind Energy – Construction and Operation of a Wind Energy Facility	C-10 through C-13, E-3	All permits for construction and operation of a wind energy facility.
Wind Energy – Site Testing and Feasibility	C-9, E-2	All wind energy site testing and feasibility permits.
Termination For the Development of Hydroelectric Power or Reclamation Purposes	E-11	All authorizations in areas withdrawn for power or reclamation projects.

2. Use the following table to determine the mandatory special use authorization form, supplemental clauses, and appendices for each type of special use.

Mandatory Special Use Authorization Forms, Supplemental Clauses, and Appendices by Type of Use

DESIGNATION	FSM	USE CODE	MANDATORY
Recreation Special Uses	2721		
Privately Owned Improvements Authorized for Groups	2721.1		
Boat dock and wharf	2721.11	111	
Club	2721.12	112	
Organizational camp	2721.13	113	FS-2700-5 with A-16, C-14, X-16,
Shelter	2721.14	114	
Private camp	2721.15	115	B-1, B-2, B-10, X-30
Noncommercial, Privately Owned Improvements Authorized to Individuals	2721.2		
Isolated cabin	2721.21	121	D-5
Houseboat	2721.22	122	
Recreation residence	2721.23	123	FS-2700-5a with D-24 or D-28
Caretaker residence	2721.24	124	D-5, E-17

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DESIGNATION	FSM	USE CODE	MANDATORY
Lodging	2721.3		
Private lodging (cooperative, condominium, cabin, or trailer court)	2721.31	131	B-1, B-2, B-10, B-38, D-5 D-24, X-24, X-30
Hotel, motel	2721.32	132	FS-2700-5 with X-24, X-25 or X-26, X-30
Resort	2721.33	133	FS-2700-5 or FS-2700-5c
Campground – privately owned	2721.34	134	
Restaurant	2721.35	135	B-1, B-2, B-10, B-38, X-22, X-24, X-25 or X-26, X-30
Store, shop, office, rental service facility	2721.36	136	B-1, B-2, B-10, B-38, X-22, X-25 or X-26, X-30
Service station	2721.37	137	B-1, B-2, B-10, X-22
Marina	2721.38	138	FS-2700-5 or FS-2700-5c
Ropeway	2721.39	139	FS-2700-4 or FS2700-5, with B-1, B-2, B-10, B-29 (if applicable), B-39, X-22, X- 30
Concessions Involving Federally Owned Improvements	2721.4		
Concessioner-operated campgrounds	2721.41	141	FS-2700-4h with Appendices B, F, G, X-23
Concessioner-operated day use sites	2721.42	142	FS-2700-4h with Appendices B, F, G
Historic Property Lease	2724.47	451	FS-2700-13
Organizational camp	2721.43	143	FS-2700-4 with A-16, A-20 or A-21, B-8, Appendix F, C-14, C-16, and C-17 (if applicable), C-18 and C-19 (if applicable), D-16, X-16, X-22
Recreation lodging – short term use of federally owned lodging managed by the Forest Service	2721.44	144	FS-2300-43
Visitor center	2721.45	145	B-1, B-2, B-10, D-24, X-24, X-25 or X-26
Resort, use for any federally owned lodging managed as a concession.		146	FS-2700-4 with A-20 or A-21, B-1, B-2, B-4 (if boating is involved), B-8, B-10, B-29 (if applicable) Appendix F (FS-2700-4h), C-16 and C-17 (if applicable), C-18 and C-19 (if applicable), D-16, D- 24; X-22, X-24, X-25 or X-26, X-30

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DESIGNATION	FSM	USE CODE	MANDATORY
Concession Services	2721.5		
Rental service	2721.51	151	FS-2700-4 with B-1, B-2, B-10, C-8, X-22, X-25 or X-26, X-30
Transportation service	2721.52	152	FS-2700-4 with B-1, B-2, B-10, C-8, X-22, X-25 or X-26, X-30
Outfitting and guiding Priority use Temporary use Term permit	2721.53	153	FS-2700-4i FS-2700-3f FS-2700-5d with B-29 (if applicable) FS-2700-4i, Appendices H, I, A-23 (if applicable)
Ski Area (36 CFR 251.51)	2721.61e	161	FS-2700-5b with B-29 (if applicable) C- 15 (if applicable), C-16 and C-17 (if applicable), C-18 and C-19 (if applicable), D-30 in prior appropriation doctrine states or D-31 in riparian doctrine states.
Ropeways	2721.62	162	FS-2700-4 or FS-2700-5, with B-29 (if applicable), C-18, C-19.
Ski slope, ski trail	2721.63	163	FS-2700-4 with B-1, B-2, B-10, B-29 (if applicable), C-8 and C-14 (if applicable).
Ski activity	2721.64	164	FS-2700-4 with B-1, B-2, B-10, B-29 (if applicable), C-8 and C-14 (if applicable).
Snow play	2721.65	165	FS-2700-4 or FS2700-5 with B-1, B-2, B-10, B-29 (if applicable), C-14, C-18, C- 19 (if applicable), X-22, X-30, C-8
Outdoor Recreation Improvements	2721.7		
Target range		171	B-1, B-2, B-10, X-22, X-24
Park playground		172	B-1, B-2, B-10, X-22, X-24
Golf course		173	B-1, B-2, B-10, X-22, X-24
Cave cavern		174	B-1, B-2, B-10, X-22, X-24
Racetrack		175	B-1, B-2, B-10, X-22, X-24
Day use facility		176	B-1, B-2, B-10, X-22, X-24
Visitor center		177	B-1, B-2, B-10, D-24, X-24, X-25 or X-26
Hunting enhancement		178	

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DESIGNATION	FSM	USE CODE	MANDATORY
Temporary Events	2721.8		
Recreation event		181	Short-term uses: FS-2700-3c Long-term uses: FS-2700-4 with B-1, B-2, B-10; X-22, X-24, X-30
Vendor, peddler		182	B-1, B-2, B-10, X-22, X-25, or X-26
Noncommercial Group	2721.9		
Noncommercial group use	2721.91	191	FS-2700-3b
Tribal traditional and cultural use	2721.92	192	
Agriculture			
Crops	2722.1		
Cultivation	2722.11	211	D-18
Nursery	2722.12	212	D-18
Orchard	2722.13	213	D-18
Apiary	2722.14	214	
Livestock area	2722.15	215	D-18
Fish hatchery	2722.16	216	B-1, B-2
Fur and game farm	2722.17	217	
Worm harvesting	2722.18	218	
Mariculture	2722.19	219	
Agricultural Improvements			
Barn, shed	2722.21	221	
Fence	2722.22	222	X-33
Agriculture residence	2722.23	223	
Range Facilities	2722.3		
Building	2722.31	231	
Corral, pen, and livestock area	2722.32	232	D-18
Dipping vat	2722.33	233	D-18
Enclosure	2722.4		
Convenience enclosure	2722.41	241	
Community and Public Information	2723		
Meetings	2723.1		
Multi-season tribal traditional and cultural use	2723.12	312	

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DESIGNATION	FSM	USE CODE	MANDATORY
Religious Facilities	2723.2		
Cemetery	2723.21	321	B-1, B-2
Church	2723.22	322	
Public Information	2723.3		
Marker	2723.31	331	
Monument	2723.32	332	
Sign	2723.33	333	
Sanitary Systems	2723.4		
Solid waste disposal site	2723.41	341	
Liquid waste disposal area	2723.42	342	
Sewage transmission line	2723.43	343	
Hazardous and toxic waste disposal site	2723.44	344	
Transfer station	2723.45	345	
Debris disposal area	2723.46	346	
Community Residences	2723.5		
Residence, privately owned building	2723.51	351	D-5
Residence, federally owned building	2723.52	352	B-9, D-5
Residence, Alaska Term Permit Act	2723.53	353	
Service Uses	2723.6		
School	2723.61	361	B-1, B-2
Service building	2723.62	362	B-1, B-2
Hospital or sanitarium	2723.63	363	B-1, B-2
Shelter	2723.64	364	B-1, B-2
Mailbox	2723.65	365	X-33
Parking lot	2723.66	366	
Visitor center/museum	2723.67	367	B-1, B-2
Encroachments	2723.7		
Cabin (invalid mining claim)	2723.71	371	D-5
Residence	2723.72	372	D-5
Other improvement	2723.73	373	
Cabin predating ANILCA	2723.74	374	

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DESIGNATION	FSM	USE CODE	MANDATORY
Feasibility, Research, Training, Cultural Resources, and Historical	2724		
Feasibility	2724.1		
Site survey and testing	2724.11	411	B-29 (if applicable)
Resource survey	2724.12	412	
Hydroelectric investigation	2724.13	413	See FSH 2709.15
Wind energy testing	2724.14	414	C-9, E-2
Solar energy testing	2724.15	415	
Geothermal energy testing	2724.16	416	
Biomass testing	2724.17	417	
Research	2724.2		
Experimental	2724.21	421	B-1, B-2
Research study	2724.22	422	
Weather station	2724.23	423	
Weather modification device	2724.24	424	
Observatory	2724.25	425	B-1, B-2
Training	2724.3		
Military training area	2724.31	431	D-4
Education center	2724.32	432	B-1, B-2
Cultural Resources and Treasure Trove Uses	2724.4		
1906 Act permit	2724.41	441	FS-2700-32
Non-disturbing use	2724.42	442	FS-2700-32
Disturbing use	2724.43	443	FS-2700-32
Treasure hunting	2724.44	444	X-17, X-63
Historical	2724.5		
Historic building and improvement	2724.51	451	B-1, B-2
Historic site	2724.52	452	B-1, B-2
Industry	2725		
Camps	2725.1		
Construction camp and residence	2725.11	511	
Temporary construction activities	2725.12	512	
Storage	2725.2		
Warehouse and storage yard	2725.21	521	X-33
Stockpile site	2725.22	522	

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DESIGNATION	FSM	USE CODE	MANDATORY
Storage and Use of Explosives and Magazine Security	2719	523	FS-2700-4 with B-29, C-8
Manufacturing	2725.3		
Processing plant	2725.31	531	
Truck and equipment depot	2725.32	532	
Batch and mixing plant	2725.33	533	
Measurement	2725.4		
Weighing or scaling station	2725.41	541	X-33
Arts	2725.5		
Still photography	2725.51	551	FS-2700-4
Commercial Filming	2725.52	552	FS-2700-4
Mineral Exploration	2725.6		
Geological and geophysical exploration	2725.61	561	B-29 (if applicable)
Mineral material sale	2725.62	562	
Mineral Development	2725.7		
Occupancy permit, reserved mineral right	2725.71	571	B-29 (if applicable)
Occupancy permit, outstanding mineral right	2725.72	572	B-29 (if applicable)
Timber	2725.9		
Tailhold	2725.91	591	
Spar	2725.92	592	
Log landing	2725.93	593	
Yarding corridor	2725.94	594	
Flume, log chute	2725.95	595	
Energy Generation and Transmission	2726		
Power plants under Authority of the Federal Energy Regulatory Commission	2726.1 2770		
Hydroelectric project, FERC- licensed	2726.11 2770	611	See FSH 2709.15
Hydroelectric project, FERC- exempted	2726.12 2770	612	See FSH 2709.15

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DESIGNATION	FSM	USE CODE	MANDATORY
Other Powerplants	2726.2		
Wind power facility	2726.21	621	B-1, B-2, C-10 through C-13, E-3
Fossil fuel powerplant	2726.22	622	B-1, B-2
Solar Energy Power Facility	2726.23	623	
Geothermal Energy Power Facility	2726.24	624	
Biomass Energy Power Facility	2726.25	625	
Oil and Gas Development	2726.3		
Oil and gas pipeline	2726.31	631	C-23, C-24, D-4, D-9, E-7, X-1, X-2, X-17, X-33, X-44, and X-45 or X-46
Oil and gas pipeline-related facility	2726.32	632	
Oil and gas production and storage area	2726.33	633	
Natural gas pipeline (FERC)	2726.34	634	C-23, C-24, D-4, D-9, E-7, X-1, X-2, X-17, X-33, X-44, and X-45 or X-46
Powerline Facilities	2726.4		
Powerline Facility, REA financed or eligible for REA financing	2726.41	641	A-10, D-4, F-15, X-17, X-33
Other utility improvement, REA financed or eligible for REA financing	2726.42	642	A-10, B-1
Powerline Facility	2726.43	643	FS-2700-31 or FS-2700-4j
Other utility improvement	2726.44	644	FS-2700-4
Amendment of existing powerline facility authorization		641, 643	C-25, C-26, C-27, C-28, or C-29, as applicable
Transportation	2727		
Aircraft Facilities	2727.1		
Airport, heliport	2727.11	711	B-1, B-2, X-35, X-36, X-38, X-39
Hangar and service facility	2727.12	712	B-1, B-2
Airport concession	2727.13	713	B-1, B-2, B-10, X-22, X-24
Airport or airway beacon	2727.14	714	X-33
Helicopter landing site	2727.15	715	B-1, B-2
Marine	2727.2		
Mooring point	2727.21	721	B-1, B-2
Boat dock, wharf, pier	2727.22	722	B-1, B-2, B-4

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DESIGNATION	FSM	USE CODE	MANDATORY
Canal	2727.23	723	D-18, X-74
Navigation aid, lighthouse	2727.24	724	
Navigation aid (beacon, buoy marker, and others)	2727.25	725	
Railroads	2727.3		
Railroad right-of-way	2727.31	731	D-18
Railroad signal device	2727.32	732	X-33
Federal Aid Highway Right-of-Way	2727.4 2730		
Department of Transportation easement	2727.41	741	See FSH 2709.12
Road or Trail Authorizations	2727.5		
National Forest Roads and Trails Act easement	2727.51	751	FS-2700-9f (Public Roads) FS-2700-9g (Forest Roads) FS-2700-9h (Private Roads)
Federal Land Policy and Management Act easement	2727.52	752	FS-2700-9i (Forest Roads) FS-2700-9j (Private Roads)
Federal Land Policy and Management Act permit	2727.53	753	FS-2700-4b (Forest Roads) FS-2700-4c (Private Roads)
Wilderness Act authorization for roads and trails	2727.54	754	See FSH 2709.12
Pipeline (Non-Energy Related)	2727.6		
Slurry pipeline	2727.61	761	D-18, X-33
Cableway and Conveyor	2727.7		
Tramway or conveyor	2727.71	771	D-18
Communications Use (Wireless)	2728		
Non-Broadcast	2728.1		
Internet Service Provider	2728.11	811	For a wireless communications use, use form FS-2700-10b or FS-2700-10c
Cellular	2728.12	810	
Passive Reflector	2728.13	807	When authorizing a communications use in or on a federally owned facility under Forest Service jurisdiction use form FS-2700-4 with A-20 or A-21, A- 22 (if applicable), B-8, B-9, D-16, X-14, X-33, X-49, X-50, X-51, X-52
Private Mobile Radio Service	2728.14	806	
Commercial Mobile Radio Service	2728.15	815	
Local Exchange Network	2728.16	805	
Microwave - Industrial	2728.17	804	
Facility Manager	2728.18	818	
Microwave - Common Carrier	2728.19	803	

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DESIGNATION	FSM	USE CODE	MANDATORY
<u>Other Communications Use</u>	2728.3		When authorizing a communications use that is not located at an approved communications site and that is a single use, use form FS-2700-10c (if applicable) or FS-2700-4 with X-33, X-49, X-50, X-51, X-52
Other Communications Improvement	2728.31	831	
Other Communications Improvement, REA-financed or eligible for financing	2728.32	832	
Navigational Equipment	2728.33	833	
Amateur Radio	2728.34	801	
Personal/Private Receive-only	2728.35	802	
Natural Resource Monitoring	2728.36	814	
<u>Broadcast</u>	2728.4		For ancillary communications uses that do not include operation of radio equipment (e.g., a generator and propane tank only), use form FS-2700-4 with X-33, X-49, and X-51
AM and FM Radio Broadcast	2728.41	816	
Broadcast Translator, Low Power Television, Low Power FM Radio	2728.42	808	
Cable Television	2728.43	809	
Television Broadcast	2728.44	817	
Communications Use (Wired)	2728.2		
Telephone and telegraph line	2728.21	821	X-33 (if applicable)
Telephone, REA financed or eligible for financing	2728.22	822	A-10, X-33 (if applicable)
Fiber Optic Cable	2728.23	823	A-19, X-33 (if applicable)
Water (Non-Power-Generating)	2729		
Water Transmission	2729.1		
Irrigation water ditch	2729.11	911	D-25
Irrigation water transmission pipeline, 12 inches in diameter or more	2709.12	912	D-25, X-33
Irrigation water transmission pipeline less than 12 inches in diameter	2729.13	913	D-25, X-33
Water transmission pipeline, 12 inches in diameter or more	2729.14	914	B-10 or B-12, D-25, X-29, X-33
Water transmission pipeline, less than 12 inches in diameter	2729.15	915	D-25, X-33

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DESIGNATION	FSM	USE CODE	MANDATORY
Water conveyance system easements under the Act of October 27, 1986	2729.16	916	FS-2700-9a; see section 53.3
Impoundment	2729.2		
Debris and siltation impoundment	2729.21	921	B-36 or B-37
Dam, reservoir	2729.22	922	B-10 or B-12, B-36 or B-37, D-25 (generally), X-20
Water diversion, weir	2729.23	923	B-10 or B-12, D-25 (generally)
Reservoir	2729.24	924	B-10 or B-12, D-25 (generally), X-20
Dam, reservoir, Public Law 99-545	2729.25	925	FS-2700-9a; see section 53.3
Reservoir, Public Law 99-545	2729.26	926	FS-2700-9a; see section 53.3
Development	2729.3		
Well, spring, windmill	2729.31	931	D-24 or D-27 or D-25
Stock water	2729.32	932	D-24 or D-27
Wildlife water supply	2729.33	933	D-24 or D-27
Fish ladder	2729.34	934	
Water storage tank	2729.35	935	D-24 or D-27
Measurement	2729.4		
Stream gauging station	2729.41	941	
Water quality monitoring station	2729.42	942	
Water Treatment	2729.5		
Water treatment plant	2729.51	951	
Leasing Forest Service Administrative Sites	2750		
Administrative site lease	2750	391	FS-2700-14

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52 - Supplemental Clauses

Supplemental clauses are categorized as follows:

Category	Title
A	Land Use Fees and Payments
B	Safety, Health, Liability, and Nondiscrimination
C	Development, Construction, Operations, and Performance Bonds
D	Resource and Improvement Protection
E	Tenure, Termination, Revocation, and Limit of Use
F	Fire
G	Roads
X	Miscellaneous

52.1 - A Clauses: Land Use Fees and Debt Collection

A-1. Land Use Fees - Graduated Rate Fee System. Include the bracketed paragraph when authorized facilities must be built before operations commence; otherwise, omit the bracketed paragraph. Delete all user notes prior to printing.

A. Land Use Fees - Graduated Rate Fee System. The holder shall pay market value for the use of National Forest System lands for operation of the authorized facilities as determined using Graduated Rate Fee System (GRFS). The land use fee may be readjusted every 5 years to ensure that the land use fee is commensurate with the market value of the use and occupancy authorized by this permit.

1. The provisions of GRFS identified under this permit may be revised by the Forest Service to reflect changed times and conditions. Changes shall become effective when:
 - (a) mutually agreed;
 - (b) this permit is amended for other purposes; or
 - (c) a new permit is issued (including after termination of this permit).
2. GRFS may be replaced in its entirety by the Chief of the Forest Service if a new generally applicable land use fee system is imposed affecting all holders of authorizations under 16 U.S.C. 497. Replacement shall become effective on the beginning of the holder's business year.

<USER NOTES FOR CLAUSE A.3>

<Include this clause if the use and occupancy are located on both private and National Forest System lands. Otherwise, omit this clause.>

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3. **Allocation of Gross Fixed Assets (GFA) and Sales.** For purposes of the calculation, GFA will be adjusted as follows: Full value will be allowed for assets used solely to generate sales for permitted operations. No value will be given for assets used solely to generate sales for private operations. Assets used jointly to generate sales for private and permitted operations will be allocated on a basis of use. All GFA will be shown on the depreciation schedule.

B. Land Use Fees Under GRFS. The annual land use fees due the United States for those activities authorized by this permit shall be calculated on sales according to the following schedule:

Type of Business	Break-Even Point (Sales to GFA) (%)	Rate Base (%)	Balance of Sales Rate (%)
Grocery	70	.75	1.13
Service, Food	70	1.25	1.88
Service, Car	70	1.30	1.95
Merchandise	70	1.50	2.25
Service, Alcoholic Beverages	60	1.80	2.70
Outfitting/Guiding	50	2.00	3.00
Rental and Services	30	4.50	6.75
Lodging	40	4.00	6.00
Lifts, Tows, Ski Schools	20	2.00	5.00

1. A weighted-average break-even point (called the break-even point) and a weighted-average rate base (called the rate base) shall be calculated and used when applying the schedule to mixed business. If the holder's business records do not clearly segregate the sales into the business categories authorized by this permit, they shall be placed in the most logical category. If sales with a different rate base are grouped, place them all in the rate category that shall yield the highest land use fee. Calculate the land use fee on sales below the break-even point using 50 percent of the rate base. Calculate the land use fee on sales between the break-even point and twice the break-even point using 150 percent of the rate base. Calculate the land use fee on sales above twice the break-even point using the balance of sales rate.
2. The minimum annual land use fee for this use, which is due in advance and is not subject to refund, shall be equal to the land use fee that would result when sales are 40 percent of the break-even point. This land use fee shall be calculated and billed by the Forest Service during the final quarter of the holder's fiscal year, using the most recent GFA figure and previously reported sales data for the current year, plus, if the operating season is still active, estimated sales for the remainder of the year.

C. Definitions of Sales Categories and GFA

1. **Sales Categories.** For purposes of recording and reporting sales, and sales-related information including the cost of sales, the holder's activities are divided into the following:

Grocery. Includes the sale of items usually associated with grocery stores such as staple foods, meats, produce, and household supplies. Includes the sale of bottled soft drinks, alcoholic beverages, when included in the grocery operation.

Service, Food. Includes the serving of meals, sandwiches, and other items either consumed on the premises or prepared for carry out. Snack bars are included.

Service, Cars. Includes servicing and the sale of fuels, lubricants, and all kinds of articles used in servicing and repairing autos, boats, jet skis, and aircraft.

Merchandise. Includes the sale of clothing, souvenirs, gifts, ski equipment and other sporting equipment. Where a "Service, Cars" category of business is not established by this permit, the sale of auto accessories is included in this category.

Service, Alcoholic Beverages. Includes the sale of alcoholic beverages for consumption on the premises and other sales ordinarily a part of a bar or cocktail lounge business. Where a bar is operated in conjunction with a restaurant or overnight accommodations, alcoholic beverage sales shall be accounted for consistent with holder's normal business practice. The sale of alcoholic beverages for consumption off the premises is also included in this item, except as indicated in "Grocery."

Outfitting and Guiding. Includes outfitting and guiding services, regardless of the mode of travel, when associated with a resort or marina with a mixture of business. All fees charged are considered sales.

Lodging. Includes lodging where daily maid service is furnished.

Rentals and Services. Includes lodging where daily maid service is not furnished by the holder; the rental of camping space, ski equipment and other equipment rentals and services. Also included are services such as barbershops, and amusements including video games.

Lifts, Tows, and Ski Schools. Includes changes for use of all types of uphill transportation facilities and for sports lessons and training not covered by 16 U.S.C. 497c.

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2. **GFA.** The capitalized cost of improvements, equipment, and fixtures necessary and used to generate sales and other revenue in the permit area or within the development boundary shown in this permit. GFA shall be established by and changed at the sole discretion of the authorized officer based on the current interpretation of guidelines supporting GRFS.

(a) **Valuing GFA.** The value of GFA shall be the cost of each qualifying asset as reflected in the financial statements of the current holder. This is the same amount as shown on the holder's fixed asset depreciation schedule which supports the general ledger prepared in accordance with Generally Accepted Accounting Principles (GAAP). Include in GFA, when identified by the holder and approved by the authorized officer, costs which are expensed by the holder as payment to utility companies for constructing and installing utilities to the area to the extent they are necessary for the generation of sales. Costs for user surcharge or demand rates are not included as GFA. If fixed assets have not been assigned a value by the holder at the time a permit is issued, the value for GFA must be determined by the holder and provided to the authorized officer no later than the end of the new holder's first financial reporting period.

(b) **Revaluing GFA.** Revalue GFA when events result in a change or restatement of fixed assets on the holder's official accounting records, prepared in accordance with GAAP. Examples of events that may cause the holder to restate the value of fixed assets include but are not limited to:

- (1) Sale of assets or common stock which results in a change in ownership, or controlling interest;
- (2) Mergers or other business combinations;
- (3) Leveraged buy outs, and acquisitions; or
- (4) Other events, either voluntary or involuntary, which trigger a revaluation of capitalized assets associated with the authorized use.

When the holder reports a change in the value of assets due to a restatement of the value of those assets, an audit may be necessary to validate the new GFA. Any adjustment in fees shall be retroactive to the time the change in asset value occurred.

(c) **The following, and similar items, are not part of GFA:**

- (1) Assets that ordinarily qualify for inclusion in GFA, but which are out of service for the full operating year for which fees are being determined.

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- (2) Land.
 - (3) Expendable or consumable supplies.
 - (4) tangible assets, such as goodwill, permit value, organization expenses, and liquor licenses.
 - (5) Improvements not related to the operation.
 - (6) Luxury assets, to the extent their design and cost exceed functional need.
 - (7) The pro rata share of GFA assets in off-site activities not directly associated with the authorized use.
 - (8) Expensed assets.
 - (9) Operating leases.
 - (d) **Initial GFA.** As of the date of this permit, (____) the initial GFA under this ownership has been determined to be \$ ____ as shown in detail Appendix G of this permit. If an error is found in the GFA amount, it shall be changed to the correct amount retroactive to the date the error occurred and fees adjusted accordingly.
- D. Change of GFA Upon Sale or Change in Controlling Interest.** Upon change of ownership, effective dominion or controlling interest or upon sale of assets or common stock which results in a change of ownership, effective dominion, or controlling interest, the value of GFA shall be established applying GAAP.
- E. Determining Sales and Other Revenue.** Sales and GFA shall be derived from all improvements and facilities, including those of applicable third parties, which constitute a logical single overall integrated business operation regardless of the land ownership. A map shall be prepared designating the development boundary and may be augmented by narrative or table and shall become a part of this permit.
- 1. **Sales.** Fees shall be assessed against all receipts from sales unless specifically exempted. Sales for the purpose of fee calculation include (1) all revenue derived from goods and services sold which are related to operations under this permit and all revenue derived within the development boundary, unless otherwise excluded; (2) the value of goods and services traded-off for goods and services received (bartering); and (3) the value of gratuities.
- (a) **Definitions.**
 - (1) **Gratuities.** Goods, services, or privileges that are provided without charge or at

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deep discount to such individuals as employees, owners, and officers, or immediate families of employees, owners, and officers, and not available to the general public.

- (2) **Acceptable Discounts.** Transactions for goods or services below stated, listed, or otherwise presented prices to the public at large. Included are such things as group sales and organized programs. These are included in sales at the actual transaction price.
 - (3) **Discriminatory Pricing.** Rates based solely on residence, race, color, or religion. Discounts based on age or disability are not discriminatory pricing.
 - (4) **Preferential Discounts.** Discounts offered to certain classes or individuals based on their status, such as members of boards of directors, contractors, advertisers, doctors, and VIPs.
 - (5) **Market Price.** The price generally available to an informed public excluding special promotions. It may not be the "window price."
 - (6) **Bartering or Trade Offs.** The practice of exchanging goods or services between individuals or companies.
 - (7) **Commissions.** Commissions are payments received by the holder for collecting revenue on behalf of others as an agent or providing services not directly associated with the operations, such as selling hunting and fishing licenses, bus or sight-seeing tickets for trips outside or predominantly outside the permit area, and accommodating telephone toll calls.
 - (8) **Franchise Receipts.** These are payments made to specific holders by third parties solely for the opportunity to do business at a specific location. The holder provides little, if anything, in the way of facilities or services. They may be the only fee paid to the holder or, if some facilities or services are provided by the holder, they may be made in addition to a rental fee. The franchise receipts may be in the form of fixed amounts of money or in reduced prices for the franchiser's product or service.
- (b) **Inclusions.** The following items shall be included as gross receipts to arrive at sales:
- (1) **Gratuities.** Daily and season passes are valued at market price unless the holder has sufficient records of daily individual use to substantiate a "value of use". Value of Use is the number of days the pass is used times the market price. Does not include employees. See paragraph (b)(4) below.

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- (2) **Preferential Discounts.** Includes the amount that would have been received had the transaction been made at the market price.
 - (3) **Value of Discriminatory Pricing.** Discriminatory pricing is disallowed. Include the amount that would have been received had the transaction been made at the market price.
 - (4) **Employee Discounts in Excess of 30 Percent of Market Price.** Discounts that are exclusively provided to employees, owners, officers, or members of their immediate family are gratuities and are included in sales at 70 percent of market price. Employee discounts of less than 30 percent are recorded at the transaction price.
 - (5) **Value of Bartered Goods and Services (Trade-Offs).** The value of the goods or services exchanged.
 - (6) **Gross Sales of Third Parties.** Includes sales of state-controlled liquor stores.
 - (7) **Other Revenue Items.** All other revenue items not specifically excluded below shall be included as sales.
- (c) **Exclusions.** The following items shall be excluded from gross receipts or revenue to arrive at sales:
- (1) The value of goods and services provided to employees, agents, contractors, or officials to facilitate the accomplishment of their assigned duties or work-related obligation or to others for educational or technical competence related to the type of authorized use, such as boat operation, ski patrol, or water safety and the value of goods and services provided to local, state, and federal government officials, including Forest Service employees, in the course of their official business. The holder is not required to report the value of such duty- related or official use as sales for fee calculation purposes.
 - (2) The value of meals and lodging furnished by an employer to an employee for the employer's convenience if, in the case of meals, they are furnished on the employer's business premises. The fact that the employer imposes a partial charge for or that the employee may accept or decline meals does not affect the exclusion if all other conditions are met. If employer imposes a charge for meals and lodging it shall be included at transaction price. The holder need not keep records of employee meals and lodging more detailed than those required by the Internal Revenue Service.
 - (3) Refunds from returned merchandise and receipts from sales of real and non-rental personal property used in the operation.

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- (4) Rents paid to the holder by third parties, even if based on sales.
- (5) Taxes collected on site from customers, accounted for as such in the holder's accounting records, and that were paid or are payable to taxing authorities. Taxes included in the purchase price of gasoline, tobacco, and other products, but paid to the taxing authority by the manufacturer or wholesaler are included in sales, and subject to the land use fee.
- (6) Amounts paid or payable to a government licensing authority or recreation administering agency from sales of hunting or fishing licenses and recreation fee tickets.
- (7) Value of sales and commissions where the holder is serving as an agent for businesses not directly associated with the authorized operation. This includes such things as bus or sight-seeing-ticket sales for trips not related to activities in the permit area, telephone toll charges, and accident insurance sales.
- (8) **Sales of operating equipment.** Rental equipment, capitalized assets or other assets used in operations shall be excluded from gross receipts. Examples are rental skis, boats, and motors which are sold periodically and replaced.

F. Payments, Reporting, and Reconciliation. Payments required under GRFS shall be sent to the location identified on the bill for collection. Checks or money orders shall be payable to "USDA Forest Service." Additionally, reports shall be sent to [enter mailing address of administering office]. The Forest Service may update these addresses as needed by sending written notice to the holder.

- 1. **Periodic Reports.** The holder shall report sales and calculate land use fees due each calendar [enter the reportable period, e.g., month, quarter, or year], except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shut-down for a specific period. Reports shall be submitted within 30 days of the end of each reportable period to [enter mailing address of administering office]. If the holder does not submit reports within the required timeframe, the Forest Service reserves the right to bill the holder based on historic sales data and to assess interest and late fees.
- 2. **Tentative Land Use Fee Rate.** Prior to [date], the authorized officer shall annually determine and furnish the holder with a tentative land use fee rate (as determined under paragraphs VI.B.2 through VI.F.1), which shall be applied to sales in the land use fee calculation.
- 3. **Initial Payment.** The Forest Service shall bill the minimum land use fee (as determined under paragraph VI.B.2) 30 days prior to issuance of this permit and each year thereafter

that this permit is in effect within 30 days of the final reporting period for the previous year. The holder shall submit payment in accordance with instructions in the bill for collection to the lockbox address.

<USER NOTES FOR CLAUSE VI.F.4>

<Each year after the holder has submitted annual sales data, estimate the annual land use fee for the following year based on the most recent sales data. Divide the estimated annual land use fee by the number of units in the reportable period (for example, 12 for months, 4 for quarters, or 1 for a year) to determine the amount of subsequent payments. Compare the minimum land use fee to the amount of subsequent payments to determine the number of reportable periods represented by the minimum land use fee. Commence the billing cycle when the minimum land use fee no longer covers subsequent payments due. Continue billing in advance of the authorized use.>

4. **Subsequent Payments.** The Forest Service shall bill the land use fee [enter month, quarter, or year] based on the reportable period. The holder shall submit payments in accordance with instructions in the bill for collection to the lockbox address.
5. **End-of-Year Report.** The holder must provide within three months after the close of each fiscal year under this permit a balance sheet representing the financial condition of the authorized operations at the close of the holder's fiscal year; an annual statement reporting the results of the authorized operations, including year-end adjustments for the holder and each of the holder's lessees for the same period; and a schedule of GFA adjusted to comply with the terms of this permit in a format and manner prescribed by the authorized officer.

If the authorized officer determines that additional land use fees are owed due to the holder's failure to report all sales in the period they were made or misreporting of GFA, the holder shall pay the additional land use fees, subject to the late payment provisions in clause VI.G.3.

6. **Reconciliation of Land Use Fees.** The estimated land use fee shall be reconciled against the holder's actual sales at the end of the holder's fiscal year and shall be adjusted, if necessary. The Forest Service shall bill the holder for any additional land use fees owed, and the holder shall submit payment in accordance with the instructions in the bill for collection to the lockbox address. The Forest Service shall credit any overpayment against the next payment due.

G. Land Use Fee Payment

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

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2. **Disputed Land Use Fees.** Land use fees are due and payable by the due date. Disputed land use fees, other than land use fees recalculated pursuant to an audit, must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

3. **Late Payments**

- a. **Interest.** Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any land use fee not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the United States Treasury (such as, the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the land use fee is due.
- b. **Administrative Costs.** If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.
- c. **Penalties.** A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.
- d. **Termination for Nonpayment.** This permit shall terminate if the holder fails to pay any land use fee, interest, or any other charges within 90 calendar days of the due date. The holder shall remain responsible for the delinquent charges.

4. **Administrative Offset and Credit Reporting.** Delinquent land use fees and other charges associated with this permit 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 holder 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 holder, as provided by 31 U.S.C. 3720 *et seq.*
- d. Disclosure to consumer or commercial credit reporting agencies.

- H. **Access to Records.** For purposes of administering this permit (including ascertaining that the correct land use fee was paid), the holder shall make all accounting books and

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supporting records for the authorized operations, as well as those of lessees operating in the permit area, available for review by the Forest Service or other federal agencies authorized to review Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information shall be kept confidential to the extent permitted by law. The holder shall retain these records and keep them available for review for 5 years after they were generated, unless otherwise approved by the authorized officer in writing.

- I. Accounting Records.** The holder shall follow GAAP or other comprehensive bases of accounting acceptable to the Forest Service in recording financial transactions and in reporting financial results to the authorized officer. When requested by the authorized officer, the holder at its own expense shall have annual accounting reports for the authorized operations audited or prepared by a licensed independent accountant acceptable to the Forest Service. The holder shall require lessees to comply with these same requirements. At a minimum, the holder's and lessees' accounting system shall include:
1. Systematic internal controls, including recording by type of business the gross receipts derived from all operations conducted under this permit. Gross receipts should be recorded daily and, if possible, deposited into a bank account without reduction for disbursements. Receipt entries shall be documented by cash register tapes, sale invoices, rental records, cash accounts from other sources, or some other means.
 2. A permanent record of capital investments in facilities (including a depreciation schedule).
 3. Generation and maintenance of other records and accounts as may be specified by the authorized officer.
- J. AUDIT.** All fee calculations and records of sales and GFA are subject to periodic audit. Errors in calculation or payment shall be corrected as needed for conformance with those audits. Additional land use fees and interest due as a result of such audits shall be assessed in accordance with clause VI.G.3.
1. Correction of errors includes but is not limited to any action necessary to establish the cost of GFA to the current holder, including sales, or other data required to accurately assess and calculate land use fees. For land use fee calculation purposes, errors may include:
 - (a) Misreporting or misrepresentation of amounts;
 - (b) Arithmetic mistakes;
 - (c) Typographical mistakes; and

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(d) Variation from GAAP, when such variations are inconsistent with the terms of this permit.

2. Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent, with past fees adjusted accordingly.
3. Changes effected by agency policy, including definition of assets included in GFA, shall only be made prospectively.

A-2. Land Use Fees During Construction. This clause may be used temporarily in conjunction with the GRFS clause for permits that will ultimately be under the Graduated Rate Fee System. However, the use has not yet started earning revenue. Citations are based on the Land Use Fee – Graduated Rate Fee System clause in form FS-2700-5c.

L. Land Use Fees During Construction. Notwithstanding clauses VI.A through VI.F, the holder shall pay annually to the USDA, Forest Service, a flat land use fee of [\$] for the period from [] to [] and thereafter annually on [] of each year of the construction phase authorized by this permit. The flat land use fee may be readjusted each year to ensure that it is commensurate with market value of the use and occupancy authorized by this permit. Once operations commence, the holder shall pay annually a land use fee determined under the Graduated Rate Fee System per the rest of clause A through K of this permit.

A-3. Flat Fee for Small Concessions. As provided in FSM 2715.14, paragraph 1b, recreation concessions with a land use fee of under \$3,500 annually under GRFS may pay an annual flat fee instead. Every 5 years, the flat fee must be recalculated under GRFS to determine whether the concession still qualifies for use of this clause. If recalculation results in a fee of \$3,500 or more, the permit must be amended to remove this clause and replace it with the GRFS clause (52.1, clause A-1) or a clause for a fee system that has replaced GRFS.

A. Land Use Fee. The holder shall pay an annual land use fee of [\$] determined under the Graduated Rate Fee System (GRFS). If the land use fee is \$500 or less, it must be paid in one installment. If the land use fee is more than \$500 but less than \$3,500, it will be paid in quarterly installments. Every 5 years, the fee must be recalculated under GRFS based on the previous 3-year sales history. If recalculation results in a fee of \$3,500 or more, this permit must be amended to remove this clause and replace it with the GRFS clause or a clause for a fee system that has replaced GRFS.

B. Annual Reporting. The holder shall annually report revenue and assets associated with the use and occupancy authorized by this permit within 3 months of the close of the holder's fiscal year.

C. Land Use Fee Payment Issues

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit

facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.

2. **Disputed Fees.** Land use fees are due and payable by the due date. Disputed land use fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

3. **Late Payments**

- (a) **Interest.** Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any land use fee not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the United States Treasury (for example, the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the Federal Register and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the land use fee is due.

- (b) **Administrative Costs.** If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.

- (c) **Penalties.** A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.

4. **Administrative Offset and Credit Reporting.** Delinquent land use fees and other charges associated with this permit 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 holder 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 holder, as provided by 31 U.S.C. 3720 *et seq.*

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

5. **Termination for Nonpayment.** This permit shall terminate if the holder fails to pay any land use fee, interest, or any other charges within 90 calendar days of the due date. The holder shall remain responsible for the delinquent charges.

A-6. Late Payments. Do not include this clause in permits that contain a GRFS fee clause.

Late Payments

- (a) **Interest.** Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any fee amount 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 Treasury (such as, 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 fee amount 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 percent 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 permit shall terminate if the holder fails to pay any land use fee, interest, or any other charges within 90 calendar days from the due date. The holder shall remain responsible for the delinquent charges.
- (e) **Administrative Offset and Credit Reporting.** Delinquent fees and other charges associated with this permit 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:
 - (1) Administrative offset of payments due the holder from the Forest Service.
 - (2) 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).
 - (3) Offset by the Secretary of the Treasury of any amount due the holder, as provided by 31 U.S.C. 3720 *et seq.*
 - (4) Disclosure to consumer or commercial credit reporting agencies.

A-7. Access to Records. Do not include this clause in permits that contain a GRFS land use fee clause.

Access to Records. For purposes of administering this permit (including ascertaining that the correct land use fee was paid), the holder shall make all accounting books and supporting records for the authorized operations, as well as those of lessees operating in

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the permit area, available for review by the Forest Service or other federal agencies authorized to review Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information shall be kept confidential to the extent permitted by law. The holder shall retain these records and keep them available for review for 5 years after they were generated, unless otherwise approved by the authorized officer in writing.

A-8. Accounting Records. Do not include this clause in permits that contain a GRFS land use fee clause.

Accounting Records. The holder shall follow generally accepted accounting principles or other comprehensive bases of accounting acceptable to the Forest Service in recording financial transactions and in reporting financial results to the authorized officer. When requested by the authorized officer, the holder at its own expense shall have annual accounting reports for the authorized operations audited or prepared by a licensed independent accountant acceptable to the Forest Service. The holder shall require lessees to comply with these same requirements. At a minimum, the holder's and lessees' accounting system shall include:

1. Systematic internal controls, including recording by type of business the gross receipts derived from all operations conducted under this permit. Gross receipts should be recorded daily and, if possible, deposited into a bank account without reduction for disbursements. Receipt entries shall be documented by cash register tapes, sale invoices, rental records, cash accounts from other sources, or some other means.
2. A permanent record of capital investments in facilities (including a depreciation schedule).
3. Generation and maintenance of other records and accounts as may be specified by the authorized officer.

A-9. Ski Area Permit Fees.

A. New Land Use Fee System. The Forest Service shall adjust and calculate land use fees authorized by this permit to reflect any revisions to land use fee provisions in 16 U.S.C. 497c or to comply with any new land use fee system based on market value that may be adopted by statute or otherwise after issuance of this permit.

B. Ski Area Permit Fee Calculation. The annual ski area permit fee (SAPF) due the United States for the activities authorized by this permit shall be calculated using the following formula:

AGR adjusted gross revenue;

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AGR	=	$[(LT + SS) \times (\text{proration } \%)] + \text{GRAF}$, prorated as applicable;
LT		revenue from sales of alpine and Nordic lift tickets and passes;
SS		revenue from alpine and Nordic ski school operations;
Proration %		the factor used to prorate LT and SS revenue between NFS lands and private land in the ski area; and
GRAF		gross year-round revenue from ancillary facilities located on NFS lands, prorated as applicable.

1. **SAPF Formula.** The SAPF shall be calculated by summing the products of the amount of the holder's AGR that falls into each of the four revenue brackets multiplied by the applicable percentage rate, as shown in the table below. AGR shall be determined in accordance with clause VI.B.2. The SAPF shall be calculated based on the holder's fiscal year, unless mutually agreed otherwise by the holder and the authorized officer. The four revenue brackets shall be adjusted annually using the consumer price index (CPI-U) Issued in FSH 2709.11, Chapter 30. The revenue brackets shall be indexed for the previous calendar year. The holder's AGR for any fiscal year shall not be split into more than one set of indexed brackets. Only the revenue in each bracket shall be updated annually. The percentage rates shall not change.

The revenue brackets and percentages in FSH 2709.11, Chapter 30, section 38.12, exhibit 01, shall be used as shown in the preceding formula to calculate the SAPF. The revenue brackets for FY 2011 through FY 2016 are shown below. The Washington Office Director of Recreation, Heritage, and Volunteer Resources updates the revenue brackets annually based on the Consumer Price Index (CPI-U), Table A, which is published monthly at <http://www.bls.gov>. The rate should be applied prospectively for any payment due on or after January 1 through the next calendar year. For example, use of the 2012 rate issued in October 2011 should commence for the next set of land use fee calculations and billings with a due date on or after January 1, 2012.

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Revenue Brackets and Corresponding Percentage Rates

Holder FY	Bracket 1 1.5%	Bracket 2 2.5%	Bracket 3 2.75%	Bracket 4 4%
FY 2011 CPI: 1.012	All revenue below \$4,285,000	\$4,285,000 to <\$21,431,000	\$21,431,000 to \$71,437,000	All revenue over \$71,437,000
FY 2012 CPI: 1.036	All revenue below \$4,439,000	\$4,439,000 to <\$22,203,000	\$22,203,000 to \$74,009,000	All revenue over \$74,009,000
FY 2013 CPI: 1.014	All revenue below \$4,501,000	\$4,501,000 to <\$22,514,000	\$22,514,000 to \$75,045,000	All revenue over \$75,045,000
FY 2014 CPI: 1.020	All revenue below \$4,591,000	\$4,591,000 to <\$22,964,000	\$22,964,000 to <\$76,546,000	All revenue over \$76,546,000
FY 2015 CPI: 1.020	All revenue below \$4,683,000	\$4,683,000 to <\$23,423,000	\$23,423,000 to \$78,077,000	All revenue over \$78,077,000
FY 2016 CPI: 1.002	All revenue below \$4,692,000	\$4,692,000 to <\$23,470,000	\$23,470,000 to \$78,233,000	All revenue over \$78,233,000

2. **Calculation of AGR.** AGR shall be calculated by summing the year-round revenue from the sale of lift tickets and ski school operations prorated for use of NFS lands and from GRAF, prorated as applicable.

(a) The following shall be included in AGR:

- (1) **Prorated LT.** Year-round revenue from sales of alpine and Nordic ski area passes and lift tickets, including revenue generated on private land (such as from lift tickets sold on private land), prorated according to the percentage of use between NFS lands and private land in the ski area per clause VI.B.3.a and VI.B.3.b;
- (2) **Prorated SS.** Revenue from alpine and Nordic ski school operations, including

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lessons provided to teach alpine or Nordic skiing or other winter sports activities, such as racing, snowboarding, or snowshoeing, even if the lessons are purchased on private land, prorated according to the percentage of use between NFS lands and private land in the ski area per clause VI.B.3.a and VI.B.3.b;

- (3) **GRAF, Prorated As Applicable.** Gross year-round revenue from temporary and permanent ancillary facilities, including all the holder's or subholder's lodging, food service, rental shops, parking, and other ancillary operations, located on NFS lands in the permit area, prorated, as applicable, according to the percentage of use between NFS lands and private land in the ski area per clause VI.B.3.c. Revenue generated from ancillary facilities on private land shall not be included in AGR;
- (4) **Bartered Goods and Complimentary Lift Tickets.** The market price of bartered goods and complimentary lift tickets offered for commercial or other promotional purposes, such as for advertising. The value of bartered goods and complimentary lift tickets offered for commercial or other promotional purposes shall be categorized as LT, SS, or GRAF, as appropriate; and
- (5) **Special Event Revenue.** Revenue from events such as food festivals, foot races, and concerts on NFS lands in the permit area. Special event revenue shall be included in the AGR formula as LT, SS, or GRAF, as applicable. The revenue shall be prorated according to the percentage of use between NFS lands and private land per clause VI.B.3. Discriminatory pricing, such as, pricing based solely on race, religion, sex, national origin, or place of residence, is prohibited under clause III.N or III.O, but if it occurs, the amount that would have been received had discriminatory pricing not occurred shall be included in AGR.

(b) The following shall be excluded from AGR:

- (1) Revenue from sales of operating equipment;
- (2) Refunds;
- (3) Rent paid to the holder by subholders or lessees;
- (4) Sponsor contributions to special events;
- (5) Employee gratuities and employee lift tickets;
- (6) Lift tickets and passes provided for public safety or public service purposes (such as for the National Ski Patrol or for volunteers to assist in the Special Olympics);
- (7) Discounts; and

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- (8) Any other goods and services (other than bartered goods and complimentary lift tickets offered for commercial or other promotional purposes) for which the holder receives no money.
3. **Proration of Revenue.** Alpine and Nordic revenue shall be prorated separately. Prorated revenues shall be added together and summed with GRAF to produce AGR. One or more of the following methods, as appropriate, shall be used to prorate revenue:
- (a) Alpine revenue shall be prorated using the Slope Transport Feet Method, per the direction in FSM 2715.11c, paragraph 6b(2)(c) effective in 1992.
 - (b) Nordic revenue shall be prorated using the percentage of Nordic trail length on NFS lands to total Nordic trail length.
 - (c) For ancillary facilities that are partially located on NFS lands, the ratio of the facility square footage located on NFS lands to the total facility square footage shall be calculated, and the revenue for ancillary facilities shall be prorated in accordance with this ratio. Special event revenue allocatable to GRAF shall be prorated by the ratio of use on NFS lands to the total use.
4. **Absence of AGR.** In cases when the holder has no AGR for a given fiscal year, the holder shall pay a land use fee of \$2 per acre for NFS lands under permit or a percentage of the appraised value of NFS lands under permit, at the discretion of the authorized officer.
- C. **SAPF Payments.** Reports and deposits shall be sent or delivered to the Collection Officer, USDA, Forest Service, at the address furnished by the authorized officer. Checks or money orders shall be made payable to USDA, Forest Service.
- 1. The holder shall calculate and submit an advance payment which is due by the beginning of the holder's payment cycle. The advance payment shall equal 20 percent of the holder's average SAPF for 3 operating years, when available. When past SAPF information is not available, the advance payment shall equal 20 percent of the SAPF, based on the prior holder's average SAPF or projected AGR. For ski areas not expected to generate AGR for a given payment cycle, advance payment of the SAPF as calculated in clause VI.B.4 shall be made. The advance payment shall be credited toward the total SAPF for the payment cycle.
 - 2. The holder shall report sales, calculate the SAPF due based on a tentative percentage rate, and make interim payments each calendar year, except for periods in which no sales take place and the holder has notified the authorized officer that the operation has entered a seasonal shut down for a specific period. Reports and payments shall be made by the end of the month following the end of each reportable period. Interim payments shall be credited toward the total SAPF for the payment cycle.

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3. Within 90 days after the close of the ski area's payment cycle, the holder shall provide a financial statement, including a completed SAPF information form, Form FS-2700- 19a, representing the ski area's financial condition at the close of its business year and an annual operating statement reporting the results of operations, including a final payment which includes year-end adjustments for the holder and each sub-holder for the same period. Any balance that exists may be credited and applied against the next payment due or refunded, at the discretion of the holder.
4. Within 30 days of receipt of a statement from the Forest Service, the holder shall make any additional payment required to ensure that the correct SAPF is paid for the past year's operations.
5. All SAPF calculations and records of sales are subject to review or periodic audit as determined by the authorized officer. Errors in calculation or payment shall be corrected as needed for conformance with those reviews or audits. In accordance with clause VI.E, interest and penalties shall be assessed on additional fees due as a result of reviews or audits.

D. Correction of Errors. Correction of errors includes any action necessary to calculate the holder's sales or slope transport feet percentage or to make any other determination required to calculate SAPFs accurately. For SAPF calculation purposes, an error may include:

1. Misreporting or misrepresentation of amounts;
2. Arithmetical mistakes;
3. Typographical mistakes; or
4. Variation from generally accepted accounting principles (GAAP), when such variations are inconsistent with the terms of this permit.

Correction of errors shall be made retroactively to the date the error was made or to the previous audit period, whichever is more recent, and past SAPFs shall be adjusted accordingly.

E. Land Use Fee Payment Issues

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next business day.
2. **Disputed Land Use Fees.** Land use fees are due and payable by the due date. Disputed land use fees must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.

3. Late Payments.

- (a) **Interest.** Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any fee amount 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 fee amount 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 permit shall terminate if the holder fails to pay any land use fee, interest, or any other charges within 90 calendar days of the due date. The holder shall remain responsible for the delinquent charges.

4. Administrative Offset and Credit Reporting. Delinquent land use fees and other charges associated with this permit 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 holder 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 holder, as provided by 31 U.S.C. 3720 *et seq.*
- (d) Disclosure to consumer or commercial credit reporting agencies.

F. Access to Records. For purposes of administering this permit (including ascertaining that the correct land use fee was paid), the holder shall make all accounting books and supporting records for the authorized operations, as well as those of lessees operating in the permit area, available for review by the Forest Service or other federal agencies authorized to review Forest Service activities. Review of accounting books and supporting records shall be made at dates convenient to the holder and reviewers. Financial information shall be kept confidential to the extent permitted by law. The holder shall retain these records and keep them available for review for 5 years after they were

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generated, unless otherwise approved by the authorized officer in writing.

G. Accounting Records. The holder shall follow generally accepted accounting principles or other comprehensive bases of accounting acceptable to the Forest Service in recording financial transactions and in reporting financial results to the authorized officer. When requested by the authorized officer, the holder at its own expense shall have annual accounting reports for the authorized operations audited or prepared by a licensed independent accountant acceptable to the Forest Service. The holder shall require lessees to comply with these same requirements. At a minimum, the holder's or lessees' accounting system shall include:

1. Systematic internal controls, including recording by type of business the gross receipts derived from all operations conducted under this permit. Gross receipts should be recorded daily and, if possible, deposited into a bank account without reduction by disbursements. Receipt entries shall be documented by cash-register tapes, sale invoices, rental records, cash accounts from other sources, or some other means.
2. A permanent record of capital investments in facilities (including a depreciation schedule).
3. Generation and maintenance of other records and accounts as may be specified by the authorized officer.

A-10. Land Use Fee - Exemptions and Waivers. Use the following clause for uses that are exempt from a land use fee, for example, facilities that are eligible for financing under the Rural Electrification Act, or for which the land use fee is waived. Document fee waivers in the Special Uses Data System.

Land Use Fee. The holder is exempt from a land use fee pursuant to 36 CFR 251.57 and Forest Service Handbook 2709.11, Chapter 30.

Land Use Fee. The holder's land use fee has been waived pursuant to 36 CFR 251.57 and Forest Service Handbook 2709.11, Chapter 30. The authorized officer reserves the right to review the land use fee waiver determination periodically and to charge all or part of the land use fee if the waiver is no longer appropriate.

A-11. Land Use Fee - Indexed. Use the following clause for uses for which the land use fee is indexed (such as linear uses). Calculate the land use fee based on applicable direction in FSH 2709.11, Chapter 30.

Land Use Fee. The holder shall pay an initial annual land use fee of \$[amount] for the period from [date] to [date], and thereafter on [date] of each year this permit is in effect shall pay an annual land use fee of \$ [amount]. The annual land use fee shall be adjusted annually using the appropriate index.

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A-12. Land Use Fee - Non-Indexed. Use the following clause for uses for which the land use fee is not indexed (such as many non-linear uses). Calculate the land use fee based on applicable direction in FSH 2709.11, Chapter 30.

Land Use Fee. The holder shall pay an initial annual land use fee of \$[amount] for the period from [date] to [date], and thereafter on [date] of each year this permit is in effect shall pay an annual land use fee of \$[amount].

A-14. Land Use Fee - Consolidated Payment. The authorized officer may require a single consolidated payment covering more than one year for holders other than private individuals, as opposed to commercial or other entities, whose annual land use fee is more than \$100. A private individual whose annual land use fee is more than \$100 may elect to make a consolidated land use payment covering more than one year. Under FSH 2709.11, section 32.21, no more than 5 payments may be consolidated. If payment of land use fees is consolidated, include the following clause.

Consolidated Land Use Fee Payment. Payment of annual land use fees for [number of years up to 5] years shall be consolidated. The first consolidated land use fee payment shall be made on [date first full payment is due], when the first full annual land use fee payment is due, and thereafter every [number of years up to 5 given above] years from [date first full payment is due], until this permit expires.

A-15. Land Use Fee - Consolidated Payment, GT Concessions. For permits issued under Section 7 of the Granger-Thye (GT) Act, a consolidated land use fee (a land use fee covering multiple years) may be established to complete a GT fee offset project that costs more than the amount of the land use fee for 1 year. When consolidating a land use fee for a campground concession, add the applicable clauses below to form FS-2700-4h as clause IV.H. Do not remove the standard clauses.

If consolidating land use fees, select the appropriate clause below, depending on whether the holder will make payments and the Forest Service will perform the work under a GT fee offset agreement or whether the holder will perform the work in lieu of payments under a GT fee offset agreement. Be conservative in determining the amount of a consolidated fee payment to avoid making a refund for authorized excess offset work. Do not reconcile the consolidated land use fee based on actual gross revenues if the consolidated fee period covers up to 5 years. Reconcile the consolidated land use fee only if the consolidated fee period exceeds 5 years and the consolidated fee payment was established as a requirement in the prospectus in exchange for a longer-term length.

Delete the user notes prior to printing.

<USER NOTES FOR CLAUSE A-15>

<Use the following clause A-15 where work will be performed by the Forest Service under a GT fee offset agreement and delete the remaining clause A-15.>

H. Consolidated Land Use Fee Payment Where the Forest Service Performs the Work Under a GT Fee Offset Agreement

1. **Consolidated Land Use Fee Period.** Notwithstanding clauses IV.A, IV.C.1, and IV.C.2 of this permit, the annual land use fees for [number from 2 to 5 for land use fees up to \$250,000 and from 6 to 10 for land use fees over \$250,000] years shall be consolidated for the period from [date] to [date].
2. **Determination of the Consolidated Land Use Fee.** The consolidated land use fee payment shall be determined by multiplying the average annual gross revenue for the concession authorized by this permit for the last 3 years (adjusted, if applicable, based on expansion or contraction of the concession) by the number of years the land use fee payments will be consolidated, and multiplying the product by the percentage of gross revenues the holder has agreed to pay. The consolidated land use fee for the consolidated fee period is \$[amount]. The holder shall pay the entire consolidated land use fee payment on [date], when the first annual land use fee payment otherwise would have been due.

<Include the following clause IV.H.3 if the consolidated land use fee period covers up to 5 years. Otherwise delete it.>

3. **Lack of Reconciliation of the Consolidated Land Use Fee.** Notwithstanding clause IV.C.4, the consolidated land use fee paid shall not be reconciled based on actual gross revenues.

<Include the following clause IV.H.3 if the consolidated land use fee period exceeds 5 years. Otherwise delete it.>

4. **Reconciliation of the Consolidated Land Use Fee.** Notwithstanding clause IV.C.4, at the midpoint of the consolidated fee period (every 3 to 5 years), compare the consolidated land use fee to actual gross revenues and adjust the fee as necessary for the remainder of the consolidated fee period. Bill the holder for any additional payment owed during the remaining consolidated fee period or refund any overpayment to the holder.
5. **Payment of Land Use Fees After the Consolidated Land Use Fee Period Has Ended.** After the consolidated fee period has elapsed, the annual land use fee shall be paid pursuant to clause IV.A until this permit expires, unless a new consolidated fee period is established.

<Use the following clause A-15 where work will be performed by the holder under a GT fee offset agreement and delete the preceding clause A-15.>

H. Consolidated Land Use Fee Payment Where the Holder Performs the Work Under a GT Fee Offset Agreement

1. **Consolidated Land Use Fee Period.** Notwithstanding clauses IV.A, IV.C.1, and IV.C.2 of this permit, the annual land use fees for [number from 2 to 5 for land use fees up to \$250,000 and from 6 to 10 for land use fees over \$250,000] years shall be consolidated for the period from [date] to [date].
2. **Determination of the Consolidated Land Use Fee.** The consolidated land use fee payment shall be determined by multiplying the average annual gross revenue for the concession authorized by this permit for the last 3 years (adjusted, if applicable, based on expansion or contraction of the concession) by the number of years the land use fee payments will be consolidated, and multiplying the product by the percentage of gross revenues the holder has agreed to pay. The consolidated land use fee for the consolidated fee period is \$[amount].
3. **Performance of Work.** The holder shall perform the work specified in the Granger-Thye Fee Offset Agreement attached to this permit in lieu of paying the consolidated land use fee. The holder shall commence the work covered by that agreement within the first 6 months of the consolidated fee period and shall complete the work within 18 months of the beginning of the consolidated land use fee period.

<Include the following clause IV.H.4 if the consolidated land use fee period covers up to 5 years. Otherwise delete it.>

4. **Lack of Reconciliation of the Consolidated Land Use Fee.** Notwithstanding clause IV.C.4, the consolidated land use fee that is offset shall not be reconciled based on actual gross revenues.

<Include the following clause IV.H.4 if the consolidated land use fee period exceeds 5 years and the consolidated fee payment was established as a requirement in the prospectus in exchange for a longer-term length. Otherwise delete it.>

5. **Reconciliation of the Consolidated Land Use Fee.** Notwithstanding clause IV.C.4, at the midpoint of the consolidated fee period (every 3 to 5 years), compare the consolidated land use fee to actual gross revenues, and adjust the fee as necessary for the remainder of the consolidated fee period. Bill the holder for the amount the actual land use fee exceeds the value of previously authorized work performed or amend the GT fee offset agreement to require additional fee offset work for that amount. Refund to the holder the amount the value of authorized work performed exceeds the actual land use fee.

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6. Payment of Land Use Fees After the Consolidated Land Use Fee Period Has Ended.

After the consolidated fee period has elapsed, the annual land use fee shall be paid pursuant to clause IV.A until this permit expires, unless a new consolidated fee period is established.

A-16. Land Use Fee - Organizational Camps. Use the following clause for organizational camp fees charged pursuant to 16 U.S.C. 6231 *et seq.* See FSH 2709.11, section 36, for additional direction and an example for calculating the fee for organizational camps. Paragraph 2 of this clause addresses the fee based on other revenues. For fees based on other revenues of up to \$10,000, payment should be made quarterly. For fees based on other revenues of over \$10,000, payment should be made monthly.

Organizational Camp Land Use Fee. The annual land use fee due the United States for the activities authorized by this permit shall be calculated using the following formula:

Fee = Land Use Fee + Other Revenues Fee + Facility Use Fee, where:

A. Land Use Fee. The Land Use Fee = .05 (Acres x Value Per Acre x Annual Adjustment Factor) – Reductions for Priority 1 and Priority 2 Use.

The land use fee may be offset pursuant to section 3 of the Federal Timber Contract Payment Modification Act (16 U.S.C. 539f). This offset work and its value shall be documented and agreed to in advance.

1. The Value Per Acre is the estimated per-acre market value of land and buildings in the county where the camp is located, as reported in the most recent Census of Agriculture conducted by the National Agricultural Statistics Service. The Annual Adjustment Factor is the annual compounded rate of change between the two most recent Censuses of Agriculture.

2. Reductions to the land use fee for Priority 1 and Priority 2 use are calculated as follows:

Priority 1 - Reduce the annual land use fee proportionate to the number of individuals with a disability and children at risk annually who attend the organizational camp.

Priority 2 - Reduce the remaining land use fee amount by up to 60 percent, proportionate to the number of persons annually who attend the organizational camp and participate in youth programs through organized and supervised social, citizenship, character-building, or faith-based activities oriented to outdoor recreation experiences.

3. The land use fee may not be reduced below the minimum land use fee. The minimum land use fee is \$300, unless adjusted by the region where the organizational camp is

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located, per FSM 2715.04b, paragraph 1. The minimum fee is due in advance of use and is not refundable.

- B. Land Use Fee Based on Other Revenues.** Revenue derived under this permit for purposes other than to introduce young people or individuals with a disability to activities that they may not otherwise experience and to educate them on natural resource issues is subject to a fee of 5 percent of adjusted gross revenue.

The land use fee based on other revenues may be offset pursuant to section 3 of the Nonprofit Organization User of National Forest Lands Act (16 U.S.C. 539f). This offset work and its value shall be documented and agreed to in advance. Estimated fees based on other revenues shall be calculated on an Estimated Fee Determination Sheet. Payments shall be made [quarterly or monthly] in advance of use.

1. **Documentation of Revenue.** Separately document revenue derived under this permit for purposes of introducing young people or individuals with a disability to activities that they may not otherwise experience and to educate them on natural resource issues, from revenue derived under this permit for other purposes.
2. **Accounting Records and Access.** The holder shall follow generally accepted accounting principles or another cash basis of accounting in recording financial transactions. When requested by the Forest Service, the holder at its expense shall have its annual accounting records audited by an independent public accountant acceptable to the Forest Service. The holder shall make all of the accounting books and supporting records for the business activities authorized by this permit available for audit by the Forest Service or other federal agencies authorized to review Forest Service activities. The holder shall retain these records and make them available for review for 5 years after the end of the year in which they were generated, unless disposition is otherwise authorized by the Forest Service in writing.

<USER NOTES FOR PARAGRAPH 3>

<The facility use fee clause below applies only to Government-owned improvements authorized under the Granger-Thye (GT) Act. If there are no GT improvements, insert “is no” in the first blank and “not applicable” in the second blank. This clause is used in conjunction with clause A-20 or clause A-21, which provide for GT fee offset.>

- C. Facility Use Fee.** There [is a/is no] facility use fee for this permit. The facility use fee is \$[amount], which is 6 percent of the value of the federally owned facilities authorized by this permit. The facility use fee is subject to Granger-Thye fee offset in accordance with clauses VI.D and VI.E. The facility use fee is not subject to reduction or waiver or offset pursuant to section 3 of the Federal Timber Contract Payment Modification Act (16 U.S.C. 539f).

D. Land Use Fee Payments.

1. **Crediting of Payments.** Payments shall be credited on the date received by the deposit facility, except that if a payment is received on a non-workday, the payment shall not be credited until the next workday.
2. **Disputed Land Use Fees.** Land use fees are due and payable by the due date. Disputed land use fees, other than land use fees recalculated pursuant to an audit, must be paid in full. Adjustments will be made if dictated by an administrative appeal decision, a court decision, or settlement terms.
3. **Late Payments.**
 - (a) **Interest.** Pursuant to 31 U.S.C. 3717 *et seq.*, interest shall be charged on any land use fee not paid within 30 days from the date it became due. The rate of interest assessed shall be the higher of the Prompt Payment Act rate or the rate of the current value of funds to the United States Treasury (i.e., the Treasury tax and loan account rate), as prescribed and published annually or quarterly by the Secretary of the Treasury in the *Federal Register* and the Treasury Fiscal Requirements Manual Bulletins. Interest on the principal shall accrue from the date the land use fee is due.
 - (b) **Administrative Costs.** If the account becomes delinquent, administrative costs to cover processing and handling the delinquency shall be assessed.
 - (c) **Penalties.** A penalty of 6% per annum shall be assessed on the total amount that is more than 90 days delinquent and shall accrue from the same date on which interest charges begin to accrue.
4. **Administrative Offset and Credit Reporting.** Delinquent land use fees and other charges associated with this permit 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 holder 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 holder, as provided by 31 U.S.C. 3720 *et seq.*
 - (d) Disclosure to consumer or commercial credit reporting agencies.

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5. **Nonpayment.** This permit shall terminate if the holder fails to pay any land use fee, interest, or any other charges within 90 calendar days of the due date. The holder shall remain responsible for the delinquent charges.

A-19. Land Use Fees - Leasing of the Holder's Fiber Optic Cable. Include the following clause in all authorizations that authorize fiber optic cable, even if the holder or lessee is exempt from or qualifies for a waiver of land use fees. Do not include the following clause in forms FS-2700-4j and FS-2700-31, as they already contain appropriate leasing provisions for fiber optic cable.

Do not use clause A-19 to authorize a party to install fiber optic cable in another party's right-of-way or lease area. In these circumstances, issue a separate special use authorization for installation of the fiber optic cable and charge a separate land use fee for the authorization based on the linear right-of-way fee schedule in Forest Service Handbook (FSH) 2709.11, Chapter 30, unless the holder qualifies for a land use fee waiver or exemption.

Do not charge an additional land use fee for fiber optic cable that is within the right-of-way or lease area; that is owned by the holder or lessee and that solely supports operation of the primary authorized use; and that is not leased to any other parties for communications uses that serve other purposes.

Charge a single, additional annual land use fee when the holder or lessee leases fiber optic cable to any third party or parties, regardless of the holder's or lessee's eligibility for a land use fee waiver or exemption and regardless of the number of third parties. Determine the single, additional annual land use fee for leasing fiber optic cable based on the linear right-of-way fee schedule in FSH 2709.11, Chapter 30. Where the primary authorized use is fiber optic cable (use code 823), determine the land use fee for leasing fiber optic cable by using the length and width of the authorized right-of-way for the fiber optic cable, with a minimum width of 10 feet. Where the primary authorized use is not fiber optic cable, determine the land use fee using the length of the authorized linear right-of-way for the primary use and a width of 10 feet. The authorized officer may request any information from the holder or lessee deemed necessary for proper administration of the leased fiber optic cable.

In the clause below, select "holder" and "permit" or "lessee" and "lease," as applicable, and delete the inapplicable terms.

Where the primary authorized use is fiber optic cable, select "the length and width of the authorized right-of-way, with a minimum width of 10 feet" and delete "the length of the authorized right-of-way and a width of 10 feet" in the clause below. Where the primary authorized use is not fiber optic cable, select "the length of the authorized right-of-way and a width of 10 feet" and delete "the length and width of the authorized right-of-way, with a minimum width of 10 feet" in the clause below. Delete the brackets.

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

A-20. GT - Fee Offset. Include clause A-20 in section VI of form FS-2700-4 when it authorizes use and occupancy of federally owned improvements, the following provisions as necessary for use in other special use authorization forms that authorize use and occupancy of federally owned improvements.

D. Granger-Thye Fee Offset. Pursuant to 16 U.S.C. 580d, the Forest Service may offset all or part of the land use fee by the amount paid by the holder for maintenance, renovation, reconditioning, and improvement deemed to be the Government's responsibility, as defined below, of federally owned improvements and their associated land.

1. Definitions

- (a) **Maintenance.** Actions taken to keep fixed assets 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.
- (b) **Improvement.** Advancing a fixed asset to a better quality or state or adding a new fixed asset to the authorized improvements under this permit, 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 holder.

- (c) **Reconditioning or Renovation.** 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.
- (d) **Holder Maintenance, Reconditioning, or Renovation.** Maintenance, reconditioning, or renovation (MRR) that neither materially adds to the value of the property nor appreciably prolongs its life and that serves only to keep the 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, refinishing picnic tables, routine housekeeping, and general snow removal.
- (e) **Government Maintenance, Reconditioning, Renovation, or Improvement.** Maintenance, reconditioning, renovation, or improvement (MRRI) 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 other federally owned structures; replacing vault toilets with flush facilities, paving interior roads, 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. **Granger-Thye Fee Offset Agreement.** Before issuance of this permit and before each operating season thereafter, the Forest Service and the holder shall annually enter into a written Granger-Thye fee offset agreement that specifies the Government maintenance, reconditioning, renovation and improvement (MRRI) to be used to offset the land use fee. The agreement shall enumerate the portion of the land use fee to be offset by the cost of work performed by the holder and the schedule for completion of offset work; which projects are to be used for offset that year; standards for completion of the projects; and examples of allowable costs.

<USER NOTES FOR OPTIONAL CLAUSES V.E AND V.F>

<Include the following optional clauses V.E and V.F when the holder performs the work under a GT fee offset agreement. Delete the remaining optional clauses V.E and V.F. The holder may request an amendment to the permit per FSM 2714 that provides for the Forest Service or a Forest Service contractor to perform the work under a GT fee offset

agreement. If the amendment is approved, use form FS-2700-23, and replace clauses V.E and V.F with clause A-21 from FSH 2709.11, chapter 50, section 52.1. If optional clauses V.E and V.F are not included, re-letter the remaining clauses in section V.>

E. Holder-Performed Fee Offset Work

1. **Work in Lieu of Cash Payments.** Notwithstanding clauses V.A and V.C, the cost of work performed by the holder pursuant to a GT fee offset agreement as provided in clause V.D.2 may be credited in lieu of cash payments against the annual land use fee, provided that the work has been accomplished in accordance with the GT fee offset agreement and has been accepted as completed by the Forest Service before the end of the holder's fiscal year. In the absence of an approved GT fee offset agreement, payment shall be made in accordance with clauses V.A and V.C.
2. **Documentation of Expenses.** Prior to reimbursement or credit for GT fee-offset work, the holder shall submit sufficient documentation to allow the authorized officer to determine that the costs claimed are allocable to the GT fee offset agreement, actual, reasonable, and not unallowable.
3. **Final Payment.** The Forest Service shall reconcile annually the actual land use fee against land use fees paid and credit given by the Forest Service for GT fee offset work. The holder shall pay any additional land use fees owed for the past year's operations within 30 days of billing.
4. **Overpayment.** Overpayment of the land use fee will be reimbursed by the Forest Service only if paid pursuant to clause V.A. Credit for offset work pursuant to clause V.D.2 is limited to the amount of the annual land use fee; expenses will not be reimbursed if they are greater than the annual land use fee.

- F. Holder Maintenance, Reconditioning or Renovation (MRR) Plan.** The holder at its expense shall perform holder MRR as defined in clause V.D.1(d) of this permit under a holder MRR plan approved by the Forest Service. The holder MRR plan shall describe required holder MRR and their frequency. The work performed under the holder MRR plan shall not be subject to fee offset under clause V.D.2 and V.E.1.

<USER NOTES FOR OPTIONAL CLAUSES V.E AND V.F>

<Select the following optional clauses V.E and V.F when the Forest Service or a Forest Service contractor performs the work under a GT fee offset agreement. Delete optional clauses V.E and V.F above. The holder may request an amendment to the permit per FSM 2714 to provide for the holder to perform the work under a GT fee offset agreement. If the amendment is approved, use form FS-2700-23, and replace clauses V.E and V.F with clause A- 20 from FSH 2709.11, chapter 50, section 52.1. If optional clauses V.E and V.F are not included, re-letter the remaining clauses in section V.>

E. Forest Service-Performed GT Fee Offset Work

1. **Work in Lieu of Cash Payments.** Notwithstanding clauses V.A and V.C, the cost of work performed pursuant to a GT fee offset agreement as provided in clause V.D.2 may be credited in lieu of cash payments against the annual land use fee. The GT fee offset agreement shall specify that the Forest Service will perform the work or contract with a third party to perform the work. In the absence of an approved GT fee offset agreement, payment shall be made in accordance with clauses V.A and V.C.
2. **Payments.** The holder shall deposit land use fees [annually or quarterly] into a cooperative account. All deposits shall be retained by the Forest Service until expended or, if unutilized in 5 years, shall be deposited into the U.S. Treasury.
3. **Offset for Forest Service Oversight of major Government Maintenance, Reconditioning, Renovation and Improvement MRRI Performed by the Holder.** The Forest Service may include in the GT fee offset agreement the cost of a Forest Service employee administering and overseeing major government MRRI projects. For purposes of this clause only, a major government MRRI project is one costing \$[amount] or more.

F. Holder Maintenance, Reconditioning, and Renovation (MRR) Plan. The holder at its expense shall perform holder MRR as defined in clause V.D.1(d) of this permit under a holder MRR plan approved by the Forest Service. The holder MRR plan shall describe required holder MRR and their frequency. The work performed under the holder MRR plan shall not be subject to fee offset under clause V.D.2.

A-21. GT - Managing Land Use Fees Retained Under Offset Agreement. Include clause A-21 in section VI of form FS-2700-4 when it is subject to a Granger-Thye (GT) fee offset agreement where the holder will pay the land use fee and the Forest Service or a Forest Service contractor will perform the work under a GT fee offset agreement. The Forest Service may enter into a single GT fee offset agreement with multiple users in a federally owned communications facility.

Document in a GT fee offset agreement any fee offset work to be performed by the Forest Service or a Forest Service contractor and attach the GT fee offset agreement as an appendix to the permit. The GT fee offset agreement and permit will be accepted by the Albuquerque Service Center, Budget and Finance Division, Reimbursable and Advance Collection Agreement Branch (hereinafter "RACA") as a cooperative agreement.

Deposit land use fee payments for GT fee offset work to be performed by the Forest Service or a Forest Service contractor into the SDNG Fund, U.S. Treasury Symbol 12X6500. After the deposit has cleared the SDNG Fund, request a transfer of the money from the SDNG Fund into a CWFS advance agreement deposit account (CWFS account), U.S. Treasury Symbol 12X8028, by submitting to RACA a copy of the permit; the GT fee offset agreement; a statement of the

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balance in the SDNG Fund; and a copy of the bill for collection.

Upon receipt of these documents, RACA will transfer the funds into a CWFS account and will record the funds under the Project Cost Accounting System (PCAS) as an advance liability. A job code will be assigned, and budget authority will be granted for the CWFS account. The advance liability will be liquidated by the PCAS as the work is performed and as expenses are recorded. The CWFS account will be managed by RACA.

Repeat the process for subsequent land use fee payments for GT fee offset work to be performed by the Forest Service or a Forest Service contractor. Upon expiration of the GT fee offset agreement or 5 years from the date of its execution, whichever occurs first, transfer any amount exceeding the cost to perform GT fee offset work from the CWFS account to Receipt Account 8984XXYY, where “XX” is the number for the affected administrative unit and “YY” is the current fiscal year.

D. Granger-Thye Fee Offset. Pursuant to 16 U.S.C. 580d, the Forest Service may offset all or part of the land use fee by the amount paid by the holder for Government maintenance, reconditioning, renovation, and improvement.

1. Definitions.

- (a) **Maintenance.** Actions taken to keep fixed assets in 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.
- (b) **Improvement.** Advancing a fixed asset to a better quality or state or adding a new fixed asset to the authorized improvements under this permit, including replacement, for example, 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 holder.
- (c) **Reconditioning or Renovation.** 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.
- (d) **Holder Maintenance, Reconditioning, or Renovation.** Maintenance, reconditioning, or renovation (MRR) that neither materially adds to the value of the property nor

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appreciably prolongs its life and that serves only to keep the 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, refinishing picnic tables, routine housekeeping, and general snow removal.

(e) Government Maintenance, Reconditioning, Renovation, or Improvement.

Maintenance reconditioning, renovation, or improvement (MRRI) 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 other government-owned structures; replacing vault toilets with flush facilities, paving interior roads, 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. **Granger-Thye Fee Offset Agreement.** The Forest Service and the holder shall enter into a Granger-Thye fee offset agreement that specifies the government maintenance, reconditioning, renovation and improvement (MRRI) to be used to offset the land use fee. The agreement shall specify that the Forest Service will perform the work or contract with a third party to perform the work. The agreement shall specify which projects are to be used for offset each year.
 3. **Payments.** The holder shall deposit permit fee payments [annually or quarterly] into a cooperative account. All deposits shall be retained by the Forest Service until expended or, if unutilized in 5 years, shall be deposited into the United States Treasury.
 4. **Offset for Forest Service Oversight of Major Government Maintenance, Reconditioning, Renovation and Improvement MRRI Performed by the Holder.** The Forest Service may include in the GT fee offset agreement the cost of a Forest Service employee administering and overseeing major government MRRI projects. For purposes of this clause only, a major government MRRI project is one costing \$[amount] or more.
- E. Holder Maintenance, Reconditioning or Renovation (MRR) Plan.** The holder at its expense shall perform holder MRR as defined in clause VI.D.1(d) of this permit under a holder MRR plan approved by the Forest Service. The holder MRR plan shall describe required holder MRR and their frequency. The work performed under the holder MRR plan shall not be subject to fee offset under clause VI.D.2.

A-22. GT - Partial Land Use Fee Waiver for States. Include clause A-22 in permits issued under the Granger-Thye (GT) Act to states where the land use fee will be waived except for the amount necessary for Government maintenance, reconditioning, renovation, and improvement (MRRI) as defined in clauses A-20 and A-21. Determine the amount of the land use fee. Estimate the cost of Government MRRI that will be necessary, and document it in a GT fee offset agreement using form FS-2700-4h, Appendix B. If the holder will perform the work, include clause A-20 in the permit. If the Forest Service will perform the work, include clause A-21.

Partial Land Use Fee Waiver. The land use fee for this use is \$_____. All of this fee is waived pursuant to 36 CFR 251.57 and FSH 2709.11, section 31.2, except for the cost of Government maintenance, reconditioning, renovation, and improvement as defined in clause [XX] that is required each year pursuant to a GT fee offset agreement. Every 5 years, the authorized officer shall review the criteria for a land use fee waiver, and if they no longer apply, shall charge the full land use fee.

A-23. National Forest System Trails Stewardship Act - Fee Offset for Holder-Performed Work. Amend form FS-2700-4i to include clause A-23 as clauses V.E and V.F, and re-letter the remaining clauses in section V, when the permit is subject to a National Forest System Trails Stewardship Act fee offset agreement. For additional information on the definitions in clause A-23, including trail-related examples, see Trail Performance Measure Accomplishment Reporting, posted at <http://fsweb.wo.fs.fed.us/rhwr/ibsc/tr-cost-mi.shtml>.

D. National Forest System Trails Stewardship Act (Stewardship Act) Fee Offset. Pursuant to Title 16 United States Code, section 583k–5, the Forest Service may offset all or part of the land use fee by the cost of construction, improvement, or maintenance of National Forest System trails, trailheads, or developed sites that support public use.

1. **Definitions.** The following definitions apply solely for purposes of this clause:

- (a) **Construction.** Building a new facility or upgrading an existing facility to serve needs different from or significantly greater than those originally intended.
- (b) **Facility.** A National Forest System trail, trailhead, or developed site.
- (c) **Improvement.** Advancing a facility to a better quality or state, including replacement or substitution of a facility or any of its components with one having essentially the same capacity and purpose.
- (d) **Maintenance.** Work needed to keep a facility in an acceptable condition, including preventive upkeep, normal repairs, replacement of parts and structural components, and other activities needed to preserve a facility so that it continues to provide acceptable service and achieves its expected life. Maintenance excludes

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.

- (1) **Government Maintenance.** Maintenance that arrests deterioration, improves and upgrades, and appreciably prolongs the life of a facility, including but not limited to [add examples for trails and trailheads], installing a new roof, new floor, or new siding; repairing or maintaining the paths, lands, walks, walls, or landscaping adjacent to a facility; replacing vault toilets with flush facilities, paving interior roads, 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) **Holder Maintenance.** Maintenance that neither materially adds to the value of a facility nor appreciably prolongs its life and that serves only to keep the 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 maintenance of trails, trails heads and developed recreation sites.

2. Land Use Fee Offset.

- (a) **Stewardship Act Fee Offset Agreement.** Before issuance of this permit and before each operating season thereafter, the Forest Service and the holder shall annually enter into a written Stewardship Act fee offset agreement that specifies the facility construction, improvement, or maintenance that will be used to offset the land use fee. The Stewardship Act fee offset agreement shall enumerate the portion of the land use fee to be offset by the cost of work performed by the holder and the schedule for completion of offset work; which projects are to be used for offset that year; standards for completion of the projects; and examples of allowable costs.
- (b) **Stewardship Act Fee Offset.** Notwithstanding clauses V.A and V.B, the cost of work performed by the holder pursuant to a Stewardship Act fee offset agreement as provided in clause V.E.2(a) may be credited in lieu of cash payments against the annual land use fee, provided that the work has been accomplished in accordance with the Stewardship Act fee offset agreement and has been accepted as completed by the Forest Service before the end of the holder's fiscal year. In the absence of an approved Stewardship Act fee offset agreement, payment of the land use fee shall be made in accordance with clauses V.A and V.B.
- (c) **Documentation of Expenses.** Prior to credit for Stewardship Act fee offset work, the holder shall submit sufficient documentation to allow the authorized officer to determine that the costs claimed are allocable to the Stewardship Act fee offset agreement, actual, reasonable, and not unallowable.

(d) **Final Payment.** The Forest Service shall reconcile annually the actual land use fee against land use fee payments made and credit given by the Forest Service for Stewardship Act fee offset work. The holder shall pay any additional land use fees owed for the past year's operations within 30 days of billing.

(e) **Overpayment.** Overpayment of the land use fee will be reimbursed by the Forest Service only if paid pursuant to clauses V.A and V.B. Credit for Stewardship Act fee offset work pursuant to clause V.E.2 is limited to the amount of the annual land use fee; expenses will not be reimbursed if they are greater than the annual land use fee.

E. Holder Maintenance Plan. The holder at its expense shall perform holder maintenance as defined in clause V.E.1(d)(2) of this permit under a holder maintenance plan approved by the Forest Service. The holder maintenance plan shall describe required holder maintenance and its frequency. The work performed under the holder maintenance plan shall not be subject to land use fee offset under clause V.E.2.

52.2 - B Clauses: Safety, Health, Liability, and Nondiscrimination

B-1. Nondiscrimination. Title VI generally applies to special use authorizations when the holder provides services or facilities to the public on National Forest System lands. This clause is already in most recreation special use permits but may be added to any other permit that authorizes public use of a facility on National Forest System lands. Additional guidance regarding nondiscrimination can be found in FSM 1770 and 1780, FSH 1709.11, chapter 70, and FSH 2709.11, section 14.2.

Nondiscrimination

1. The holder and its employees shall not discriminate against any person on the basis of race, color, sex (in educational and training activities), 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 holder 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 holder shall include and require compliance with the above nondiscrimination provisions in any third-party agreement made with respect to the operations authorized under this permit.
3. Signs setting forth this policy of nondiscrimination to be furnished by the Forest Service shall be conspicuously displayed at the public entrance to the permit area, 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.

B-2. Equal Access to Federal Programs. This clause is already in most recreation special use permits but may be added to any other permit that authorizes public use of a facility on National Forest System lands. Additional guidance regarding nondiscrimination can be found in FSM 1770 and 1780, FSH 1709.11, chapter 70, and FSH 2709.11, section 14.2.

Equal Access to Federal Programs. In addition to the above nondiscrimination policy, the holder 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.

B-4. Boating Safety.

Boating Safety.

1. **Boating Laws.** Where boats and motors are to be rented to the general public, the holder shall comply with the provisions of all State and Federal boating laws. The holder shall post at each boathouse, dock or wharf, the rules for safe operation.
2. **Boating Safety Plan.** A comprehensive safety plan shall be jointly prepared by the holder and the authorized officer in charge and the provisions thereof will be executed by the holder. This plan shall be reviewed annually and revised as needed. It will include consideration of hazards involved in the use and enjoyment of the permitted area and lake facilities. It will include provisions for adequate instructions, signs, warnings, signals, banners, buoys, and other safety precautions necessary to provide public safety regarding mechanical equipment and other sources of personal injury.
3. **Safety Testing.** The Forest Service reserves the right to test all boats, canoes, and other devices for water travel to determine their stability and safety and to suspend or prohibit their use if, in the opinion of the Forest Service, they do not comply with the minimum safety requirements of the permit.

B-5. Coast Guard Licensing and Inspection Requirements. The following clause is mandatory in special use permits for motorized passenger vessels for hire that uses waters under the jurisdiction of the United States Coast Guard.

Coast Guard Licensing and Inspection Requirements. Any motorized passenger vessel for hire that uses waters under the jurisdiction of the United States Coast Guard (Coast Guard) Title 33 Code of Federal Regulations, Part 2.38—Waters subject to the jurisdiction of the United States, must hold a valid Coast Guard merchant mariner license. Any motorized

passenger vessel for hire that carries 7 or more passengers and that uses waters under the jurisdiction of the Coast Guard must also hold a Coast Guard-issued certificate of inspection.

B-8. Risk of Loss.

Risk of Loss. The holder assumes all risk of loss to the authorized improvements and all risk of loss of use and occupancy of the permit area, in whole or in part, due to public health and safety or environmental hazards. Loss to the authorized improvements and use and occupancy of the permit 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 permit 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 permit shall terminate. Termination under this clause shall not give rise to any claim for damages, including lost profits and the value of the improvements, by the holder against the Forest Service.

B-9. Granger-Thye – Property Insurance. The following clause is mandatory when the authorized officer has elected to require property insurance. Add this clause to any form FS-2700-4 or FS-2700-5 that covers federally owned improvements. Identify the specific property to be insured. Specify whether the insurance will be based on replacement in kind or functional replacement and specify the value of the improvement (the amount of insurance must represent between 80 and 100 percent of the value of the property). Do not require property insurance for roads or underground utilities.

Property Insurance. The holder shall have in force property insurance for [identify the federal property to be insured] in the minimum amount of [\$_____] which represents [“replacement in kind” or “functional replacement”] of the insured property. The types of loss to be covered by this clause shall include but not be limited to damage to the Government-owned improvements identified herein. At the sole discretion of the authorized officer, the Forest Service may require the holder to use all proceeds from property damage insurance policies to repair, rebuild, restore, or replace damaged Government property covered by the policy, or may obtain payment of those proceeds from the concessionaire or the insurance company.

B-10. Insurance, Commercial General Liability. Include this clause in permits that authorize public services or where the authorized officer has determined that insurance is required.

Insurance. The holder shall furnish proof of insurance, such as a certificate of insurance, to the authorized officer prior to issuance of this permit and each year thereafter that this permit is in effect. The Forest Service reserves the right to review the insurance policy and require any changes needed to ensure adequate coverage of the United States in connection

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with the authorized use and occupancy. The holder 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 holder pursuant to this clause shall include the United States as an additional insured in an endorsement to the policy, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause and to the extent of the full limits of insurance available to the holder. The holder shall give 30 days prior written notice to the authorized officer of cancellation of the insurance policy by the holder 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 permit.

1. The holder shall have in force liability insurance covering losses associated with the use or occupancy authorized by this permit arising from personal injury or death and third-party property damage in the minimum amount of \$[amount] as a combined single limit per occurrence.
2. Depending on the holder's operations, the Forest Service may require the holder to demonstrate the availability of funds to address any release or threatened release of hazardous materials that may occur in connection with the holder's use and occupancy. Any requirements imposed would be established case by case by the authorized officer based on the degree of environmental risk from the holder's operations. The storage and use of normal maintenance supplies in nominal amounts generally would not trigger financial assurance requirements.

B-11. Strict Liability. Include this clause where the authorized use is high-risk pursuant to Title 36 Code of Federal Regulations, Part 251.56(d)(2)—Terms and conditions (36 CFR 251.56(d)(2)), such as an oil or gas pipeline or a dam with a high hazard assessment classification. The amount of strict liability in tort must be determined by a risk assessment. Insurance may be appropriate for high-risk uses to cover strict liability in tort, as well as liability based on negligence.

Strict Liability. The holder shall be strictly liable (liable without proof of negligence) to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this permit. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.

B-12. Indemnification and Insurance Requirements for States. If a state agrees to the standard, unqualified indemnity clauses, do not change them. Unqualified indemnity is preferable because regardless of liability limits under state law and limits of insurance

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coverage, the United States is fully protected against potential liability. In addition, the Forest Service and OGC do not have to research state tort law and ensure that the insurance obtained provides adequate coverage for the United States.

However, use one of the two sets of clauses below as a model to modify the standard indemnity clauses if (1) a state demonstrates that state law limits the state's obligation to indemnify for tort liability and (2) the state agrees to indemnify the United States subject to the liability limits under the state's tort claims act and/or to indemnify the United States to the extent of the state's self-insurance; Commercial General Liability (CGL) insurance; or participation in a self-insurance pool in an amount sufficient to cover the potential risk of tort liability for the state's uses of National Forest System lands as determined by a risk assessment. The state's environmental liability may not be qualified.

For all self-insurance and CGL insurance policies, the United States must be included as an additional insured in an endorsement to the policies. For CGL insurance policies, the Forest Service has a standard form for an additional insured endorsement, FS-2700-33. Multiple authorizations may be covered under a single self-insurance certificate or CGL insurance policy, as provided in the insurance clauses below. Generally, CGL insurance will be written on a standard industry form developed by the Insurance Services Office, Inc. (ISO). The current form for CGL insurance is CG 00 01 12 07. The Forest Service has determined via a programmatic risk assessment that liability insurance coverage of \$1,000,000 per occurrence and \$2,000,000 in the aggregate is sufficient for special uses conducted by a state, unless otherwise required by the Forest Service and agreed to by a state.

Substitute one of the two sets of clauses below, as applicable, for the standard clauses entitled "Damage to United States Property," "Indemnification of the United States," and "Insurance." These substitute clauses must be used collectively and completely, as applicable, not in part, and without revision. Do not delete or modify any other clauses. The asterisks below denote language in other clauses that is not reproduced and that should not be changed. Use of the substitute clauses for the first time in a state requires coordination among the regional office, Washington Office program manager, the local and national OGC, and appropriate officials in the State Attorney General's office and risk management division. Once agreement has been reached regarding use of the substitute clauses state-wide, they may generally be used for special use authorizations issued to the state, its agencies, or any of its institutions that participate in its risk management program, and the Regional Forester shall incorporate the agreed-upon replacement clauses into a directive supplement to this chapter. Specific circumstances may require further consultation with the Regional Office and OGC.

The substitute clauses below are designated in accordance with form FS-2700-4, section IV, Rights and Liabilities. Cross-references are underlined. Re-letter the clauses and revise underlined cross-references in the clauses, as necessary, for other authorization forms. Delete user notes and optional items that are not selected and remove the underlining in the cross-references prior to printing.

<FIRST SET OF MODIFIED LIABILITY CLAUSES>

<Include the following set of clauses IV.F, IV.I, IV.J, and IV.M if the state agrees to indemnify the United States subject to the liability limits under the state's tort claims act. Select "holder" and "permit," "lessee" and "lease," or "grantee" and "easement," as applicable, and delete the inapplicable terms and brackets.>

F. Damage to United States Property. The [holder/lessee/grantee] 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 [permit/lease/easement]. Damage includes but is not limited to destruction of or damage to National Forest System lands, fire suppression costs and destruction of or damage to federally owned improvements.

1. Subject only to the limits on the [holder's/lessee's/grantee's] liability under the [name of and citation to state tort claims act] for tort liability for third-party claims, the [holder/lessee/grantee] shall be liable for all injury, loss, or damage, including fire suppression costs, prevention and control of the spread of invasive species, and the costs of rehabilitation or restoration of natural resources, resulting from the [holder's/lessee's/grantee's] use and occupancy of the [permit/lease/easement] area. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under the Bonding clause, clause IV.K.

<USER NOTES FOR CLAUSE IV.F.2>

<Include the phrase "or contractors" in permits and easements, and delete the phrase, "contractors, or occupants." Include the phrase "contractors, or occupants" in leases, and delete the phrase "or contractors." Delete the brackets.>

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

G. Health and Safety. * * *

H. Environmental Protection. * * *

<USER NOTES FOR CLAUSE IV.I>

<Include the phrase "or contractors" in permits and easements, and delete the phrase,

“contractors, or occupants.” Include the phrase “contractors, or occupants” in leases, and delete the phrase “or contractors.” Delete the brackets.>

- I. Indemnification of the United States.** Subject only to the limits on the [holder’s/lessee’s/grantee’s] liability under the [name of and citation to state tort claims act] for tort liability, the [holder/lessee/grantee] shall indemnify, defend, and hold harmless the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the [holder/lessee/grantee] in connection with the use and occupancy authorized by this [permit/lease/easement]. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the [holder/lessee/grantee] or the [holder’s/lessee’s/grantee’s] heirs, assignees, agents, employees, [or contractors] [contractors, or occupants] in connection with the use and occupancy authorized by this [permit/lease/easement] which result in (1) violations of any laws and regulations which are now or which may in the future become applicable; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the [holder/lessee/grantee] to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in combination with or as an alternative to monetary indemnification.
- J. Environmental And Other Liability.** The Damage to United States Property and Indemnification clauses, clauses IV.F and IV.I, shall not be interpreted to limit any of the [holder's/lessee's/grantee's] liability for, or prevent the United States from taking any action to address, injury, loss, damages, or costs associated with environmental contamination, injury to natural resources, or other cause of action that arises under other law, including the Resource Conservation and Recovery Act, as amended, Title 42 United States Code, section 6901 *et seq.*, (42 U.S.C. 6901), CERCLA, Title 42 United States Code, section 9601 *et seq.* (42 U.S.C. 9601), and the Clean Water Act, as amended, Title 33 United States Code, section 1251 *et seq.*(33 U.S.C. 1251), in connection with the [holder’s/lessee’s/grantee’s] use and occupancy of federal lands, or to diminish any independent obligation of the [holder/lessee/grantee] to indemnify the United States with respect to the same.
- K. Bonding. * * ***

<USER NOTES FOR CLAUSE IV.L>

<Include clause IV.L where the authorized use is high risk pursuant to 36 CFR 251.56(d)(2), such as a dam with a high hazard assessment classification. Delete clause IV.L where the authorized use is not high risk pursuant to 36 CFR 251.56(d)(2), and re-letter the remaining clause in this section and the cross- references to the Insurance Clause above if clause IV.L is deleted.>

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- L. Strict Liability.** Subject only to the limits of liability under the [name of and citation to state tort claims act], the [holder/grantee] shall be strictly liable (liable without proof of negligence) to the United States for up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this [permit/easement]. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.

<USER NOTES FOR CLAUSE IV.M>

<Include one of the following three versions of clause IV.M. Delete the remaining two versions.>

<Include the following clause IV.M when the state cannot self-insure above the liability limits in the state's tort claims act and cannot name the United States as an additional insured under the state's self-insurance. This is a common scenario.>

- M. Insurance.** The [holder/lessee/grantee] shall obtain commercial general liability procured insurance (CGL insurance) covering property damage and personal injury or death for \$#AMOUNT# per occurrence and \$#AMOUNT# in the aggregate. The CGL insurance shall be written on a standard industry occurrence form or a substitute form providing equivalent coverage. The CGL insurance shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and liability assumed under an insured contract (including tort liability of another party assumed in a business contract). Specifically, the coverage under the CGL insurance shall extend to property damage and personal injury or death arising from the [holder's/lessee's/grantee's] activities under the [permit/lease/easement], including use and occupancy of National Forest System lands and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the [permit/lease/easement]. If the aggregate coverage limit in the CGL insurance is reached or exceeded during a given year, the [holder/lessee/grantee] shall obtain an increase in the aggregate coverage limit in the CGL insurance or obtain an additional CGL insurance policy to restore the aggregate coverage to what it was when the original CGL insurance policy was issued. If the aggregate coverage limit is reached or exceeded and the [holder/lessee/grantee] fails to obtain an increase in the aggregate coverage limit or to obtain an additional CGL insurance policy, this [permit/lease/easement] shall terminate. The [holder/lessee/grantee] shall provide notice within 48 hours to the [title and telephone number of Regional Lands Director], if the aggregate coverage limit in the CGL insurance is reached or exceeded during a given year. The United States shall be included as an additional insured in an endorsement to the CGL insurance policy, and the additional insured endorsement 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 [holder/lessee/grantee]. The [holder/lessee/grantee] shall give the authorized officer 30 days prior written notice of cancellation of or any modification to the CGL insurance. The [holder/lessee/grantee] shall pay the premiums for CGL insurance and shall pay the United

States for any deductible the United States incurs for any covered claim under the [holder's/lessee's/grantee's] CGL insurance policy.

1. Notwithstanding the Damage to United States Property and Indemnification clauses, clauses IV.F and IV.I, of this [permit/lease/easement], any limitation on the [holder's/lessee's/grantee's] liability under state law, including but not limited to the [holder's/lessee's/grantee's] sovereign immunity and the [name of and cite to state tort claims act], shall not be construed in any way to impinge upon the ability of the United States to recover under the CGL insurance. Nothing in this clause precludes the [holder/lessee/grantee] or the insurer from asserting any defense that may be available to the [holder/lessee/grantee], including sovereign immunity, in an action brought against the [holder/lessee/grantee] by a third party.
2. The Forest Service reserves the right to review the CGL insurance and require any changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy. The [holder/lessee/grantee] shall send an authenticated copy of the CGL insurance to the Forest Service immediately upon issuance.
3. If a claim is submitted to the United States for property damage and personal injury or death arising from the [holder's/lessee's/grantee's] use and occupancy authorized by this [permit/lease/easement], the Forest Service shall tender the defense of the claim to the representative of the CGL insurance provider. The [holder/lessee/grantee] understands that tort claims against the United States are governed by the Federal Tort Claims Act, which may result in the administrative denial of a claim. The [holder/lessee/grantee] further understands that in litigation the United States is represented by the United States Department of Justice (DOJ) and agrees that the representative of the CGL insurance provider will coordinate the defense with DOJ, if a claim is litigated.

<Include the following clause IV.M when the state can self-insure above the liability limits in the state's tort claims act and can name the United States as an additional insured under the state's self-insurance. This is an uncommon scenario.>

M. Insurance. The [holder/lessee/grantee] shall provide self-insurance covering property damage and personal injury or death for \$#AMOUNT# per occurrence and \$#AMOUNT# in the aggregate. The self-insurance shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and liability assumed under an insured contract (including tort liability of another party assumed in a business contract). Specifically, the coverage under the self-insurance shall extend to property damage and personal injury or death arising from the [holder's/lessee's/grantee's] activities under the [permit/lease/easement], including use and occupancy of National Forest System lands and the construction, maintenance, and operation of the structures, facilities, or equipment

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authorized by the [permit/lease/easement]. If the aggregate coverage limit in the self-insurance certificate is reached or exceeded during a given year, the [holder/lessee/grantee] shall increase the aggregate coverage limit in the self-insurance certificate or issue an additional self-insurance certificate to restore the aggregate coverage to what it was when the original self-insurance certificate was issued. If the aggregate coverage limit is reached or exceeded and the [holder/lessee/grantee] fails to obtain an increase in the aggregate coverage limit or to issue an additional self-insurance certificate, this [permit/lease/easement] shall terminate. The [holder/lessee/grantee] shall provide notice within 48 hours to the [title and telephone number of the Regional Lands Director], if the aggregate coverage limit in the self-insurance certificate is reached or exceeded during a given year. The United States shall be named as a certificate holder under the self-insurance, which shall provide for insurance coverage for the United States as required under this clause. The [holder/lessee/grantee] shall give the authorized officer 30 days prior written notice of cancellation of or any modification to the self-insurance.

1. Notwithstanding the Damage to United States Property and Indemnification clauses, clauses IV.F and IV.I, of this [permit/lease/easement], any limitation on the [holder's/lessee's/grantee's] liability under state law, including but not limited to the [holder's/lessee's/grantee's] sovereign immunity and the [name of and cite to state tort claims act], shall not be construed in any way to impinge upon the ability of the United States to recover under the self-insurance. Nothing in this clause precludes the [holder/lessee/grantee] or the insurer from asserting any defense that may be available to the [holder/lessee/grantee], including sovereign immunity, in an action brought against the [holder/lessee/grantee] by a third party.
2. The Forest Service reserves the right to review the self-insurance and require any changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy. The [holder/lessee/grantee] shall send a copy of the approved self-insurance certificate to the Forest Service immediately upon issuance.
3. If there is a conflict between this [permit/lease/easement], the self-insurance, and/or [state risk management division] self-insurance policy manuals, the order of precedence among those documents shall be (1) this [permit/lease/easement]; (2) the self-insurance certificate; and (3) the self-insurance policy manuals.
4. If a claim is submitted to the United States for property damage and personal injury or death arising from the [holder's/lessee's/grantee's] use and occupancy authorized by this [permit/lease/easement], the Forest Service shall tender the defense of the claim to the representative of the self-insurance provider. The [holder/lessee/grantee] understands that tort claims against the United States are governed by the Federal Tort Claims Act, which may result in the administrative denial of a claim. The [holder/lessee/grantee] further understands that in litigation the United States is represented by the United States Department of Justice and agrees that the

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representative of the self-insurance provider will coordinate the defense with Department of Justice, if a claim is litigated.

<Include the following clause IV.M when a political subdivision of a state participates in a self-insurance pool, rather than in the state's risk management program.>

M. Insurance. The [holder/lessee/grantee] shall furnish proof of insurance to the authorized officer prior to issuance of this [permit/lease/easement] and each year thereafter that this [permit/lease/easement] is in effect. The proof of insurance required before issuance of this [permit/lease/easement] and each year this [permit/lease/easement] is in effect shall document that the [holder/lessee/grantee] is covered by the insurance; that at least \$#AMOUNT# under the insurance is available to the [holder/lessee/grantee] to cover losses associated with the use or occupancy authorized by this [permit/lease/easement] arising from personal injury or death and third-party property damage, and that if the Forest Service sustains any losses associated with the use or occupancy authorized by this [permit/lease/easement] arising from personal injury or death and third-party property damage, the [holder/lessee/grantee] shall file a claim under the insurance on behalf of the Forest Service and shall pay the Forest Service for those losses from the insurance proceeds. The Forest Service reserves the right to review and approve the insurance documentation and require any changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy as provided in this clause. The [holder/lessee/grantee] shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the insurance documentation. The [holder/lessee/grantee] shall give written notice to the authorized officer if at any time the amount of funds available to the [holder/lessee/grantee] to cover losses associated with the use or occupancy authorized by this [permit/lease/easement] arising from personal injury or death and third-party property damage drops below \$#AMOUNT# and shall ensure that additional funding is made available to the [holder/lessee/grantee] to cover these losses. The proof of insurance, the authenticated copy of the insurance documentation, and written notice of cancellation or modification of the insurance documentation or unavailability of sufficient funds should be sent to [title and address of special uses administrator]. 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 [permit/lease/easement].

<END OF FIRST SET OF MODIFIED LIABILITY CLAUSES>

<SECOND SET OF MODIFIED LIABILITY CLAUSES>

<Include the following set of clauses IV.F, IV.I, IV.J, and IV.M if the state cannot or does not agree to indemnify the United States subject to the liability limits under the state's tort claims act. Select "holder" and "permit," "lessee" and "lease," or "grantee" and "easement," as applicable, and delete the inapplicable terms and brackets.>

F. Damage to United States Property. The [holder/lessee/grantee] 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 [permit/lease/easement]. Damage includes but is not limited to destruction of or damage to National Forest System lands, fire suppression costs, and destruction of or damage to federally owned improvements.

1. Subject only to the limits of the commercial general liability insurance (CGL insurance) which the [holder/lessee/grantee] is required to purchase under the Insurance clause, clause IV.M, for tort liability for third-party claims, the [holder/lessee/grantee] shall be liable for all injury, loss, or damage, including fire suppression costs, prevention and control of the spread of invasive species, and the costs of rehabilitation or restoration of natural resources, resulting from the [holder's/lessee's/grantee's] use and occupancy of the [permit/lease/easement] area. Compensation shall include but not be limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under the Bonding clause, clause IV.K.

<USER NOTES FOR CLAUSE IV.F.2>

<Include the phrase "or contractors" in permits and easements, and delete the phrase, "contractors, or occupants." Include the phrase "contractors, or occupants" in leases, and delete the phrase "or contractors." Delete the brackets.>

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

G. Health and Safety. * * *

H. Environmental Protection. * * *

<USER NOTES FOR CLAUSE IV.I>

<Include the phrase "or contractors" in permits and easements, and delete the phrase, "contractors, or occupants." Include the phrase "contractors, or occupants" in leases, and delete the phrase "or contractors." Delete the brackets.>

I. Indemnification of the United States. Subject only for tort liability to the limits of the CGL insurance which the [holder/lessee/grantee] is required to purchase under the Insurance clause, clause IV.M, the [holder/lessee/grantee] shall indemnify, defend, and hold harmless

the United States for any costs, damages, claims, liabilities, and judgments arising from past, present, and future acts or omissions of the [holder/lessee/grantee] in connection with the use and occupancy authorized by this [permit/lease/easement]. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the [holder/lessee/grantee] or the [holder's/lessee's/grantee's] heirs, assignees, agents, employees, [or contractors] [contractors, or occupants] in connection with the use and occupancy authorized by this [permit/lease/easement] which result in (1) violations of any laws and regulations which are now or which may in the future become applicable; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any solid waste, hazardous waste, hazardous substance, pollutant, contaminant, oil in any form, or petroleum product into the environment. The authorized officer may prescribe terms that allow the [holder/lessee/grantee] to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in combination with or as an alternative to monetary indemnification.

- J. Environmental and Other Liability.** The Damage to United States Property and Indemnification clauses, clauses IV.F and IV.I, shall not be interpreted to limit any of the [holder's/lessee's/grantee's] liability for, or prevent the United States from taking any action to address, injury, loss, damages, or costs associated with environmental contamination, injury to natural resources, or other cause of action that arises under other law, including the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.*, CERCLA, 42 U.S.C. 9601 *et seq.*, and the Clean Water Act, as amended, 33 U.S.C. 1251 *et seq.*, in connection with the [holder's/lessee's/grantee's] use and occupancy of federal lands, or to diminish any independent obligation of the [holder/lessee/grantee] to indemnify the United States with respect to the same.

K. Bonding. * * *

<USER NOTES FOR CLAUSE IV.L>

<Include clause IV.L where the authorized use is high risk pursuant to 36 CFR 251.56(d)(2) (e.g., a dam with a high hazard assessment classification). Delete clause IV.L where the authorized use is not high risk pursuant to 36 CFR 251.56(d)(2), and re-letter the remaining clause in this section and the cross-references to the Insurance Clause above if clause IV.L is deleted.>

- L. Strict Liability.** Subject only to the limits of liability under the CGL insurance which the [holder/lessee/grantee] is required to purchase under the Insurance clause, clause IV.M, the [holder/lessee/grantee] shall be strictly liable (liable without proof of negligence) to the United States for up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this [permit/lease/easement]. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law

of negligence.

M. Insurance. The [holder/lessee/grantee] shall obtain CGL insurance covering property damage and personal injury or death for \$#AMOUNT# per occurrence and \$#AMOUNT# in the aggregate. The CGL insurance shall be written on a standard industry occurrence form or a substitute form providing equivalent coverage. The CGL insurance shall cover liability arising from premises, operations, independent contractors, personal and advertising injury, and liability assumed under an insured contract (including tort liability of another party assumed in a business contract). Specifically, the coverage under the CGL insurance shall extend to property damage and personal injury or death arising from the [holder's/lessee's/grantee's] activities under the [permit/lease/easement], including use and occupancy of National Forest System lands and the construction, maintenance, and operation of the structures, facilities, or equipment authorized by the [permit/lease/easement]. If the aggregate coverage limit in the CGL insurance is reached or exceeded during a given year, the [holder/lessee/grantee] shall obtain an increase in the aggregate coverage limit in the CGL insurance or obtain an additional CGL insurance policy to restore the aggregate coverage to what it was when the original CGL insurance was issued. If the aggregate coverage limit is reached or exceeded and the [holder/lessee/grantee] fails to obtain an increase in the aggregate coverage limit or an additional CGL insurance policy, this [permit/lease/easement] shall terminate. The [holder/lessee/grantee] shall provide notice within 48 hours to the [title and telephone number of Regional Lands Director], if the aggregate coverage limit in the CGL insurance is reached or exceeded during a given year. The United States shall be included as an additional insured in an endorsement to the CGL insurance policy, and the additional insured endorsement 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 [holder/lessee/grantee]. The [holder/lessee/grantee] shall give the authorized officer 30 days prior written notice of cancellation of or any modification to the CGL insurance. The [holder/lessee/grantee] shall pay the premiums for CGL insurance and shall pay the United States for any deductible the United States incurs for any covered claim under the [holder's/lessee's/grantee's] CGL insurance policy.

1. Notwithstanding the Damage to United States Property and Indemnification clauses, clauses IV.F and IV.I, of this [permit/lease/easement], any limitation on the [holder's/lessee's/grantee's] liability under state law, including but not limited to the [holder's/lessee's/grantee's] sovereign immunity and the [name of and cite to state tort claims act], shall not be construed in any way to impinge upon the ability of the United States to recover under the CGL insurance. Nothing in this clause precludes the [holder/lessee/grantee] or the insurer from asserting any defense that may be available to the [holder/lessee/grantee], including sovereign immunity, in an action brought against the [holder/lessee/grantee] by a third party.
2. The Forest Service reserves the right to review the CGL insurance and require any

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changes needed to ensure adequate coverage of the United States in connection with the authorized use and occupancy. The [holder/lessee/grantee] shall send an authenticated copy of the CGL insurance to the Forest Service immediately upon issuance.

3. If a claim is submitted to the United States for property damage and personal injury or death arising from the [holder's/lessee's/grantee's] use and occupancy authorized by this [permit/lease/easement], the Forest Service shall tender the defense of the claim to the representative of the CGL insurance provider. The [holder/lessee/grantee] understands that tort claims against the United States are governed by the Federal Tort Claims Act, which may result in the administrative denial of a claim. The [holder/lessee/grantee] further understands that in litigation the United States is represented by the United States Department of Justice (DOJ) and agrees that the representative of the CGL insurance provider will coordinate the defense with DOJ, if a claim is litigated.

B-29. Storage and Use of Explosives and Magazine Security. This clause is mandatory in all special use authorizations where the storage and use of explosives will be authorized on National Forest System lands. The storage and use of explosives may be authorized in connection with another type of use and occupancy, such as a ski area or heli-ski outfitting and guiding. Alternatively, the storage and use of explosives may be authorized alone, such as for avalanche mitigation conducted by a state department of transportation. Forest Service artillery program managers and permit administrators who administer special use authorizations that authorize the storage and use of explosives are required to take AgLearn Course FS2700-301, Authorizing Explosives for Special Uses, or a successor course.

Storage and Use of Explosives and Magazine Security.

1. Applicable Legal Framework.

<USER NOTES FOR PARAGRAPH 1>

<Select the applicable paragraphs below, depending on the party storing and using explosives and the type of explosives stored and used under the authorization. Delete the paragraphs that do not apply, and re-letter the paragraphs, as appropriate. If only one paragraph applies, the text of the paragraph should immediately follow the heading "Applicable Legal Framework" on the same line, without a letter designation.>

<Include paragraph 1(a) when a private party is storing and using explosives under a special use authorization. This is the most common scenario for storage and use of explosives and typically involves a ski area.>

- (a) The purchase, storage, and handling of explosives by the holder under this permit are regulated by United States Department of Justice, Bureau of Alcohol, Tobacco,

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Firearms and Explosives (ATF), under Title 27 Code of Federal Regulations, Part 555—Commerce in Explosives (27 CFR part 555). Inspections of magazines authorized by this permit are subject to all ATF inspection requirements at 27 CFR part 555 and shall be conducted by ATF. Property records and inventories of these magazines shall be reconciled by ATF in accordance with ATF requirements at 27 CFR part 555 during ATF's routine periodic inspections.

<Include paragraph 1(b) with paragraph 1(a) when the Forest Service is also storing and using military ammunition at a ski area.>

- (b) The purchase, storage, and handling of military weapons and ammunition used for avalanche mitigation by the Forest Service under this permit are subject to the current Master Interagency Agreement between the Forest Service and the Assistant Secretary of the Army (Acquisition, Logistics and Technology), hereinafter "Master Interagency Agreement." Under the Master Interagency Agreement, military weapons are loaned by the Department of the Army (DOA) to the Forest Service, ammunition is purchased by the Forest Service from DOA, and the Forest Service controls the storage and use of the weapons and ammunition (FSM 2343.12). The Forest Service is not subject to state or ATF oversight, jurisdiction, licensure, and permitting requirements Title 27 Code of Federal Regulations, Part 555.141(a)(5) and Part 555.414(a)(6)—Exemptions. Inspections of magazines authorized by this permit that contain Forest Service-owned ammunition purchased from DOA under the Master Interagency Agreement are subject to all DOA inspection requirements under that agreement and shall be conducted by DOA and the Forest Service artillery program manager. Property records and inventories of these magazines shall be reconciled by the Forest Service artillery program manager in accordance with the Master Interagency Agreement.

<Include paragraph 1(c) when a state is storing and using explosives other than ammunition purchased from the Department of the Army.>

- (c) The purchase, storage, and handling of explosives by the holder under this permit are subject to applicable state and Forest Service requirements, as well as storage requirements in United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), regulations at Title 27 Code of Federal Regulations, Part 555—Commerce in Explosives (27 CFR Part 555). The holder is not otherwise subject to ATF oversight, jurisdiction, licensure, and permitting requirements. Inspections of magazines authorized by this permit are subject to all state inspection requirements and shall be conducted by the state. Property records and inventories of these magazines shall be reconciled by the holder in accordance with state requirements.

<Include paragraph 1(d) with paragraph 1(c) when a state is also storing and using ammunition purchased from the Department of the Army. Include only paragraph 1(d) when a state is only storing and using ammunition purchased from the Department of the Army.>

(d) The purchase, storage, and handling of military weapons and ammunition used for avalanche mitigation by the holder under this permit are subject to an agreement between the Department of the Army (DOA) and the holder. The holder is not subject to United States Department of Justice, Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), oversight, jurisdiction, licensure, and permitting requirements. However, the holder is subject to applicable Forest Service requirements. Inspections of magazines authorized by this permit that contain ammunition purchased by the holder from DOA under an agreement between the holder and DOA are subject to all DOA inspection requirements under that agreement and shall be conducted by DOA and the holder. Property records and inventories of these magazines shall be reconciled by the holder in accordance with the holder's agreement with DOA.

<END OF USER NOTES FOR PARAGRAPH 1>

2. **Documentation of Inspections.** All required inspections, including inspections required every seven days, shall be documented in a log. The log shall indicate the inspection type, date of inspection, and the date all deficiencies identified in any inspection report were corrected. A current copy of the log; corresponding inspection reports, if any; and a copy of the holder's current ATF-issued federal explosives license or federal explosives permit, if applicable, shall be included annually in the operating plan for review by the authorized officer.
3. **Loss or Theft of Explosive Material.** Any loss or theft of explosive material shall be reported to ATF or the Department of the Army (DOA), as appropriate, local law enforcement authorities, and the Forest Service within 24 hours of discovery.
4. **Minimum Standards for Locks and Keys.**
 - (a) **ATF Requirements.** Locks and keys for authorized magazines and key security shall meet ATF requirements at 27 CFR Part 555.
 - (b) **Replacement and Documentation.** Locks and keys shall be replaced periodically at least every ten years. In the case of deterioration or a potential breach in security, such as lost keys, any affected keys and locks shall be replaced immediately. Periodic lock and key replacement shall be documented in a log. The log shall include the date of the most recent replacement. A current copy of the log shall be included annually in the operating plan for review by the authorized officer.

<USER NOTES FOR PARAGRAPHS 4(c) and 4(d)>

<Include paragraph 4(c) when a private party is storing and using explosives under a special use authorization or when a state is storing and using explosives other than ammunition purchased from the Department of the Army.>

- (c) **Key Control for Magazines Containing Explosives Not Purchased From DOA.** Key control for magazines authorized by this permit containing explosives not purchased from DOA shall at a minimum provide for appointment of a custodian, maintenance of a list of personnel authorized to use and issue keys, a locked container for key storage, and documentation of locks and keys on a key control register and inventory.

<Include paragraph 4(d) with paragraph 4(c) when the Forest Service or a state is also storing and using ammunition purchased from the Department of the Army. Include paragraph 4(d) by itself, re-lettered as 4(c), when a state is only storing and using ammunition purchased from the Department of the Army. Delete paragraph 4(d) if it does not apply.>

- (d) **Key Control for Magazines Containing Ammunition Purchased From DOA.** Key control for magazines authorized by this permit containing ammunition purchased from DOA shall be in accordance with the Master Interagency Agreement and shall be documented on DOA form DA-5513-R, Key Control Register and Inventory.

B-36. Dam Safety When State Regulations Apply. Use this clause in special use permits, historic property leases, or ditch bill easements (an easement issued under Federal Land Policy and Management Act, Title 43 United States Code 1761(c)(1) (43 U.S.C. 1761(c)(1)), authorizing a dam in the following instances:

1. The dam is located in a state that claims jurisdiction over all dams in the state;
2. The Forest Service has determined that state regulations alone or with some supplementation from clause B-37 are adequate for the dams in the state that are authorized by a special use permit, historic property lease, or ditch bill easement; or
3. A memorandum of understanding between the Forest Service and a state provides for state regulation of these dams.

For purposes of clause B-36, a dam is any artificial barrier, including appurtenant works, that impounds or diverts water, either temporarily or long term, but not including a facility that is 6 feet or less in height or that impounds no more than 15 acre feet of water, unless the facility poses a significant hazard to occupied facilities, structures, recreation areas, or travel routes downstream.

Dam Safety

1. The [holder/lessee/grantee] shall comply with all state standards and regulations pertaining to dam safety in the [State/Commonwealth of ____]. Unless stated otherwise in a memorandum of understanding (MOU) or equivalent instrument between the [State/Commonwealth of ____] and the Forest Service, the Forest Service has a role in enforcing applicable [State/Commonwealth of ____] dam safety regulations within the [permit/lease/easement] area. Applicable MOUs regarding safety of the improvements authorized by this [permit/lease/easement] include [full name and date of MOUs].

<Add paragraphs 1 through 8 of clause B-37 as necessary to address gaps in state dam safety regulations and renumber the remaining paragraphs.>

2. Any condition of the authorized improvements that adversely affects or that could adversely affect operation of the authorized dam, safety of the dam or the public, or the surrounding lands and resources shall, upon written notice from the authorized officer, be corrected or modified by the [holder/lessee/grantee] at the [holder's/lessee's/grantee's] expense. The authorized officer shall specify a completion date for corrective work in the notice.
3. The Forest Service reserves the right to abate emergencies. When the authorized officer determines that there is a danger of a failure for any reason of the authorized dam, the Forest Service has the right to take any actions deemed necessary to prevent or abate a failure, including lowering the level of impounded water by utilizing existing structures or by artificially breaching the dam. The United States shall not be liable to the [holder/lessee/grantee] for any loss or damage, including damage to the dam or loss of value of impounded water, associated with actions taken by the Forest Service under this clause. The [holder/lessee/grantee] shall indemnify the United States for all costs, including legal and court costs, associated with the Forest Service's exercise of its rights under this clause, other than costs attributed to the negligence of the United States or its officers, agents, or employees. Failure of the Forest Service to exercise its rights under this clause shall not constitute a violation of any duty of the United States or a defense to noncompliance with any terms of this [permit/lease/easement] and shall not relieve the [holder/lessee/grantee] of any liability for damages in the event of a dam failure.
4. The [holder/lessee/grantee] and the [holder's/lessee's/grantee's] successors, agents, and assigns shall have sole responsibility for the safety of the authorized dam and appurtenant structures and any associated liability.
5. If a state regulatory entity claims jurisdiction over the dam authorized by this [permit/lease/easement], the [holder/lessee/grantee] shall provide correspondence and reports associated with regulation of the dam to the authorized officer upon request.

B-37. Dam Safety When State Regulations Do Not Apply. Use this clause in special use permits, historic property leases, or ditch bill easements authorizing a dam where:

1. No state dam safety regulations exist; or
2. There is little or no involvement by the state in regulating dam safety on National Forest System lands.

For purposes of clause B-37, a dam is defined in paragraph 1 of that clause.

Dam Safety

1. **Definitions.** The following definitions apply to this clause:

Canal. A linear water conveyance structure of varying capacity that is usually lined and that is constructed to specified engineering standards.

Dam. Any artificial barrier, including appurtenant works, that impounds or diverts water, either temporarily or long term, but not including a facility that is 6 feet or less in height or that impounds no more than 15 acre feet of water, unless the facility poses a significant hazard to occupied facilities, structures, recreation areas, or travel routes downstream.

Dam Failure. The catastrophic breakdown or breach of a dam characterized by the sudden, rapid, and uncontrolled release of water.

Emergency Action Plan. A document that identifies potential emergency conditions at a dam and specifies preplanned actions to be followed to minimize property damage and loss of life should a dam failure occur, including:

- (a) Actions the owner of the dam must take to moderate or alleviate problems at the dam;
- (b) Procedures and information regarding issuance of early warning and notification of an emergency to responsible emergency management authorities; and
- (c) Inundation maps displaying critical areas for action by responsible emergency management authorities in case of an emergency (see FEMA Publication 64).

Hazard Assessment Classification. A system that categorizes dams according to the severity of consequences resulting from their failure or mis operation and that in no way reflects on their current condition (for example, their safety, structural integrity, or flood routing capacity).

- (a) **Low.** A classification that includes dams whose failure, malfunction, or misoperation

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would result in no loss of human life and minor damages limited to undeveloped or agricultural lands and for which significant improvements are not planned in the foreseeable future.

(b) **Significant.** A classification that includes dams whose failure, malfunction, or misoperation would result in no probable loss of human life but could cause economic loss, disruption of lifeline facilities, or other significant impacts and dams whose failure would result in non-recoverable damage.

(c) **High.** A classification that includes dams whose failure, malfunction, or misoperation would likely result in loss of human life.

2. **Construction, Inspection, Certification, and Project Files.** The [holder/lessee/grantee] shall ensure that any construction, rehabilitation, or modification of the authorized dam shall be inspected by a qualified engineer. At a minimum, the qualified engineer shall maintain a daily inspection diary, descriptions of design changes, and records of construction material and foundation tests for any construction, rehabilitation, or modification of the dam. Upon completion of the construction, rehabilitation, modification, the [holder/lessee/grantee] shall provide to the authorized officer written certification from the qualified engineer that the work was performed in accordance with the approved plans and specifications. No water shall be impounded without prior written approval from the authorized officer. The [holder/lessee/grantee] shall maintain in a project file for the term of this permit all design notes, as-built drawings, and documentation produced by the qualified engineer and shall make the project file available to the Forest Service, other inspection personnel, and other federal agencies authorized to review Forest Service activities.

3. **Operating Plan.** This clause supplements the standard operating plan clause in this [permit/lease/easement]. The operating plan for a new dam shall be prepared during the design phase. At a minimum, the operating plan shall specify required operating procedures; routine maintenance; record-keeping for operation and maintenance; and those responsible for implementing the operating plan. When an operation and maintenance inspection of the dam is conducted, the operating plan shall be reviewed and amended as needed by those responsible for implementing the operating plan and the qualified engineer performing the inspection.

<USER NOTES FOR PARAGRAPH 4>

<Include paragraph 4 only for dams with a high hazard assessment classification or to address unusual circumstances, such as the likelihood of an earthquake, a large flood, or a terrorist event. Otherwise, delete paragraph 4, and renumber the remaining paragraphs.>

4. **Emergency Action Plan.** The [holder/lessee/grantee] shall prepare an Emergency Action Plan (EAP). The EAP for new dams shall be prepared during the design phase. The EAP

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and any revisions to the EAP must have prior written approval from the authorized officer. At a minimum, the EAP shall include:

- (a) Actions to be taken upon discovery of an unsafe condition or impending dam failure to prevent, mitigate, or delay dam failure.
 - (b) Procedures for notification of law enforcement, civil preparedness, and Forest Service personnel of impending dam failure.
 - (c) Procedures for notifying persons in immediate danger of losing life or property due to dam failure.
 - (d) Maps delineating the area that would be inundated by water or debris in the event of dam failure.
 - (e) The names; home, office, and cellular telephone numbers; and email addresses of those responsible for implementing the EAP. In preparing the EAP, the [holder/lessee/grantee] shall consult and cooperate with appropriate law enforcement and civil preparedness personnel responsible for implementing the EAP. The [holder/lessee/grantee] shall be responsible for all aspects of implementing the EAP, including emergency coordination. The [holder/lessee/grantee] shall review the EAP annually and shall update it annually as necessary or appropriate based on that review. The [holder/lessee/grantee] shall test the EAP at least every 5 years.
5. **Inspection and Maintenance.** The [holder/lessee/grantee] shall have Operation and Maintenance (O&M) inspections of the dam and appurtenant structures conducted in accordance with the following table.

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Dam Inspections

Hazard Assessment Classification	Inspection Type	Inspection Frequency	Level of Expertise Required
LOW	O&M	10 years	Qualified Engineer
	Hazard Assessment	10 years*	Qualified Engineer
	Special	**	Qualified Engineer
SIGNIFICANT	O&M	5 years	Qualified Engineer
	Hazard Assessment	5 years*	Qualified Engineer
	Special	**	Qualified Engineer
HIGH	O&M	1 year	Qualified Engineer***
	Safety	5 year	Qualified Engineer
	Special	**	Qualified Engineer
<p>* Perform hazard assessments more frequently if increased downstream development is observed.</p> <p>** A special inspection must be performed by a qualified engineer.</p> <p>*** A qualified engineer must review and approve in writing the annual O&M inspection reports for dams with a high hazard assessment classification. At a minimum, the annual on-site inspection must be completed by someone familiar with the operation of the dam.</p>			

O&M inspections shall be reviewed by a qualified engineer. Special inspections shall be performed by a qualified engineer immediately after any dam has experienced an unusual event, such as a large flood, a first filling, an earthquake, or an act of terrorism. All O&M inspections shall be documented in a report. Two copies of each inspection report shall be provided to the authorized officer within 30 days of the date of inspection.

Repairs or operational changes recommended by the inspecting or reviewing engineer shall be made by the holder within 1 year from the date of inspection, unless a longer period is approved by the authorized officer in writing or a shorter period is deemed required by the authorized officer for reasons of public safety. Upon request by the authorized officer, the holder shall provide a plan outlining the methods and schedule for performing the repairs or operational changes and shall notify the authorized officer when they are completed.

The authorized officer shall specify a completion date for the corrective work.

6. **Forest Service Inspection.** The [holder/lessee/grantee] shall allow inspection of the authorized dam and appurtenant structures at any time by the authorized officer or their representative. A copy of inspection reports prepared by the Forest Service shall be provided to the [holder/lessee/grantee]. Inspections performed by the Forest Service do not relieve the [holder/lessee/grantee] from any liability for the dam or of the responsibility of ensuring that inspections are conducted in accordance with paragraph 6 of this clause. Failure of the Forest Service to inspect shall not constitute a violation of any duty of the United States or a defense to noncompliance with any terms of this [permit/lease/easement] and shall not relieve the holder of any liability for damages in the event of a dam failure.
7. **Safety Evaluations.** Beginning in [year] and every 5 years thereafter, the [holder/lessee/grantee] shall have a dam safety evaluation performed by a professional engineer certified in the state in which the authorized dam is located to verify the safety and integrity of the dam and appurtenant structures. At a minimum, the dam safety evaluation shall include a detailed field inspection of the dam and appurtenant structures and a review of all pertinent documents, such as investigation, design, construction, instrumentation, operation, maintenance, and inspection records. The dam safety evaluation shall be based on current accepted design criteria and practices. The [holder/lessee/grantee] shall provide 2 copies of the dam safety evaluation report, stamped with the professional engineer's seal, to the authorized officer and Regional Engineer. Based on this report, the authorized officer may require the [holder/lessee/grantee] to perform additional evaluations pursuant to standards deemed appropriate by the authorized officer and may require rehabilitation or modification of the dam, as necessary or appropriate, within a reasonable period.

<Include paragraph 8 only for dams with a high hazard assessment classification or to address unusual circumstances, such as the likelihood of an earthquake, a large flood, or a terrorist event. Otherwise, delete paragraph 8, and renumber the remaining paragraphs.>

8. **Corrective Action.** Any condition of the authorized improvements that adversely affects or that could adversely affect operation of the authorized dam, safety of the dam or the public, or the surrounding lands and resources shall, upon written notice from the authorized officer, be corrected or modified by the [holder/lessee/grantee] at the [holder's/lessee's/grantee's] expense. The authorized officer shall specify a completion date for corrective work in the notice.
9. **Forest Service's Right to Abate Emergencies.** When the authorized officer determines that there is a danger of a failure for any reason of the authorized dam, the Forest Service has the right to take any actions deemed necessary to prevent or abate a dam failure, including lowering the level of impounded water by utilizing existing structures or by artificially breaching the dam. The United States shall not be liable to the [holder/lessee/grantee] for any loss or damage, including damage to the dam or loss of

value of impounded water associated with actions taken by the Forest Service under this clause. The [holder/lessee/grantee] shall indemnify, defend, and hold harmless the United States for all costs, including legal and court costs, associated with the Forest Service's exercise of its rights under this clause, other than costs attributed to the negligence of the United States or its officers, agents, or employees. Failure of the Forest Service to exercise its rights under this clause shall not constitute a violation of any duty of the United States or a defense to noncompliance with any terms of this [permit/lease/easement] and shall not relieve the [holder/lessee/grantee] of any liability for damages in the event of a dam failure.

10. **Liability.** The [holder/lessee/grantee] and the [holder's/lessee's/grantee's] successors, agents, and assigns shall have sole responsibility for the safety of the authorized dam and appurtenant structures and any associated liability.

<Add clause B-11, Strict Liability, as paragraph 11 for dams with a high hazard assessment classification or to address unusual circumstances, such as the likelihood of an earthquake, a large flood, or a terrorist event.>

B-38. Drinking Water Systems. Include clause B-38 in all authorizations where the holder is the supplier of water, as owner or operator, and is responsible for the operation and maintenance of a drinking water system that provides water to the public for human consumption. Do not include clause B-38 if the permit is issued under section 7 of the Granger-Thye Act or the permit otherwise authorizes the holder to operate all or part of a federally owned drinking water system. Rather, attach to the permit Appendix F, "Operation of Federally Owned Drinking Water Systems," from form FS-2700-4h.

Review FSM 7420 for statutes, regulations, and additional Forest Service directives that apply to drinking water systems. Consult with the administrative unit's facility or environmental engineer on specific drinking water requirements or possible revisions to clause B-38 or Appendix F to form FS-2700-4h to address special situations. The authorized officer should ensure that qualified personnel administer authorizations that include the operation and maintenance of drinking water systems.

Drinking Water Systems. The holder, as the water supplier and owner or operator of the drinking water system for the facilities authorized by this permit, is responsible for compliance with all applicable federal, state, and local drinking water laws and regulations governing operation and maintenance of a public drinking water system, including but not limited to developing, operating, and maintaining the system and conducting drinking water testing and taking appropriate corrective and follow-up actions in accordance with federal, state, and any other applicable requirements. For purposes of this permit, public water systems are defined in accordance with the Safe Drinking Water Act, as amended Title 42 United States Code, section 300f *et seq.*, and the National Primary Drinking Water Regulations, Title 40 Code of Federal Regulations, Part 141—National Primary Drinking

Water Regulations (40 CFR part 141), or state regulations, if more stringent. The holder shall retain all drinking water system records as required by applicable laws and regulations. The holder agrees to make the records available to the Forest Service and to any other regulatory agency authorized to review Forest Service activities.

52.3 - C Clauses: Development, Construction, Operations, and Performance Bonds

C-1. Site Development Schedule.

Site Development Schedule. The holder shall prepare by [date] a schedule for the progressive development and installation of facilities in the permit area. This schedule shall be made a part of this authorization. The holder may accelerate the scheduled date for installation of any improvement authorized, provided the other scheduled priorities are met and that all priority installations authorized are completed to the satisfaction of the Forest Service and ready for public use prior to the scheduled due date. All required plans and specifications for site improvements, and structures included in the development schedule shall be properly certified and submitted to the Forest Service at least 45 days before the construction date stipulated in the development schedule.

C-2. Site Plan.

Site Plan. The holder shall prepare site plans to show the location of all buildings, service areas, roads, and structures. Such plans shall be on a scale of __ with __foot contour intervals. The holder is encouraged to consult with the authorized officer during the preparation of the site plan to ensure that it is adequate. No construction shall be undertaken by the holder prior to site plan approval.

C-3. Bonding.

Bonding. The authorized officer may require the [holder/lessee] to furnish a surety bond or other security for any of the obligations imposed by the terms of this [permit/lease] or any applicable law, regulation, or order.

<Delete clauses 1 through 3 when a bond is not required.>

1. As a further guarantee of compliance with the terms of this [permit/lease], the holder 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, such as, to secure the holder's obligation to restore the [permit/lease] area after construction or upon revocation or termination of the [permit/lease] without issuance of a new [permit/lease]]. The authorized officer may periodically evaluate the adequacy of the bond or other security and increase or decrease the amount as appropriate. If the bond or other security becomes unsatisfactory to the authorized officer, the [holder/lessee]

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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 [holder/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 [holder/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 [holder/lessee] may be required to obtain additional bonding or security prior to undertaking additional construction or alteration not covered by the bond or other security or when the authorized [improvements/facilities] are to be removed and the [permit/lease] area restored.

C-4. GT Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements. Include the Davis-Bacon Act, minimum wage, and paid sick leave clause in new Granger-Thye (GT) fee-offset agreements for commercial special use authorizations with non-governmental entities when the land use fee will be offset by the cost of Government maintenance, reconditioning, renovation, and improvement (MRRI) that are valued at more than \$2,000 and that are performed on federally owned facilities at the holder's expense. Do not include this clause in new GT fee-offset agreements with a state or local governmental entity, unless the state or local governmental entity subcontracts the Government MRRI to a private entity. See clauses C-5 and C-6 for instructions on inclusion of the minimum wage and paid sick leave clauses in special use authorizations issued under the GT Act.

Davis-Bacon Act, Minimum Wage, and Paid Sick Leave Requirements. Government maintenance, reconditioning, renovation, and improvement conducted under this agreement and costing over \$2,000 is subject to the Davis-Bacon Act, 40 U.S.C. 3141 *et seq.*, and its implementing regulations, including the Davis-Bacon Act clause at 29 CFR 5.5; Executive Order 14026, *Increasing the Minimum Wage for Federal Contractors*, and its implementing regulations, including the federal contractor minimum wage clause at 29 CFR Part 23, Appendix A; and Executive Order 13706, *Establishing Paid Sick Leave for Federal Contractors*, and its implementing regulations, including the federal contractor paid sick leave clause at 29 CFR Part 13, Appendix A. These regulatory requirements are incorporated by reference into this agreement as if fully set forth in this agreement.

C-5. Minimum Wage Requirement. Per Executive Order 14026 and 9 CFR Part 23, include the minimum wage clause in:

1. Any new commercial service special use authorization for a new or existing use,

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regardless of whether the authorization is issued competitively or non-competitively, including when a new authorization is issued after approval of new, changed, or additional uses or area (36 CFR 251.61); and

2. Any existing campground concession permit when it is unilaterally extended by the authorized officer pursuant to FSM 2344.31 or any existing priority use outfitting and guiding permit when it is unilaterally extended by the authorized officer pursuant to FSH 2709.14, Chapter 50, section 53.1m.

Do not include the minimum wage clause when an existing commercial service special use authorization is amended after approval of new, changed, or additional uses or area (36 CFR 251.61).

For purposes of Executive Order 14026 and 29 CFR Part 23, a commercial service special use authorization involves the provision of services. Examples include but are not limited to resorts, outfitting and guiding, campground concessions, public communications uses, and powerline facilities.

Commercial special use authorizations that do not involve the provision of services or the use of federally owned improvements authorized under the GT Act are not subject to the requirement to include the minimum wage clause. Examples of commercial special use authorizations that do not involve the provision of services and that typically would not involve the use of federally owned improvements include permits for agricultural uses like crop production.

Minimum Wage Requirement. Executive Order 14026, *Increasing the Minimum Wage for Contractors*, and its implementing regulations, including the federal contractor minimum wage clause at 29 CFR Part 23, Appendix A, are incorporated by reference into this authorization as if fully set forth in this authorization.

C-6. Paid Sick Leave Requirement. Per Executive Order 13706 and 29 CFR Part 13, include the paid sick leave clause in any new commercial service special use authorization for a new or existing use, regardless of whether the authorization is issued competitively or non-competitively, including when a new authorization is issued after approval of new, changed, or additional uses or area (36 CFR 251.61).

Exercise of the Forest Service's unilateral option to extend a campground concession permit pursuant to FSM 2344.31 or a priority use outfitting and guiding permit pursuant to FSH 2709.14, Chapter 50, section 53.1m, does not trigger the requirement to include the paid sick leave clause.

For purposes of Executive Order 13706 and 29 CFR Part 13, a commercial service special use authorization involves the provision of services. Examples include but are not limited to resorts, outfitting and guiding, campground concessions, public communications uses, and

powerline facilities.

Commercial special use authorizations that do not involve the provision of services or the use of federally owned improvements authorized under the GT Act are not subject to the requirement to include the paid sick leave clause. Examples of commercial special use authorizations that do not involve the provision of services and that typically would not involve the use of federally owned improvements include permits for agricultural uses like crop production.

Paid Sick Leave Requirement. Executive Order 13706, *Establishing Paid Sick Leave for Federal Contractors*, and its implementing regulations, including the federal contractor paid sick leave clause at 29 CFR Part 13, Appendix A, are incorporated by reference into this authorization as if fully set forth in this authorization.

C-7. Master Development Plan.

Master Development Plan. The holder shall prepare and maintain, in a form acceptable to the Forest Service, a Master Development Plan (MDP) encompassing the entire operation presently envisioned for development in connection with the National Forest System lands authorized by this permit. The MDP should encompass all National Forest System lands authorized for use by this permit. For planning purposes, a capacity for use measured in people-at-one-time shall be established in the MDP. Upon acceptance by the authorized officer, the MDP shall become a part of this permit. Overall development at the [type of use] authorized by this permit shall not exceed the capacity established in the MDP, and additional construction beyond maintenance of existing improvements at the [type of use] covered by this permit shall not be authorized without amendment to the MDP and without the requisite environmental analysis and documentation needed to support that additional construction or development under the National Environmental Policy Act (NEPA). The holder shall propose any changes to the MDP in a form acceptable to the Forest Service and shall submit the proposed changes to the authorized officer. Once accepted, the revised MDP shall become part of this permit. Acceptance of the original or revised MDP by the authorized officer does not authorize new development or uses. The authorized officer's acceptance of the original or revised MDP does not constitute approval of its contents or provide any assurance that any particular item in the original or revised MDP will be authorized by the Forest Service or constructed by the holder. No rights or obligations of the holder or the Forest Service are determined by the authorized officer's acceptance of the original or revised MDP, nor does any legal consequences, including the requirement to conduct environmental analysis under NEPA, flow from the authorized officer's acceptance of the original or revised MDP.

C-8. Operating Plan.

Operating Plan. The holder shall prepare and annually revise by [date] an operating plan. The operating plan shall be prepared in consultation with the authorized officer or the

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authorized officer's designated representative and shall cover all operations authorized by this permit. The operating plan shall outline steps the holder 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 holder's operations for compliance with the terms of this permit. The operating plan shall be submitted by the holder 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 permit as an appendix. Any operating plan revisions shall be submitted by the holder 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 holder to discuss the terms and conditions of the permit or operating plan, provide annual use reports, determine need for performance bond for construction projects and amount of bond, or other concerns either party may have.

C-9. Wind Energy - Site Feasibility Study. Include clause C-9 in section II of form FS-2700-4 when it is being issued for wind energy site testing and feasibility.

E. Site Feasibility Study. For purposes of this clause:

Cultural Resources. A product or location of human activity, occupation, or use identifiable through field survey, historical documentation, or oral evidence, including prehistoric, archaeological, and architectural sites and structures, historic properties, sacred sites and objects, and traditional cultural properties; and

Species of Management Concern. Bats, birds, and other species that are listed as threatened or endangered, proposed to be listed, or candidates for listing under the Endangered Species Act; state-protected species; and Forest Service-designated sensitive and management indicator species.

The holder shall prepare a site feasibility study. At a minimum, the site feasibility study shall include a description of the following relative to the permit area:

1. The wind resource;
2. The proximity to transmission lines and access roads;
3. Any species of management concern and their habitats;
4. Bat and bird migration routes;
5. Visual resources;
6. Soil and geological factors;

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7. Cultural resources;
8. Wetlands;
9. Noise that may affect wildlife or humans;
10. Community facilities and services;
11. Aviation considerations; and
12. Required road construction, including construction of new and temporary roads and reconstruction of existing roads.

C-10. Wind Energy - Improvements. Include clause C-10 in section II of form FS-2700-4 when it is being issued for construction and operation of a wind energy facility.

B. Study Plan. The study plan that has been approved by the authorized officer shall be attached as Appendix A to this permit. The study plan includes survey outcomes from site testing and feasibility studies.

C. Plan of Development. The Plan of Development (POD) that has been approved by the authorized officer shall be attached as Appendix B to this permit. The POD contains all required on-site construction drawings and specifications, including drawings and specifications for road construction to connect the permit area to existing forest roads and for reconstruction of National Forest System roads; abatement procedures; acceptable design measures; and other requirements determined through environmental analysis.

D. Site Plan. The site plan that has been approved by the authorized officer shall be attached as Appendix C to this permit. The site plan is consistent with the environmental analysis for the wind energy project authorized by this permit.

E. Modifications to The Study Plan, The Pod, and The Site Plan. In consultation with the holder, the authorized officer may require modifications to the study plan, the POD, and the site plan when deemed necessary or desirable.

C-11. Wind Energy - Operating Plan, Construction Phase. Include clause C-11 in section III of form FS-2700-4 when it is being issued for construction and operation of a wind energy facility.

D. Annual Operating Plan for the Construction Phase. The holder shall prepare in consultation with the authorized officer an annual operating plan that addresses transportation and traffic management for the construction phase of the wind energy project authorized by this permit. Specifically, the annual operating plan for the construction phase shall:

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1. Specify the size, weight, origin, destination, unique handling requirements, and alternative transportation that may be necessary for turbine components, main assembly cranes, and other large equipment;
2. Identify any permits that are required for movement of these loads in accordance with state traffic law;
3. Address minimizing hazards from increased truck traffic;
4. Identify needed temporary traffic control measures, such as signs, barricades, flaggers, and pilot cars, which are warning vehicles that drive in front and sometimes behind oversized vehicles and vehicles with oversized loads. All temporary traffic control measures must comply with the Manual on Uniform Traffic Control Devices for Streets and Highways; and
5. Specify dates or seasons of operation and other information required to administer the authorized use, such as seasonal limitations on the use of heavy equipment.

The annual operating plan for the construction phase shall be submitted by the holder and approved by the authorized officer and shall be attached as Appendix D to this permit.

C-12. Wind Energy - Operating Plan, Operational Phase. Include clause C-12 in section III of form FS-2700-4 when it is being issued for construction and operation of a wind energy facility.

E. Annual Operating Plan for the Operational Phase. The holder shall prepare in consultation with the authorized officer an annual operating plan for the operational phase of the wind energy project authorized by this permit. At a minimum, the annual operating plan for the operational phase shall:

1. Require submission of final as-built drawings of the wind energy facilities before operations commence and upon modification of the facilities;
2. Specify dates or seasons of operation and other information required to administer the authorized use, such as seasonal limitations on the use of heavy equipment and requirements for plowing snow;
3. Address hazardous materials and waste management, specifically, requirements for the storage, use, transportation, and disposal of hazardous materials and waste anticipated to be used, stored, or transported in the permit area; spill prevention and response measures; inspection procedures; and procedures to ensure that the permit area is kept free of debris and trash;
4. Include a safety plan describing access to the permit area, safe work practices, security, emergency procedures, fire control, and other measures to avoid or mitigate safety

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hazards;

5. Require an annual inspection report of meteorological towers and other authorized wind energy equipment; and
6. Require an annual report of the amount of energy produced by the authorized facility and where that energy is sold.

The annual operating plan for the operational phase shall be submitted by the holder and approved by the authorized officer and attached as Appendix E to this permit.

C-13. Wind Energy - Monitoring Plan. Include clause C-13 in section III of form FS-2700-4 when it is being issued for construction and operation of a wind energy facility. See chapter 70, section 75.21, paragraph 6, for examples of items that may need to be addressed or included in the monitoring plan.

F. Monitoring Plan. The holder shall prepare in consultation with the Authorized Officer a monitoring plan that addresses the potential effects on wildlife and any required mitigation measures addressed in the environmental analysis for the wind energy project authorized by this permit. The monitoring plan shall be attached as Appendix F to this permit. In consultation with the holder, the authorized officer may require modifications to the monitoring plan when deemed necessary or desirable.

C-14. Operating Plan for Supervision of Children. The following clause is mandatory in special use authorizations that involve supervision of children under the age of 18 by the holder, holder's employees, agents, or contractors other than for ski areas. This includes commercial filming or still photography, the provision of health care (including but not limited to first aid), teaching or instruction (including but not limited to outfitting and guiding and organizational camps), and childcare:

Operating Plan. The holder shall prepare and by [date] [annually/every _____ years] revise an operating plan. The operating plan must be prepared in consultation with the authorized officer or the authorized officer's designated representative and must cover all operations authorized by this permit. The operating plan must outline steps the holder will take to protect public health, safety, and the environment. The plan must include sufficient detail and standards to enable the Forest Service to monitor the holder's operations for compliance with the terms of this permit. The operating plan also must provide that if the holder or the holder's employees, agents, or contractors learn of facts that give reason to suspect that a child under the age of 18 has suffered physical or mental injury, sexual abuse or exploitation, or negligent treatment (child abuse), the holder or the holder's employees, agents, or contractors shall as soon as possible report the child abuse to [the local law enforcement or child protective services agency, as designated in Title 28 Code of Federal Regulations Part 81, Subpart A—Child Abuse and Child Pornography reporting Designations

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and Procedures (28 CFR Part 81, Subpart A) and as soon as practicable thereafter to the authorized officer. The operating plan must include:

1. The name, address, telephone number, and e-mail address of [the local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A].
2. A schedule for providing periodic training on the signs of child abuse and the reporting requirement when child abuse is suspected.
3. A template for reporting suspected child abuse or neglect and, to the extent mandated by applicable state law, the requirement for all employees who work with children under the age of 18 to undergo a criminal background check.

The operating plan and any revisions to the operating plan must be submitted by the holder and approved by the authorized officer prior to the commencement of operations and shall be attached to this permit as an appendix. The authorized officer may require an annual meeting with the holder to discuss the terms of the permit, operating plan, annual use reports, and any other concerns either party may have.

C-15. Operating Plan for Supervision of Children (For Ski Areas). The following clause must be included in section III, Operations, in form FS-2700-5b for all ski area permits that involve the provision of health care (including but not limited to first aid), teaching or instruction (including but not limited to ski schools), or childcare to children under the age of 18 by the holder or the holder's employees, agents, or contractors:

The operating plan must provide that if the holder or the holder's employees, agents, or contractors learn of facts that give reason to suspect that a child under the age of 18 has suffered physical or mental injury, sexual abuse or exploitation, or negligent treatment (child abuse), the holder or the holder's employees, agents, or contractors shall as soon as possible report the child abuse to [the local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A] and as soon as practicable thereafter to the authorized officer. The operating plan shall include:

1. The name, address, telephone number, and e-mail address of [the local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A].
2. A schedule for providing periodic training on the signs of child abuse and the reporting requirement when child abuse is suspected.
3. A template for reporting suspected child abuse or neglect and, to the extent mandated by applicable state law, the requirement for all employees who work with children under the age of 18 to undergo a criminal background check.

52.3 Exhibit 01. Template for Reporting Suspected Child Abuse or Neglect. The following template for reporting suspected child abuse or neglect must be provided to holders of a permit that contain clause C-14 or C-15 and must be included in their operating plan.

52.3 - Exhibit 01

Template for Reporting Suspected Child Abuse or Neglect

AUTHORITY:
Crime Control Act of 1990 (34 U.S.C. § 20341)

Information on suspected child abuse or neglect that the holder or the holder's employees, agents, or contractors obtain should be reported to [the local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A] with authority to take emergency action to protect children who are abused or neglected. Retain a copy for your records. Some of the information obtained in this type of reporting may be subject to protection under the Privacy Act, Title 5 United States Code, section 552a.

Date of Initial Call: January 1, 2013

Name, Title, Organization, Address, Telephone Numbers, and E-Mail Address of Persons Contacted:

John Doe, Sargent, Smith County Police, 100 Broad Street, Arlington, VA, 703-555-5000,
John.Doe@smithcountypolice.com

Action Taken in Response: Report opened and filed

Date of Follow-Up Call or Other Contacts: February 1, 2013

Name, Title, Organization, Address, Telephone Number, and E-Mail Address of Persons Contacted:

John Doe, Sargent, Smith County Police, 100 Broad Street, Arlington, VA, 703-555-5000,
John.Doe@smithcountypolice.com

Action Taken in Response: Report closed and filed

Permit Holder's Name, Address, and Telephone Number:

James Smith, Smith County Recreation, 120 Broad Street, Arlington, VA, 703-555-5100,
James.Smith@smithcountyrecreation.com

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52.3 - Exhibit 01 - Continued

Child's Complete Name, Including Middle Initial	Gender	Age	Date of Birth
Jane L. Doe	Female	10	May 1, 2002

Child's Address and Telephone Number: 555 Main Street, Arlington, VA, 703-555-5201.

Name of Child's Parents or Guardian: Thomas Doe
Relationship: Father

Parents' or Guardian's Address and Telephone Number:
555 Main Street, Arlington, VA, 703-555-5201

Name of Persons Suspected of Abuse or Neglect: Fred Thomas

Relationship: Counselor

Address and Telephone Numbers of Persons Suspected of Abuse or Neglect:
755 Broad Street, Arlington, VA, 703-555-5301

Mark all that apply:

(X) Physical Injury () Sexual Abuse () Emotional Neglect or Abuse
() Physical Neglect () Other (specify):

State the nature and extent of the current injury, neglect, or sexual abuse to the child in question and the circumstances leading to the suspicion that the child is a victim of abuse or neglect:

Counselor punched child in public view of the class he was supervising.

If known, provide information concerning any previous injury, sexual abuse, or neglect experienced by this child or other children in this child's family, including any previous action taken in response:

None known

State other information that may be helpful in establishing the cause of the child's status:
No information available

Signature and Title of Person Making Report: Sign Here **Date:** January 1, 2013

Distribution: [Insert the name, address, telephone number, and e-mail address of local law enforcement or child protective services agency, as designated in 28 CFR Part 81, Subpart A]

C-16. Drawings, Specifications, and Records for Natural Resource-Based Recreational Facilities. Add this clause to the operations section of the permit when authorizing natural resource- based recreational facilities as defined in FSM 7330.05. These types of improvements are typically authorized in conjunction with other improvements under a term permit. See FSM 2340 for related policy and FSM 7330 for applicable engineering requirements. Clause C-16 must always be used in conjunction with Clause C-17, Audit of Natural Resource-Based Recreational Facilities.

Drawings, Specifications, and Records for Natural Resource-Based Recreational Facilities. All drawings, specifications, and records for natural resource- based recreational facilities as defined in FSM 7330.05 shall be properly prepared and certified as being in accordance with American Society for Testing and Materials Standards (ASTM) Standard F24 or other applicable industry standards developed and adopted by a consensus organization that have been certified in writing by a qualified engineer to be an acceptable alternative to ASTM F24, or applicable state standards that have been certified in writing by a qualified engineer to be more restrictive than ASTM F24. A complete set of drawings, specifications, and records for each natural resource-based facility shall be maintained by the holder and made available to the Forest Service upon request. These documents shall be retained by the holder 3 years after removal of the natural resource- based recreational facility from National Forest System lands.

C-17. Audit of Natural Resource-Based Recreational Facilities. Add this clause to the operations section of the permit when authorizing natural resource-based recreational facilities as defined in FSM 7330.05. These types of improvements are typically authorized in conjunction with other improvements under a term permit. See FSM 2340 for related policy and FSM 7330 for applicable engineering requirements. Clause C-17 must always be used in conjunction with Clause C-16, Drawings, Specifications, and Records for Natural Resource-Based Recreational Facilities.

Audit of Natural Resource-Based Recreational Facilities. The holder shall, at its own expense, have all natural resource-based recreational facilities as defined in FSM 7330.05 audited annually by a qualified engineer or qualified auditor prior to commencement of operations of the primary season of use and while the facilities are not in use by the public. Audits shall be conducted in accordance with ASTM F24, including the audit provisions of ASTM F2974, or other applicable industry standard developed and adopted by a consensus organization that have been certified in writing by a qualified engineer to be an acceptable alternative to ASTM F24, or applicable state standards that have been certified in writing by a qualified engineer to be more restrictive than ASTM F24. A report signed by the qualified engineer or qualified auditor shall document the audit, including the applicable industry or state standards utilized in the audit, and any deficiencies to be corrected. The holder shall submit a written certification of audit to the authorized officer attesting that the natural resource-based recreational facilities authorized by this permit have been audited for public safety and that they are ready for public use. The written certification of audit shall be

submitted to the Forest Service prior to commencement of the primary season of use. At a minimum, the written certification of audit shall state in its entirety and without revision:

Pursuant to [holder's name]'s Forest Service permit, [authorization ID], [holder's name] has had an annual audit performed of the natural resource- based recreational facilities authorized by the permit to determine their compliance with ASTM F24 or other applicable industry standard developed and adopted by a consensus organization. [Holder's name] has received the results of that audit and has made and documented corrections of all deficiencies noted in the audit report. The natural resource-based recreational facilities authorized by the permit are ready for public use.

C-18. Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars. Add this clause to the operations section of the permit when authorizing aerial tramways, aerial and surface lifts, tows, conveyors, and funiculars. These types of improvements are typically authorized in conjunction with other improvements under a Ski Area Term Permit. See FSM 7320 for applicable engineering requirements. Clause C-18 must always be used in conjunction with Clause C-19, Inspection of Ropeways.

Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars. All drawings, specifications, and records for aerial tramways, aerial and surface lifts, tows, conveyors, and funiculars, hereinafter "ropeways," shall, notwithstanding clause II.B of this permit, be properly prepared and certified by a qualified ropeway engineer as being in accordance with the latest edition in effect of American National Standards Institute (ANSI) Standard B77.1, American National Standard for Passenger Ropeways – Aerial Tramways, Aerial Lifts, Surface Lifts, Tows and Conveyors – Safety Requirements (ANSI B77.1), or ANSI Standard B77.2, Funiculars – Safety Requirements (ANSI B77.2), as applicable, or applicable state standards that have been certified in writing by a qualified ropeway engineer to be more restrictive than ANSI B77.1 or B77.2. The effective date of the latest edition of ANSI B77.1 or B77.2 is 1 year from the date of its approval by ANSI. A complete set of drawings, specifications, and records for each ropeway shall be maintained by the holder and shall be made available to the Forest Service upon request. These drawings, specifications, and records shall be retained by the holder for 3 years after removal of a ropeway from National Forest System lands.

C-19. Inspection of Ropeways. Add this clause to the operations section of the permit when authorizing ropeways. These types of improvements are typically authorized in conjunction with other improvements under a Ski Area Term Permit. See FSM 7320 for applicable engineering requirements. Clause C-19 must always be used in conjunction with Clause C-18, Drawings, Specifications, and Records for Aerial Tramways, Aerial and Surface Lifts, Tows, Conveyors and Funiculars.

Inspection of Ropeways. The holder at its expense shall have ropeways inspected annually by a qualified ropeway engineer or qualified ropeway specialist prior to commencement of the primary season of use and while the ropeways are not in use by the public. Inspections shall be conducted in accordance with the latest edition in effect of ANSI B77.1 or B77.2, as applicable, including the general inspection provisions, or applicable state standards that have been certified in writing by a qualified ropeway engineer to be more restrictive than ANSI B77.1 or B77.2. A report signed by the qualified ropeway engineer or qualified ropeway specialist shall document the inspection and any deficiencies to be corrected. The holder shall submit a written certification of inspection to the authorized officer attesting that the ropeways authorized by this permit have been inspected for public safety and that they are ready for public use. The written certification of inspection shall be submitted to the Forest Service prior to commencement of the primary season of use. At a minimum, the written certification of inspection shall state in its entirety and without revision:

Pursuant to [holder's name]'s Forest Service permit, [authorization ID], [holder's name] has had an annual inspection performed of the ropeways authorized by the permit to determine their compliance with ANSI B77.1 or B77.2, as applicable, or applicable state standards. [Holder's name] has received the results of that inspection and has made and documented corrections of all deficiencies noted in the inspection report. The ropeways authorized by the permit are ready for public use.

C-23. Right-of-Way Width, Oil and Gas Pipeline.

Right-of-Way Width. The width of the right-of-way is limited to [] feet plus the ground occupied by the pipeline.

C-24. Pipeline, Oil and Gas Standards and Practices. Include the selection item 1 for liquid (oil or refined products) pipelines. Include selection item 2 for gas pipelines. Delete the remaining selection item.

Standards And Practices. All designs, materials, construction, operation, maintenance, and termination practices employed in connection with this use shall be in accordance with safe and proven engineering practices and shall meet or exceed the standards contained in the following:

<Selection item 1>

1. United States Standard Code for Pressure Piping, ANSI B 31.4, "Liquid Petroleum Transportation Piping System" and
2. United States Department of Transportation Regulations at Title 49 Code of Federal Regulations, Part 195—Transportation of Hazardous Liquids by Pipeline.

<Selection item 2>

United States Department of Transportation Regulations at Title 49 Code of Federal Regulations, Part 192—Transportation of Natural and Other Gas by Pipeline; Minimum Federal Safety Standards.

C-25. Operating Plans and Agreements and Vegetation Management for Powerline Facilities Authorized by Form FS-2700-4j. If agreed to by the holder, replace any Electric Transmission Line Permit for Non-Federal Entities, form FS-2700-4j, issued before February 10, 2022, with the current version of form FS-2700-4j. If the holder does not agree to replacement of the existing permit, make the following amendments to the existing permit:

- Change the authority citation in the heading and clause I.A of the existing permit from “Section 501(a)(4) of the 43 U.S.C. 1761(a)(4),” to “Title V of 43 U.S.C. 1761-1772.”
- Substitute the term “powerline facilities” for the term “transmission facilities” throughout the existing permit.
- Substitute the following as the second paragraph, the introductory text to the fourth paragraph, and paragraph 1 in the existing permit:

* * * * *

This powerline facility permit for the [capacity and name of powerline facility or facilities] (the permit), dated _____, is issued by the United States Department of Agriculture, Forest Service (the Forest Service), to [name of entity] (the holder). The linear right-of-way, access roads and trails, and any hazard trees outside the linear right-of-way for each powerline facility authorized by this permit shall be referred to collectively as “the permit area.” A legal description and a map of the permit area and applicable Minimum Vegetation Clearance Distance (MVCD) for each powerline facility authorized by this permit are contained in Appendix A, and the access roads and trails for each powerline facility authorized by this permit are listed and identified on the map in Appendix B. The powerline facility or facilities authorized by this permit shall be referred to collectively as “the powerline facilities.”

* * * * *

In addition, this permit gives the holder:

1. The right of ingress to and egress from the right-of-way along access roads and trails, listed in Appendix B, and the right to construct, reconstruct, and maintain the access roads and trails, in accordance with the following provisions:

* * * * *

- Substitute without modification the following as clauses III.A and III.B in the existing permit:

<USER NOTES FOR CLAUSE III.A>

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

A. Operating Plan or Agreement

1. **Preparation.** The holder shall prepare an operating plan or agreement independently or in consultation with the authorized officer or the authorized officer's designated representative. The operating plan or agreement shall be submitted by the holder and approved by the authorized officer or the authorized officer's designated representative prior to commencement of operations and shall be attached to this permit as Appendix C. At least every 10 years from the approval date of the operating plan or agreement in Appendix C, the holder shall review and, as necessary or appropriate, propose updates to the operating plan or agreement to address changed conditions. Proposed updates to the operating plan or agreement that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the holder for review and approval by the authorized officer. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the holder and the authorized officer.
2. **Contents.** The operating plan or agreement in Appendix C shall cover all operations authorized by this permit. The operating plan or agreement shall outline steps the holder 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 holder's operations for compliance with the terms of this permit. The contents of the operating plan or agreement shall meet all the requirements enumerated in 36 CFR 251.56(h)(5) and chapter 80, section 84.

B. Vegetation Management

1. **Vegetation Management Activities.** The holder shall describe vegetation management activities as part of the operating plan or agreement in Appendix C. The vegetation management activities shall specify best management practices for felling, pruning, and destruction of trees, brush, shrubs, and other plants (hereinafter "vegetation"); the applicable MVCD for the powerline facilities; and procedures for designating, marking, and felling or pruning hazard trees and other vegetation. The vegetation management activities shall also address provide for

prevention and control of invasive species, including invasive plants, within the permit 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 holder shall follow invasive species prevention and control measures prescribed by the operating plan or agreement in Appendix C. In addition, the vegetation management activities shall provide for integration of native, non- invasive, low-growing vegetation that does not interfere with the powerline facilities and that promotes powerline facility reliability, reduces powerline facility maintenance costs, and is compatible with the aesthetics and health of the native plant and animal life in the permit area.

2. Routine and Emergency Vegetation Management and Planting of Vegetation.

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

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

- (1) The holder has submitted an email or letter to the authorized officer requesting approval of a single routine vegetation management project or an annual schedule of work for routine vegetation management in accordance with the specified timeframe in Appendix C;
- (2) The proposed routine vegetation management is covered by approval of the operating plan or agreement in Appendix C or by subsequent case-by-case environmental analysis and consultation; and
- (3) The authorized officer has not responded to the request in accordance with the specified timeframe in Appendix C.

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

(b) **Emergency Vegetation Management.** Emergency vegetation management, either inside the linear right-of-way for a powerline facility or outside the linear

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

3. **Disposal of Felled Trees and Planting of Vegetation.** The holder shall notify the authorized officer when approved felling, pruning, or destruction of vegetation has been completed. The Forest Service shall determine in advance of felling the method of disposal of trees felled in the permit area that meet utilization standards. Disposal may be by sale or without charge per Title 36 Code of Federal Regulations, Part 223—Sale and Disposal of National Forest System Timber (36 CFR Part 223), as may be most advantageous to the United States. Debris from felling that does not meet utilization standards shall also be disposed of according to methods determined by the Forest Service. Planting of vegetation in the permit area must have prior written approval from the authorized officer.
- Substitute without modification the following as clause IV.I in the existing permit:
 - I. **Strict Liability.** If the holder has an operating plan, the holder shall be strictly liable (liable without proof of negligence) to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this permit or, if the holder has an operating agreement approved under FSH 2709.11, Chapter 80, up to \$500,000 per occurrence until March 23, 2028. After that date, the holder shall be strictly liable in tort to the United States up to the same limit as a holder with an operating plan. Strict liability in tort may not be imposed on the holder for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement under FSH 2709.11, Chapter 80, or unreasonably failing to adhere to an applicable schedule in an operating plan or agreement approved under FSH 2709.11, Chapter 80, for activities for which requirements for environmental analysis and consultation have been met. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.
 - Add the phrase "and MVCD for Each Powerline Facility" to the title of Appendix A on the second page of the existing permit and in Appendix A of the existing permit.
 - Include the minimum vegetation clearance distance for each authorized powerline facility in Appendix A of the existing permit.

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- Add “or Agreement” to the title of Appendix C on the second page of the existing permit and in Appendix C of the existing permit.
- Add “Appendix E: Definitions” on the second page of the existing permit and add the following Appendix E to the appendices in the existing permit:

Appendix E

Definitions

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

A. Powerline Facility Infrastructure

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

B. Powerline Facility Maintenance

1. **Emergency Maintenance.** Immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
2. **Non-Routine Maintenance.** Realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.
 - (a) **Realignment.** Moving structures and associated supported cables outside the linear alignment for a powerline facility due to environmental conditions (see clause II.C of the permit).
 - (b) **Rebuild.** Replacement of existing cables as well as the majority of structures

typically in the same linear alignment.

- (c) **Re-conductor.** Replacement of existing conductor and other cables as applicable, where only very few structures are replaced, moved, or raised.
 - (d) **Upgrade.** Increasing the transfer capability of an existing powerline facility, which may also include a few structure replacements, adding intermediate structures or raising one or more structures, or ground removal to ensure conductor clearance.
3. **Routine Maintenance.** Repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (such as, insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

C. Vegetation Management

- 1. **Emergency Vegetation Management.** Unplanned pruning or felling of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned pruning or felling of hazard trees on National Forest System lands adjacent to either side of the linear right-of-way that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
- 2. **Flashover.** An electric discharge over or around the surface of an insulated conductor that may result in fire through the ignition of surrounding objects.
- 3. **Hazard Tree.** For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter “vegetation” (whether located on National Forest System lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the holder to be:
 - (a) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
 - (b) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the

MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.

4. **Maximum Operating Sag.** The theoretical position of a conductor when operating at 100 degrees Celsius, which must be accounted for when determining the MVCD.
5. **Minimum Vegetation Clearance Distance.** A calculated minimum distance that is stated in feet or meters to prevent flashover between conductors and vegetation for various altitudes and operating voltages and that is measured from a conductor at maximum operating sag to vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the holder uses to determine whether vegetation poses a system reliability hazard to the powerline facility.
6. **Non-Emergency (Routine) Vegetation Management.** Planned actions as described in an approved operating plan or agreement periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

D. Roads and Trails

1. **Access Road or Trail.** For purposes of this permit, a road or trail constructed, operated, and maintained by the holder that is necessary to access a powerline facility or its linear right-of-way.
2. **Road or Trail Construction.** Building a road or trail where no road or trail has previously existed.
3. **Road or Trail Reconstruction.** Rebuilding an existing road or trail to increase its capacity, upgrade drainage crossings, or provide improved access, which may involve increasing the road or trail prism.
4. **Road or Trail Maintenance.** The upkeep of an entire road or trail within the existing road or trail prism, including surface and shoulders, parking and side areas, structures, and traffic control devices, that is necessary to maintain or restore the road or trail in accordance with its original design standards.

C-26. Operating Plans and Agreements and Vegetation Management for Powerline Facilities Authorized by Form FS-2700-4 Issued to a Non-Federal Entity. If agreed to by the holder, replace any Special Use Permit, form FS-2700-4, for a powerline facility issued before February 10, 2022, with the current version of form FS-2700-4j. If the holder does not agree to replacement of the existing permit, make the following amendments to the existing permit:

- Change the authority citation in the heading and clause I.A of the existing permit to “Title V of 43 U.S.C. 1761-1772.”
- Substitute the term “powerline facilities” for the term “transmission facilities” throughout the existing permit.
- Insert the following paragraph as the purpose statement on page 1 of the existing permit:

This powerline facility permit for the [capacity and name of powerline facility or facilities] (the permit), dated _____, is issued by the United States Department of Agriculture, Forest Service (the Forest Service), to [name of entity] (the holder). The linear right-of-way, access roads and trails, and any hazard trees outside the linear right-of-way for each powerline facility authorized by this permit shall be referred to collectively as “the permit area.” A legal description and a map of the permit area and applicable minimum vegetation clearance distance for each powerline facility authorized by this permit are contained in Appendix B, and the access roads and trails for each powerline facility authorized by this permit are listed and identified on the map in Appendix C. The powerline facility or facilities authorized by this permit shall be referred to collectively as “the powerline facilities.”

- Substitute without modification the following clause III.C for clause III.C in the existing permit, add the following clause III.D to the existing permit, and re-letter clause III.D as clause III.E in the existing permit:

<USER NOTES FOR CLAUSE III.C>

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

C. Operating Plan or Agreement

1. **Preparation.** The holder shall prepare an operating plan or agreement independently or in consultation with the authorized officer or the authorized officer’s designated representative. The operating plan or agreement shall be submitted by the holder and approved by the authorized officer or the authorized officer’s designated representative prior to commencement of operations and shall be attached to this permit as Appendix D. At least every 10 years from the approval date of the operating plan or agreement in Appendix D, the holder shall review and, as necessary or appropriate, propose updates to the operating plan or agreement to

address changed conditions. Proposed updates to the operating plan or agreement that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the holder for review and approval by the authorized officer. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the holder and the authorized officer.

2. **Contents.** The operating plan or agreement in Appendix D shall cover all operations authorized by this permit. The operating plan or agreement shall outline steps the holder 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 holder's operations for compliance with the terms of this permit. The contents of the operating plan or agreement shall meet all the requirements enumerated in Title 36 Code of Federal Regulations, Part 251.56(h)(5) (36 CFR 251.56(h)(5)) and chapter 80, section 84.

D. Vegetation Management

1. **Vegetation Management Activities.** The holder shall describe vegetation management activities as part of the operating plan or agreement in Appendix D. The vegetation management activities shall specify best management practices for felling, pruning, and destruction of trees, brush, shrubs, and other plants (hereinafter "vegetation"); the applicable MVCD for the powerline facilities; and procedures for designating, marking, and felling or pruning hazard trees and other vegetation. The vegetation management activities shall also address provide for prevention and control of invasive species, including invasive plants, within the permit 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 holder shall follow invasive species prevention and control measures prescribed by the operating plan or agreement in Appendix D. In addition, the vegetation management activities shall provide for integration of native, non- invasive, low-growing vegetation that does not interfere with the powerline facilities and that promotes powerline facility reliability, reduces powerline facility maintenance costs, and is compatible with the aesthetics and health of the native plant and animal life in the permit area.
2. **Routine and Emergency Vegetation Management and Planting of Vegetation.** Routine and emergency vegetation management and planting of vegetation, both inside the linear right-of-way for a powerline facility and outside the linear right-of-way for a powerline facility to fell or prune hazard trees, must be conducted in accordance with Appendix D and clause III.D. For purposes of vegetation management per Appendix D and clause III.D, the MVCD for each powerline facility is enumerated in Appendix B, and vegetation management outside the linear right-of-

way for a powerline facility shall be limited to felling and pruning of hazard trees.

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

- (1) The holder has submitted an email or letter to the authorized officer requesting approval of a single routine vegetation management project or an annual schedule of work for routine vegetation management in accordance with the specified timeframe in Appendix D;
- (2) The proposed routine vegetation management is covered by approval of the operating plan or agreement in Appendix D or by subsequent case-by-case environmental analysis and consultation; and
- (3) The authorized officer has not responded to the request in accordance with the specified timeframe in Appendix D.

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

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

3. **Disposal of Felled Trees and Planting of Vegetation.** The holder shall notify the authorized officer when approved felling, pruning, or destruction of vegetation has been completed. The Forest Service shall determine in advance of felling the method of disposal of trees felled in the permit area that meet utilization standards. Disposal may be by sale or without charge per 36 CFR Part 223, as may be most advantageous to the United States. Debris from felling that does not meet utilization standards shall also be disposed of according to methods determined by the Forest Service. Planting of vegetation in the permit area must have prior written approval

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from the authorized officer.

- Substitute without modification the following as clause IV.K in the existing permit:
 - K. Strict Liability.** If the holder has an operating plan, the holder shall be strictly liable (liable without proof of negligence) to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this permit or, if the holder has an operating agreement approved under FSH 2709.11, Chapter 80, up to \$500,000 per occurrence until March 23, 2028. After that date, the holder shall be strictly liable in tort to the United States up to the same limit as a holder with an operating plan. Strict liability in tort may not be imposed on the holder for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement under FSH 2709.11, Chapter 80, or unreasonably failing to adhere to an applicable schedule in an operating plan or agreement approved under FSH 2709.11, Chapter 80, for activities for which requirements for environmental analysis and consultation have been met. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.
- Add the following Appendix A to the existing permit:

Appendix A

Definitions

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

A. Powerline Facility Infrastructure

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

B. Powerline Facility Maintenance

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

C. Vegetation Management

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

that may result in fire through the ignition of surrounding objects.

3. **Hazard Tree.** For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter “vegetation” (whether located on National Forest System lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the holder to be:
 - (a) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
 - (b) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.
4. **Maximum Operating Sag.** The theoretical position of a conductor when operating at 100 degrees Celsius, which must be accounted for when determining the MVCD.
5. **Minimum Vegetation Clearance Distance.** A calculated minimum distance that is stated in feet or meters to prevent flashover between conductors and vegetation for various altitudes and operating voltages and that is measured from a conductor at maximum operating sag to vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the holder uses to determine whether vegetation poses a system reliability hazard to the powerline facility.
6. **Non-Emergency (Routine) Vegetation Management. Planned** actions as described in an approved operating plan or agreement periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

D. Roads and Trails

1. **Access Road or Trail.** For purposes of this permit, a road or trail constructed, operated,

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and maintained by the holder that is necessary to access a powerline facility or its linear right-of-way.

2. **Road or Trail Construction.** Building a road or trail where no road or trail has previously existed.
 3. **Road or Trail Reconstruction.** Rebuilding an existing road or trail to increase its capacity, upgrade drainage crossings, or provide improved access, which may involve increasing the road or trail prism.
 4. **Road or Trail Maintenance.** The upkeep of an entire road or trail within the existing road or trail prism, including surface and shoulders, parking and side areas, structures, and traffic control devices, that is necessary to maintain or restore the road or trail in accordance with its original design standards.
- Add the following Appendix B to the existing permit, and include the MVCD for each authorized powerline facility in Appendix B to the existing permit:

Appendix B

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

* * * * *

- Add the following Appendices C and D to the existing permit:

Appendix C

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

* * * * *

Appendix D Operating Plan or Agreement

* * * * *

C-27. Operating Plans and Agreements and Vegetation Management for Powerline Facilities Authorized by an Easement. If agreed to by the grantee, replace any Electric Transmission Line Easement, form FS-2700-31, issued before February 10, 2022, with the current version of form FS-2700-31. If the grantee does not agree to replacement of the existing easement, make the following amendments to the existing easement:

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- Change the authority citation in the heading and clause I.A of the existing easement from “Section 501(a)(4) of 43 U.S.C. 1761(a)(4),” to “Title V of 43 U.S.C. 1761-1772.”
- Substitute the term “powerline facilities” for the term “transmission facilities” throughout the existing easement.
- Substitute the following as the second paragraph, the introductory text of the fourth paragraph, the introductory text of paragraph 1, and paragraph 1 in the existing easement:

* * * * *

The grantor, in consideration of an annual land use fee paid by the grantee, grants to the grantee, subject to existing easements and other valid existing rights, a non-exclusive linear right-of-way for one or more powerline facilities. The linear right-of-way, access roads and trails, and any hazard trees outside the linear right-of-way for each powerline facility authorized by this easement shall be referred to collectively as “the easement area.” A legal description and a map of the easement area and applicable MVCD for each powerline facility authorized by this easement are contained in Appendix B, and the access roads and trails for each powerline facility authorized by this easement are listed and identified on the map in Appendix C. The powerline facility or facilities authorized by this easement shall be referred to collectively as “the powerline facilities.”

* * * * *

The grantor further grants to the grantee:

1. The right of ingress to and egress from the linear rights-of-way for the powerline facilities along access roads and trails listed in Appendix C, and the right to construct, reconstruct, and maintain the access roads and trails, in accordance with the following provisions:

* * * * *

- Substitute without modification the following clauses III.A and III.B for clauses III.A and III.B in the existing easement.

<USER NOTES FOR CLAUSE III.A>

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

A. Operating Plan or Agreement

1. **Preparation.** The grantee shall prepare an operating plan or agreement independently or in consultation with the authorized officer or the authorized

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

2. **Contents.** The operating plan or agreement shall cover all operations authorized by this easement. The operating plan or agreement shall outline steps the grantee will take to protect public health and safety and the environment and shall include sufficient detail and standards to enable the Forest Service to monitor the grantee's operations for compliance with the terms of this easement. The contents of the operating plan or agreement shall meet all the requirements enumerated in 36 CFR 251.56(h)(5) and Forest Service Handbook 2709.11, Chapter 80, section 84.

B. Vegetation Management

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

health of the native plant and animal life in the easement area.

2. Routine and Emergency Vegetation Management and Planting of Vegetation.

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

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

- (1) The grantee has submitted an email or letter to the authorized officer requesting approval of a single routine vegetation management project or an annual schedule of work for routine vegetation management in accordance with the specified timeframe in Appendix C;
- (2) The proposed routine vegetation management is covered by approval of the operating plan or agreement in Appendix C or by subsequent case-by-case environmental analysis and consultation; and
- (3) The authorized officer has not responded to the request in accordance with the specified timeframe in Appendix C.

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

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

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3. **Disposal of Felled Trees and Planting of Vegetation.** The grantee shall notify the authorized officer when approved felling, pruning, or destruction of vegetation has been completed. The Forest Service shall determine in advance of felling the method of disposal of trees felled in the easement area that meet utilization standards. Disposal may be by sale or without charge per 36 CFR Part 223, as may be most advantageous to the United States. Debris from felling that does not meet utilization standards shall also be disposed of according to methods determined by the Forest Service. Planting of vegetation in the easement area must have prior written approval from the authorized officer.
- Substitute without modification the following as clause IV.I in the existing easement:
 - I. **Strict Liability.** If the grantee has an operating plan, the grantee shall be strictly liable (liable without proof of negligence) to the United States up to the limit specified in 36 CFR 251.56(d)(2), as amended, per occurrence for any injury, loss, or damage arising in tort under this easement or, if the grantee has an operating agreement approved under FSH 2709.11, Chapter 80, up to \$500,000 per occurrence until March 23, 2028. After that date, the grantee shall be strictly liable in tort to the United States up to the same limit as a holder with an operating plan. Strict liability in tort may not be imposed on the grantee for injury or damages resulting from the authorized officer's unreasonably withholding or delaying approval of an operating plan or agreement under FSH 2709.11, Chapter 80, or unreasonably failing to adhere to an applicable schedule in an operating plan or agreement approved under FSH 2709.11, Chapter 80, for activities for which requirements for environmental analysis and consultation have been met. Liability in tort for injury, loss, or damage to the United States exceeding the prescribed amount of strict liability in tort shall be determined under the law of negligence.
 - Add the phrase "and MVCD for Each Powerline Facility" to the title of Appendix A on the second page and in Appendix A of the existing easement.
 - Add the minimum vegetation clearance distance for each authorized powerline facility to Appendix A.
 - Add "Appendix E: Definitions" on the second page of the existing easement, and add the following Appendix E to the appendices in the existing easement:

Appendix E

Definitions

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

A. Powerline Facility Infrastructure

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

B. Powerline Facility Maintenance

1. **Emergency Maintenance.** Immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
2. **Non-Routine Maintenance.** Realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.
 - (a) **Realignment.** Moving structures and associated supported cables outside the linear alignment for a powerline facility due to environmental conditions (see clause II.C of the easement).
 - (b) **Rebuild.** Replacement of existing cables as well as the majority of structures typically in the same linear alignment.
 - (c) **Re-conductor.** Replacement of existing conductor and other cables as applicable, where only very few structures are replaced, moved, or raised.
 - (d) **Upgrade.** Increasing the transfer capability of an existing powerline facility, which

may also include a few structure replacements, adding intermediate structures or raising one or more structures, or ground removal to ensure conductor clearance.

3. **Routine Maintenance.** Repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (such as, insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

C. Vegetation Management

1. **Emergency Vegetation Management.** Unplanned pruning or felling of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned pruning or felling of hazard trees on National Forest System lands adjacent to either side of the linear right-of-way that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
2. **Flashover.** An electric discharge over or around the surface of an insulated conductor that may result in fire through the ignition of surrounding objects.
3. **Hazard Tree.** For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter “vegetation” (whether located on National Forest System lands inside or outside the linear right-of-way for the powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the grantee to be:
 - (a) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
 - (b) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan or agreement.
4. **Maximum Operating Sag.** The theoretical position of a conductor when operating at

100 degrees Celsius, which must be accounted for when determining the MVCD.

5. **Minimum Vegetation Clearance Distance.** A calculated minimum distance that is stated in feet or meters to prevent flashover between conductors and vegetation for various altitudes and operating voltages and that is measured from a conductor at maximum operating sag to vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way of a powerline facility for purposes of felling or pruning hazard trees, which the grantee uses to determine whether vegetation poses a system reliability hazard to the powerline facility.
6. **Non-Emergency (Routine) Vegetation Management.** Planned actions as described in an operating plan or agreement periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.

D. Roads and Trails

1. **Access Road or Trail.** For purposes of this easement, a road or trail constructed, operated, and maintained by the grantee that is necessary to access a powerline facility or its linear right-of-way.
2. **Road or Trail Construction.** Building a road or trail where no road or trail has previously existed.
3. **Road or Trail Reconstruction.** Rebuilding an existing road or trail to increase its capacity, upgrade drainage crossings, or provide improved access, which may involve increasing the road or trail prism.
4. **Road or Trail Maintenance.** The upkeep of an entire road or trail within the existing road or trail prism, including surface and shoulders, parking and side areas, structures, and traffic control devices, that is necessary to maintain or restore the road or trail in accordance with its original design standards.

C-28. Operating Plans and Vegetation Management for Powerline Facilities Authorized by Form FS-2700-4k Issued to a Federal Entity. If agreed to by the federal holder, replace any Electric Transmission Line Permit for Federal Entities, form FS-2700-4k, issued before February 10, 2022, with the current version of form FS-2700-4k. If the federal holder does not agree to replacement of the existing permit, make the following amendments to the existing permit:

- Change the authority citation in the heading and clause I.A of the existing permit from

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“Sections 501(a)(4) and 507(a) of, 43 U.S.C. 1761(a)(4) and 1767(a),” to Title V of 43 U.S.C. 1761-1772.”

- Substitute the term “powerline facilities” for the term “transmission facilities” throughout the existing permit.
- Substitute the following as the first paragraph, paragraph 1, and paragraph 2.a for the first paragraph, paragraph 1, and paragraph 2.a in the existing permit:

This powerline facility permit for the [capacity and name of powerline facility or facilities] (the permit), dated _____, is issued by the United States Department of Agriculture, United States Forest Service (the Forest Service), to [name of power marketing administration] (the federal holder) for use and occupancy of National Forest System lands for one or more powerline facilities pursuant to Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761-1772, and 36 CFR Part 251, Subpart B, as amended. The federal holder is an agency, department, or unit of the executive branch of the federal government and is authorized to operate powerline facilities pursuant to the [name of and cite for federal holder’s authority].

1. This permit gives the federal holder a non-exclusive linear right-of-way or rights-of-way for one or more powerline facilities, including the right to locate, construct, operate, maintain, repair, rebuild, upgrade, remove, and patrol one or more powerline facilities, subject to applicable law and applicable notification, coordination, and approval provisions in Title 36 Code of Federal Regulations, Part 251.61(a)—Applications for New, Changed, or Additional uses or Area (36 CFR 251.61(a)), this permit, and the operating plan in Appendix F. The linear right-of-way, access roads and trails, and any hazard trees outside the linear right-of-way for each powerline facility authorized by this permit shall be referred to collectively as “the permit area.” A legal description and a map of the permit area and the minimum vegetation clearance distance for each powerline facility authorized by this permit are contained in Appendix C, and the access roads and trails for each powerline facility authorized by this permit are listed and identified in Appendix D. The powerline facility or facilities authorized by this permit shall be referred to collectively as “the powerline facilities.”
2. In addition, this permit gives the federal holder:
 - a. The right of ingress to and egress from the linear rights-of-way for the powerline facilities along access roads and trails, listed in Appendix D, and the right to construct, reconstruct, and maintain the access roads and trails, subject to applicable law and the applicable notification, coordination, and approval provisions in 36 CFR 251.61(a), this permit, and the operating plan in Appendix F. The Forest Service does not have an obligation to maintain the access roads and trails. The federal holder’s rights to access roads and trails granted in this paragraph shall be

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subordinate to any right to use an access road or trail subsequently granted by the United States to a local public road authority for a public road, provided that the federal holder shall continue to have access to that right-of-way to operate and maintain the powerline facilities, manage vegetation, and address public safety related to the powerline facilities.

* * * * *

- Substitute without modification the following clauses III.A and III.B for clauses III.A and III.B in the existing permit:

A. Operating Plan

1. **Preparation.** The federal holder shall prepare an operating plan independently or in consultation with the authorized officer or the authorized officer's designated representative. The operating plan shall be submitted by the federal holder and approved by the authorized officer or the authorized officer's designated representative, consistent with the Forest Service's authorities, prior to use and occupancy of the permit area pursuant to this permit and shall be attached to this permit as Appendix F. At least every 10 years from the approval date of the operating plan in Appendix F, the federal holder shall review and, as necessary or appropriate, propose updates to the operating plan to address changed conditions. Proposed updates to the operating plan that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the federal holder for review and approval by the authorized officer. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the federal holder and the authorized officer.
2. **Contents.** The operating plan in Appendix F shall apply to permit area management for the powerline facilities and access roads and trails. The operating plan shall outline steps the federal holder 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 federal holder's operations for compliance with the terms and conditions of this permit. The operating plan shall also outline the roles and responsibilities of the federal holder and the Forest Service with regard to management of the permit area. The contents of the operating plan shall meet all the requirements enumerated in 36 CFR 251.56(h)(5) and chapter 80, section 84.

B. Vegetation Management

1. **Vegetation Management Activities.** The federal holder shall describe vegetation management activities as part of the operating plan in Appendix F. The description of vegetation management activities shall specify best management practices for

felling, pruning, and destruction of trees, brush, shrubs, and other plants (hereinafter “vegetation”) that are consistent with the federal holder’s North American Electric Reliability Corporation -compliant powerline facility vegetation management program and its associated environmental analyses. The description of vegetation management activities shall also identify the applicable MVCD for the powerline facilities and procedures for designating, marking, and felling or pruning hazard trees and other vegetation. The description of vegetation management activities shall also provide for prevention and control of invasive species, including invasive plants, within the permit 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 federal holder shall follow prevention and control measures prescribed by the operating plan. In addition, the description of vegetation management activities shall provide for integration of native, non- invasive, low-growing vegetation that does not interfere with the powerline facilities and that promotes powerline facility reliability, reduces powerline facility maintenance costs, is compatible with the aesthetics and health of the native plant and animal life in the permit area, and is consistent with the federal holder’s NERC-compliant powerline facility vegetation management program and other vegetation management documents. The federal holder shall provide the Forest Service with a paper or electronic copy of the federal holder’s programmatic and supplemental environmental analysis for the powerline facilities and documentation of the federal holder’s powerline facility vegetation management program.

2. Routine and Emergency Vegetation Management and Planting of Vegetation.

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

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

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

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- (2) The proposed routine vegetation management is covered by approval of the operating plan in Appendix F or by subsequent case-by-case environmental analysis and consultation; and
- (3) The authorized officer has not responded to the request in accordance with the specified timeframe in Appendix F.

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

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

3. **Disposal of Felled Trees and Planting of Vegetation.** The federal holder shall notify the authorized officer when approved felling, pruning, or destruction of vegetation has been completed. The Forest Service shall determine in advance of felling the method of disposal of trees felled in the permit area that meet utilization standards. Disposal may be by sale or without charge per 36 CFR Part 223, as may be most advantageous to the United States. Debris from felling that does not meet utilization standards shall also be disposed of according to methods determined by the Forest Service. Planting of vegetation in the permit area must have prior written approval from the authorized officer.

- Substitute the following Appendix A for Appendix A in the existing permit:

Appendix A

Definitions

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

<USER NOTES FOR SECTION A>

<Include Section A in permits issued to Bonneville Power Administration (Bonneville). Delete Section A in permits issued to other federal entities, and re-letter the remaining sections and

the cross-references in paragraphs E.2 and F.2 of this appendix.>

A. General References

1. **Conversion or Convert.** The process of replacing the authorization for existing powerline facilities and federal holder access roads under an historical MOU and supplement or under a LUGI with a special use authorization for a federal entity issued under the Federal Land Policy and Management Act (FLPMA).
2. **Coordinate.** To work together to seek and consider input from the other party to the FLPMA permit, including discussing and considering incorporation of that input in implementing the 2016 MOU, permit, and operating plan for the federal holder's permits for powerline facilities.
3. **Historical Memorandum of Understanding.** The 1960, 1966, 1967, or 1974 MOU between Bonneville Power Administration (Bonneville) and the Forest Service that provides for authorization of the federal holder's powerline facilities (referred to in these MOUs as "transmission lines") and access roads on National Forest System lands.
4. **Land Use Grant Instrument (LUGI).** A valid but outdated special use authorization issued under the 1974 historical MOU.
5. **Special Use Authorization.** A written permit, term permit, lease, or easement that authorizes use or occupancy of National Forest System lands and specifies the terms and conditions under which the use or occupancy may occur. See 36 CFR 251.51.
6. **Supplement.** A document which, in combination with an historical MOU, authorizes the use and occupancy of National Forest System lands for the federal holder's powerline facilities and access roads and which iterates the location of the federal holder's powerline facilities and access roads on National Forest System lands; specifications regarding vegetation management, including felling of hazard trees; the reference numbers for associated drawings; the acreage involved; and the requirement for a right-of-way management plan.

B. Abbreviations

CE or CX – Categorical Exclusion

FLPMA – Federal Land Policy and Management Act

NFS – National Forest System lands

POC – Point of Contact

SA – Supplement Analysis

C. Environmental Resources

1. National Environmental Policy Act

(a) **Categorical Exclusion (referred to as a CX by the federal holder and a CE by the Forest Service).** A category of actions which do not individually or cumulatively have a significant effect on the human environment, and which are therefore exempt from requirements to prepare an environmental impact statement (Council on Environmental Quality's regulations at Title 40 Code of Federal Regulations, Part 1508.4—Protection of Environment (40 CFR 1508.4)). The federal holder and the Forest Service have different NEPA implementing regulations that define their applicable categorical exclusions. See Title 36 Code of Federal Regulations, Part 220.6—Categorical Exclusions (36 CFR 220.6) for the Forest Service's categorical exclusions and Title 10 Code of Federal Regulations, Part 1021.410—Application of Categorical Exclusions (10 CFR 1021.410) for the United States Department of Energy's categorical exclusions.

(b) **Supplement Analysis.** A NEPA document prepared by the federal holder pursuant to Title 10 Code of Federal Regulations, Part 1021.314(c)—Supplemental Environmental Impact Statements (10 CFR 1021.314(c)) to determine whether (i) an existing Environmental Impact Statement (EIS) should be supplemented pursuant to Title 40 Code of Federal Regulations, Part 1502.9(c)—Draft, Final, and Supplemental Statements (40 CFR 1502.9(c)); (ii) a new EIS should be prepared; or (iii) no further NEPA documentation is required.

<USER NOTES FOR DEFINITION C.1(b)>

<Include the following paragraph in definition C.1(b) in permits issued to BPA. Delete the following paragraph in definition C.1(b) in permits issued to other federal entities.>

This term is referenced for informational purposes because the federal holder typically uses supplement analyses tiered to its transmission system vegetation management program EIS for routine vegetation management actions. See the federal holder's Transmission System Vegetation Management Program Final Environmental Impact Statement (FEIS) (June 2000) (DOE/EIS-0285),

https://www.bpa.gov/efw/Analysis/NEPADocuments/Pages/Vegetation_Management.aspx.

The EIS established a framework for addressing site-specific environmental analysis of the federal holder's vegetation management actions by (1) using the EIS planning steps to ensure consideration of all potential issues, (2) consulting the EIS to determine whether impacts had been previously considered, (3) applying the appropriate established mitigation measures, and (4) documenting the analysis in a supplement analysis as appropriate. Title 10 Code of Federal

Regulations, Part 1021.314—Supplemental Environmental Impact Statements.

D. Powerline Facility Infrastructure

1. **Conductor.** Cable or wire that transmits electricity.
2. **Fiber Optic Cable.** An all-dielectric, self-supporting, non-conducting cable consisting of a central core surrounded by buffer tubes containing optical fibers and covered with a protective polyethylene jacket; an optical ground wire; or an overhead ground wire with optical fibers integrated into the design of the cable to provide telecommunications capability as well as lightning protection.
3. **Overhead Ground Wire.** Grounded wire typically installed above powerline facility phase conductors or substations to intercept lightning strikes.
4. **Linear Right-of-Way.** An authorized right-of-way for a linear facility such as a road, trail, pipeline, powerline facility, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description.
5. **Powerline Facility.** One or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the federal holder; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.
6. **Structure.** A type of support for powerline facilities, overhead ground wires, and fiber optic cable consisting of wood (such as poles), concrete, or steel (such as lattice steel towers), depending on the size of the powerline facility.
7. **Tower.** A type of structure consisting of lattice steel.

E. Powerline Facility Activities and Projects

1. **New Construction.** A project that adds a new powerline facility at any voltage to the federal holder's electric transmission system where no powerline facilities have previously existed, and no special use authorization has been issued.
2. **Construction or Construction Activity or Project.** An activity or project involving any of the terms defined in paragraphs E.4 and E.5 and not including new construction.
3. **Maintenance.** An activity or project performed on the powerline facilities (including replacement of or addition of parts and structural components and other activities such

as wood pole replacements, hardware replacements, re-conductoring, electrical impairment removal, wood pole rebuilding, and moving structures) that is needed to ensure the powerline facilities continue to provide safe and reliable service.

4. **Routine Maintenance.** Repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (such as, insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
5. **Non-Routine Maintenance.** Realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.
 - (a) **Electrical Impairment Removal.** An activity needed to achieve the regulatory requirements for electrical clearance between a conductor and the ground or other objects, which may include raising or adding structures, ground excavation, or requesting third parties to move or remove buildings or other improvements under their control.
 - (b) **Realignment.** Moving structures and associated supported cables outside the linear alignment for a powerline facility due to environmental conditions (see clause II.C of the FLPMA permit).
 - (c) **Rebuild.** Replacement of existing cables as well as the majority of structures typically in the same linear alignment.
 - (d) **Re-conductor.** Replacement of existing conductor and other cables as applicable, where only very few structures are replaced, moved, or raised.
 - (e) **Refurbishment.** Replacement of powerline facility components as needed, such as conductors, ground wire, fiber optic cable, assemblies, structures, or hardware due to age or condition.
 - (f) **Upgrade.** Increasing the transfer capability of an existing powerline facility, which may also include a few structure replacements, adding intermediate structures or raising one or more structures, or ground removal to ensure conductor clearance.
 - (g) **Emergency Maintenance.** Immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability

and safety standards and as identified in an approved operating plan.

F. Operation and Maintenance of the Federal Holder's Fiber Optic Cable Attached to the Federal Holder's Powerline Facilities or Buried in the Permit Area Below or Near the Federal Holder's Powerline Facilities

1. **Fiber Optic Cable Installation.** Installation of fiber optic cable on an existing powerline facility or buried in the permit area below or near an existing powerline facility that is required to improve the federal holder's communications capability and that is needed to support the safe and reliable operation and maintenance of the federal holder's electric transmission system.
2. **Fiber Optic Cable Maintenance and Replacement.** Maintenance or replacement of fiber optic cable that is installed as defined in paragraph F.1.

G. Vegetation Management

1. **Emergency Vegetation Management.** Unplanned pruning or felling of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned pruning or felling of hazard trees on National Forest System lands adjacent to either side of the linear right-of-way that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
2. **Flashover.** An electric discharge over or around the surface of an insulated conductor that may result in fire through the ignition of surrounding objects.
3. **Hazard Tree.** For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter "vegetation" (whether located on National Forest System lands inside or outside the linear right-of-way for a powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the federal holder to be:
 - (a) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
 - (b) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan.

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4. **Iso-Clearance Map.** A graphic depiction using contour lines to portray the maximum permitted vegetation height above ground that does not violate the minimum clearance distance or other minimum prescribed clearance limits from conductors.
5. **Maximum Operating Sag.** The theoretical position of a conductor when operating at 100 degrees Celsius, which must be accounted for when determining the MVCD.
6. **Minimum Vegetation Clearance Distance.** A calculated minimum distance that is stated in feet or meters to prevent flashover between conductors and vegetation for various altitudes and operating voltages and that is measured from a conductor at maximum operating sag to vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the federal holder uses to determine whether vegetation poses a system reliability hazard to the powerline facility.
7. **Non-Emergency (Routine) Vegetation Management.** Planned actions as described in an approved operating plan periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan.
8. **Slash.** All vegetative debris resulting from the federal holder's vegetation management, including but not limited to limbs, tops, unmerchantable logs, bark, wood chunks, pushed out stumps, damaged brush, and damaged residual trees.
9. **Swing.** Horizontal conductor position with six pounds per square foot of wind and 15.5 degrees Celsius.
10. **Timber.** Any tree that has commercial value from lumber, chip, pulp, or veneer.
11. **Tree.** A woody, stemmed, perennial plant species, typically having a single stem or trunk with the potential to grow to a height greater than ten feet and bearing lateral branches at some distance from the ground.

H. Roads and Trails

1. **Access Road or Trail.** For purposes of this permit, a road or trail constructed, operated, and maintained by the federal holder that is necessary to access a powerline facility or its linear right-of-way.
2. **Road.** A motor vehicle route over 50 inches wide, unless identified and managed as a

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trail, Title 36 Code of Federal Regulations, Part 212.1--Definitions (36 CFR 212.1).

3. **Trail.** A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail (36 CFR 212.1).
4. **Forest Road or Trail.** A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the National Forest System and the use and development of its resources (36 CFR 212.1).
5. **National Forest System Road.** A forest road other than a road which has been authorized by a legally documented right-of-way held by a state, county, or other local public road authority (36 CFR 212.1).
6. **National Forest System Trail.** A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a state, county, or other local public road authority (36 CFR 212.1).
7. **Road or Trail Construction.** Building a road or trail where no road or trail has previously existed.
8. **Road or Trail Reconstruction.** Rebuilding an existing road or trail to increase its capacity, upgrade drainage crossings, or provide improved access, which may involve increasing the road or trail prism.

<USER NOTES FOR DEFINITION H.9>

<In the title of definition H.9, include the phrases "Road or Trail Improvement (Federal Holder)/" and "(Forest Service)" in permits issued to Bonneville. Delete the phrases "Road or Trail Improvement (Federal Holder)/" and "(Forest Service)" in permits issued to other federal entities.>

9. **Road or Trail Improvement (Federal Holder)/Road or Trail Maintenance (Forest Service).** The upkeep of an entire road or trail within the existing road or trail prism, including surface and shoulders, parking and side areas, structures, and traffic control devices, that is necessary to maintain or restore the road or trail in accordance with its original design standards.
- Add the phrase "and MVCD for Each Powerline Facility" to the title of Appendix C on the second page and in Appendix C of the existing permit.
 - Add the MVCD for each authorized powerline facility to Appendix C of the existing permit.

C-29. Operating Plans and Vegetation Management for Powerline Facilities Authorized by a Special Use Permit or Other Type of Special Use Authorization Issued to a Federal Entity.

Make the following amendments to all Special Use Permits, form FS-2700-4, and to all other types of special use authorizations (such as a memorandum of understanding between the Forest Service and Bonneville Power Administration plus a supplement or land use grant instrument) for powerline facilities operated by federal entities that were issued before February 10, 2022. When an operating plan is approved per 36 CFR 251.56(h)(5) and Forest Service Handbook 2709.11, Chapter 80, section 84, for a powerline facility operated by a federal entity under an authorization other than form FS-2700-4k, replace that authorization with the current version of form FS-2700-4k.

- Change any authority citations for the existing authorization to “Title V of the Federal Land Policy and Management Act, 43 U.S.C. 1761-1772.”
- Substitute the term “powerline facilities” for the term “transmission facilities” throughout the existing authorization.
- Add the following as the first paragraph to the existing authorization:

This powerline facility authorization for the [capacity and name of powerline facility or facilities] (the authorization), dated _____, is issued by the United States Department of Agriculture, Forest Service (the Forest Service), to [name of entity] (the federal holder). The linear right-of-way, access roads and trails, and any hazard trees outside the linear right-of-way for each powerline facility authorized by this authorization shall be referred to collectively as “the authorization area.” A legal description and a map of the authorization area and applicable minimum vegetation clearance distance for each powerline facility authorized by this authorization are contained in Appendix B, and the access roads and trails for each powerline facility authorized by this authorization are listed and identified on the map in Appendix C. The powerline facility or facilities authorized by this authorization shall be referred to collectively as “the powerline facilities.”

- Add without modification the following operating plan clause and vegetation management clause to the existing authorization:

Operating Plan

1. **Preparation.** The federal holder shall prepare an operating plan independently or in consultation with the authorized officer or the authorized officer’s designated representative. The operating plan shall be submitted by the federal holder and approved by the authorized officer or the authorized officer’s designated representative, consistent with the Forest Service’s authorities, prior to use and occupancy of the authorization area pursuant to this authorization and shall be attached to this authorization as Appendix D. At least every 10 years from the approval date of

the operating plan, the federal holder shall review and, as necessary or appropriate, propose updates to the operating plan to address changed conditions. Proposed updates to the operating plan that are deemed significant by the authorized officer shall be treated as proposed modifications and shall be submitted by the federal holder for review and approval by the authorized officer. Proposed updates that are deemed non-significant by the authorized officer may be made by written agreement of the federal holder and the authorized officer.

2. **Contents.** The operating plan shall apply to authorization area management for the powerline facilities and access roads and trails. The operating plan shall outline steps the federal holder 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 federal holder's operations for compliance with the terms and conditions of this authorization. The operating plan shall also outline the roles and responsibilities of the federal holder and the Forest Service with regard to management of the authorization area. The contents of the operating plan shall meet all the requirements enumerated in 36 CFR 251.56(h)(5) and Forest Service Handbook 2709.11, Chapter 80, section 84.

Vegetation Management

1. **Vegetation Management Activities.** The federal holder shall describe vegetation management activities as part of the operating plan. The description of vegetation management activities shall specify best management practices for felling, pruning, and destruction of trees, brush, shrubs, and other plants (hereinafter "vegetation") that are consistent with the federal holder's North American Electric Reliability Corporation (NERC)-compliant powerline facility vegetation management program and its associated environmental analyses. The description of vegetation management activities shall also identify the applicable MVCD for the powerline facilities and procedures for designating, marking, and felling or pruning hazard trees and other vegetation. The description of vegetation management activities shall also provide for prevention and control of invasive species, including invasive plants, within the authorization 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 federal holder shall follow prevention and control measures prescribed by the operating plan. In addition, the description of vegetation management activities shall provide for integration of native, non-invasive, low-growing vegetation that does not interfere with the powerline facilities and that promotes powerline facility reliability, reduces powerline facility maintenance costs, is compatible with the aesthetics and health of the native plant and animal life in the authorization area, and is consistent with the federal holder's NERC-compliant powerline facility vegetation management program and other vegetation management documents. The federal holder shall provide the Forest Service with a paper or electronic copy of the federal holder's programmatic and supplemental environmental

analysis for the powerline facilities and documentation of the federal holder's powerline facility vegetation management program.

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

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

- (1) The federal holder has submitted an email or letter to the authorized officer requesting approval of a single routine vegetation management project or an annual schedule of work for routine vegetation management in accordance with the specified timeframe in the approved operating plan;
- (2) The proposed routine vegetation management is covered by approval of the operating plan or by subsequent case-by-case environmental analysis and consultation; and
- (3) The authorized officer has not responded to the request in accordance with the specified timeframe in the approved operating plan.

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

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

vegetation management conducted, the reason it was conducted, the methods used to conduct it, and the resulting benefit.

3. **Disposal of Felled Trees and Planting of Vegetation.** The federal holder shall notify the authorized officer when approved felling, pruning, or destruction of vegetation has been completed. The Forest Service shall determine in advance of felling the method of disposal of trees felled in the authorization area that meet utilization standards. Disposal may be by sale or without charge per 36 CFR Part 223, as may be most advantageous to the United States. Debris from felling that does not meet utilization standards shall also be disposed of according to methods determined by the Forest Service. Planting of vegetation in the authorization area must have prior written approval from the authorized officer.
- Add the following Appendix A to the existing authorization:

Appendix A

Definitions

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

<USER NOTES FOR SECTION A>

<Include Section A in authorizations issued to Bonneville Power Administration (Bonneville). Delete Section A in authorizations issued to other federal entities, and re- letter the remaining sections and the cross-references in paragraphs E.2 and F.2 of this appendix.>

A. General References

1. **Conversion or Convert.** The process of replacing the authorization for existing powerline facilities and federal holder access roads under an historical MOU and supplement or under a LUGI with a special use authorization for a federal entity issued under FLPMA.
2. **Coordinate.** To work together to seek and consider input from the other party to the authorization, including discussing and considering incorporation of that input in implementing the 2016 MOU, authorization, and operating plan for the federal holder's authorizations for powerline facilities.
3. **Historical Memorandum of Understanding (MOU).** The 1960, 1966, 1967, or 1974 MOU between Bonneville Power Administration and the Forest Service that provides for authorization of the federal holder's powerline facilities (referred to in these MOUs as "transmission lines") and access roads on NFS lands.
4. **Land Use Grant Instrument (LUGI).** A valid but outdated special use authorization issued under the 1974 historical MOU.

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5. **Special Use Authorization.** A written permit, term permit, lease, or easement that authorizes use or occupancy of NFS lands and specifies the terms and conditions under which the use or occupancy may occur. See 36 CFR 251.51.
6. **Supplement.** A document which, in combination with an historical MOU, authorizes the use and occupancy of NFS lands for the federal holder's powerline facilities and access roads and which iterates the location of the federal holder's powerline facilities and access roads on NFS lands; specifications regarding vegetation management, including felling of hazard trees; the reference numbers for associated drawings; the acreage involved; and the requirement for a right-of-way management plan.

B. Abbreviations

CE or CX – Categorical Exclusion

FLPMA – Federal Land Policy and Management Act

NFS – National Forest System lands

POC – Point of Contact

SA – Supplement Analysis

C. Environmental Resources

1. National Environmental Policy Act (NEPA)

- (a) **Categorical Exclusion (referred to as a CX by the federal holder and a CE by the Forest Service).** A category of actions which do not individually or cumulatively have a significant effect on the human environment, and which are therefore exempt from requirements to prepare an environmental impact statement (Council on Environmental Quality's regulations at 40 CFR1508.4). The federal holder and the Forest Service have different NEPA implementing regulations that define their applicable categorical exclusions. See 36 CFR 220.6 for the Forest Service's categorical exclusions and 10 CFR 1021.410 for the United States Department of Energy's categorical exclusions.
- (b) **Supplement Analysis.** A NEPA document prepared by the federal holder pursuant to 10 CFR 1021.314(c) to determine whether (i) an existing EIS should be supplemented pursuant to 40 CFR 1502.9(c); (ii) a new EIS should be prepared; or (iii) no further NEPA documentation is required.

<USER NOTES FOR DEFINITION C.1(b)>

<Include the following paragraph in definition C.1(b) in authorizations issued to Bonneville.

Delete the following paragraph in definition C.1(b) in authorizations issued to other federal entities.>

This term is referenced for informational purposes because the federal holder typically uses supplement analyses tiered to its transmission system vegetation management program environmental impact statement (EIS) for routine vegetation management actions. See the federal holder's Transmission System Vegetation Management Program Final Environmental Impact Statement (FEIS) (June 2000) (DOE/EIS-0285),

https://www.bpa.gov/efw/Analysis/NEPADocuments/Pages/Vegetation_Management.aspx.

The EIS established a framework for addressing site-specific environmental analysis of the federal holder's vegetation management actions by (1) using the EIS planning steps to ensure consideration of all potential issues, (2) consulting the EIS to determine whether impacts had been previously considered, (3) applying the appropriate established mitigation measures, and (4) documenting the analysis in a supplement analysis as appropriate. 10 CFR 1021.314.

D. Powerline Facility Infrastructure

1. **Conductor.** Cable or wire that transmits electricity.
2. **Fiber Optic Cable.** An all-dielectric, self-supporting, non-conducting cable consisting of a central core surrounded by buffer tubes containing optical fibers and covered with a protective polyethylene jacket; an optical ground wire; or an overhead ground wire with optical fibers integrated into the design of the cable to provide telecommunications capability as well as lightning protection.
3. **Overhead Ground Wire.** Grounded wire typically installed above powerline facility phase conductors or substations to intercept lightning strikes.
4. **Linear Right-of-Way.** An authorized right-of-way for a linear facility such as a road, trail, pipeline, powerline facility, fence, water transmission facility, or fiber optic cable, whose linear boundary is delineated by its legal description.
5. **Powerline Facility.** One or more electric distribution or transmission lines authorized by a special use authorization, and all appurtenances to those lines supporting conductors of one or more electric circuits of any voltage for the transmission of electric energy, overhead ground wires, and communications equipment that is owned by the federal holder; that solely supports operation and maintenance of the electric distribution or transmission lines; and that is not leased to other parties for communications uses that serve other purposes.
6. **Structure.** A type of support for powerline facilities, overhead ground wires, and fiber optic cable consisting of wood (such as poles), concrete, or steel (such as lattice steel towers), depending on the size of the powerline facility.

7. **Tower.** A type of structure consisting of lattice steel.

E. Powerline Facility Activities and Projects

1. **New Construction.** A project that adds a new powerline facility at any voltage to the federal holder's electric transmission system where no powerline facilities have previously existed, and no special use authorization has been issued.
2. **Construction or Construction Activity or Project.** An activity or project involving any of the terms defined in paragraphs E.4 and E.5 and not including new construction.
3. **Maintenance.** An activity or project performed on the powerline facilities (including replacement of or addition of parts and structural components and other activities such as wood pole replacements, hardware replacements, re-conductoring, electrical impairment removal, wood pole rebuilding, and moving structures) that is needed to ensure the powerline facilities continue to provide safe and reliable service.
4. **Routine Maintenance.** Repair or replacement of any component of a powerline facility due to ordinary wear and tear, such as repair of broken strands of conductors and overhead ground wire; replacement of hardware (e.g., insulator assembly) and accessories; maintenance of counterpoise, vibration dampers, and grading rings; scheduled replacement of decayed and deteriorated wood poles; and aerial or ground patrols to perform observations, conduct inspections, correct problems, and document conditions to provide for operation in accordance with applicable reliability and safety standards and as identified in an approved operating plan or agreement.
5. **Non-Routine Maintenance.** Realigning, upgrading, rebuilding, or replacing an entire powerline facility or any segment thereof, including reconductoring, as identified in an approved operating plan or agreement.
 - (a) **Electrical Impairment Removal.** An activity needed to achieve the regulatory requirements for electrical clearance between a conductor and the ground or other objects, which may include raising or adding structures, ground excavation, or requesting third parties to move or remove buildings or other improvements under their control.
 - (b) **Realignment.** Moving structures and associated supported cables outside the linear alignment for a powerline facility due to environmental conditions.
 - (c) **Rebuild.** Replacement of existing cables as well as the majority of structures typically in the same linear alignment.
 - (d) **Re-conductor.** Replacement of existing conductor and other cables as applicable, where only very few structures are replaced, moved, or raised.

- (e) **Refurbishment.** Replacement of powerline facility components as needed, such as conductors, ground wire, fiber optic cable, assemblies, structures, or hardware due to age or condition.
- (f) **Upgrade.** Increasing the transfer capability of an existing powerline facility, which may also include a few structure replacements, adding intermediate structures or raising one or more structures, or ground removal to ensure conductor clearance.
- (g) **Emergency Maintenance.** Immediate repair or replacement of any component of a powerline facility that is necessary to prevent imminent loss, or to redress the loss, of electric service due to equipment failure in accordance with applicable reliability and safety standards and as identified in an approved operating plan.

F. Operation and Maintenance of the Federal Holder's Fiber Optic Cable Attached to the Federal Holder's Powerline Facilities or Buried in the Authorization Area Below or Near the Federal Holder's Powerline Facilities

- 1. **Fiber Optic Cable Installation.** Installation of fiber optic cable on an existing powerline facility or buried in the authorization area below or near an existing powerline facility that is required to improve the federal holder's communications capability and that is needed to support the safe and reliable operation and maintenance of the federal holder's electric transmission system.
- 2. **Fiber Optic Cable Maintenance and Replacement.** Maintenance or replacement of fiber optic cable that is installed as defined in paragraph F.1.

G. Vegetation Management

- 1. **Emergency Vegetation Management.** Unplanned pruning or felling of vegetation on National Forest System lands within the linear right-of-way for a powerline facility and unplanned pruning or felling of hazard trees on National Forest System lands adjacent to either side of the linear right-of-way that have contacted or present an imminent danger of contacting the powerline facility to avoid the disruption of electric service or to eliminate an immediate fire or safety hazard.
- 2. **Flashover.** An electric discharge over or around the surface of an insulated conductor that may result in fire through the ignition of surrounding objects.
- 3. **Hazard Tree.** For purposes of vegetation management for a powerline facility, any tree, brush, shrub, other plant, or part thereof, hereinafter "vegetation" (whether located on National Forest System lands inside or outside the linear right-of-way for a powerline facility), that has been designated, prior to failure, by a certified or licensed arborist, qualified vegetation management specialist, or forester under the supervision of the federal holder to be:

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- (a) Dead; likely to die or fail before the next routine vegetation management cycle; or in a position that, under geographical or atmospheric conditions, could cause the vegetation to fall, sway, or grow into the powerline facility before the next routine vegetation management cycle; and
 - (b) Likely to cause substantial damage to the powerline facility; disrupt powerline facility service; come within 10 feet of the powerline facility; or come within the MVCD as determined in accordance with applicable reliability and safety standards and as identified in the special use authorization for the powerline facility and the associated approved operating plan.
- 4. **Iso-Clearance Map.** A graphic depiction using contour lines to portray the maximum permitted vegetation height above ground that does not violate the minimum clearance distance or other minimum prescribed clearance limits from conductors.
 - 5. **Maximum Operating Sag.** The theoretical position of a conductor when operating at 100 degrees Celsius, which must be accounted for when determining the MVCD.
 - 6. **Minimum Vegetation Clearance Distance (MVCD).** A calculated minimum distance that is stated in feet or meters to prevent flashover between conductors and vegetation for various altitudes and operating voltages and that is measured from a conductor at maximum operating sag to vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility for purposes of felling or pruning hazard trees, which the federal holder uses to determine whether vegetation poses a system reliability hazard to the powerline facility.
 - 7. **Non-Emergency (Routine) Vegetation Management.** Planned actions as described in an approved operating plan periodically taken to fell or prune vegetation on National Forest System lands within the linear right-of-way for a powerline facility and on National Forest System lands adjacent to either side of the linear right-of-way for a powerline facility to fell or prune hazard trees to ensure normal powerline facility operations and to prevent wildfire in accordance with applicable reliability and safety standards and as identified in an approved operating plan.
 - 8. **Slash.** All vegetative debris resulting from the federal holder's vegetation management, including but not limited to limbs, tops, unmerchantable logs, bark, wood chunks, pushed out stumps, damaged brush, and damaged residual trees.
 - 9. **Swing.** Horizontal conductor position with six pounds per square foot of wind and 15.5 degrees Celsius.
 - 10. **Timber.** Any tree that has commercial value from lumber, chip, pulp, or veneer.

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11. **Tree.** A woody, stemmed, perennial plant species, typically having a single stem or trunk with the potential to grow to a height greater than ten feet and bearing lateral branches at some distance from the ground.

H. Roads and Trails

1. **Access Road or Trail.** For purposes of this authorization, a road or trail constructed, operated, and maintained by the federal holder that is necessary to access a powerline facility or its linear right-of-way.
2. **Road.** A motor vehicle route over 50 inches wide, unless identified and managed as a trail (36 CFR 212.1).
3. **Trail.** A route 50 inches or less in width or a route over 50 inches wide that is identified and managed as a trail (36 CFR 212.1).
4. **Forest Road or Trail.** A road or trail wholly or partly within or adjacent to and serving the National Forest System that the Forest Service determines is necessary for the protection, administration, and utilization of the NFS and the use and development of its resources (36 CFR 212.1).
5. **National Forest System Road.** A forest road other than a road which has been authorized by a legally documented right-of-way held by a state, county, or other local public road authority (36 CFR 212.1).
6. **National Forest System Trail.** A forest trail other than a trail which has been authorized by a legally documented right-of-way held by a state, county, or other local public road authority (36 CFR 212.1).
7. **Road or Trail Construction.** Building a road or trail where no road or trail has previously existed.
8. **Road or Trail Reconstruction.** Rebuilding an existing road or trail to increase its capacity, upgrade drainage crossings, or provide improved access, which may involve increasing the road or trail prism.

<USER NOTES FOR DEFINITION H.9>

<In the title of definition H.9, include the phrases "Road or Trail Improvement (Federal Holder)"/" and "(Forest Service)" in authorizations issued to Bonneville. Delete the phrases "Road or Trail Improvement (Federal Holder)"/" and "(Forest Service)" in authorizations issued to other federal entities.>

9. **Road or Trail Improvement (Federal Holder)/Road or Trail Maintenance (Forest Service).** The upkeep of an entire road or trail within the existing road or trail prism,

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including surface and shoulders, parking and side areas, structures, and traffic control devices, that is necessary to maintain or restore the road or trail in accordance with its original design standards.

- Add the following Appendix B to the existing authorization and add the MVCD for each authorized powerline facility to Appendix B in the existing authorization.

Appendix B

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

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- Add the following Appendix C to the existing authorization:

Appendix C

**List And Location of Access Roads and Trails and
National Forest System Roads and National Forest System Trails Used by
the Federal Holder**

* * * * *

C-30. GT - Use of Site or Facility Name by Existing Holder. Include clause C-26 in permits other than form FS-2700-4h, Special Use Permit for Campground and Related Granger-Thye Concessions, authorizing recreation special uses involving federally owned facilities where the holder is the same as the holder in the previous permit.

Use of Site or Facility Name. Any new use by the holder of the name of a site or facility enumerated in the permit area description on the first page of this permit (hereinafter “the property”) to identify goods and services provided under this permit requires prior written approval from the authorized officer. New uses of the property may be approved only if they are conducted in connection with the use and occupancy authorized by this permit and in a manner consistent with the Forest Service’s mission, as determined by the Forest Service. Existing uses of the property may continue during the term of this permit without written approval from the authorized officer. Upon termination or revocation of this permit without issuance of a new permit to the holder, any permission granted by the authorized officer for new uses of the property terminates, the holder shall discontinue all new and existing uses of the property, and the holder relinquishes all rights arising from the holder’s use of the property and waives any claim of rights arising from holder’s use of the property against the Forest Service and any subsequent holder’s use of the property.

C-31. GT - Use of Site or Facility Name by New Holder. Include clause C-27 in permits other than form FS-2700-4h, Special Use Permit for Campground and Related Granger-Thye Concessions, authorizing new recreation special uses involving federally owned facilities or authorizing existing recreation special uses where the holder is different from the holder in the previous permit.

Use of Site or Facility Name. Any use by the holder of the name of a site or facility enumerated in the permit area description on the first page of this permit (hereinafter “the property”) to identify goods and services provided under this permit requires prior written approval from the authorized officer. Uses of the property may be approved only if they are conducted in connection with the use and occupancy authorized by this permit and in a manner consistent with the Forest Service’s mission, as determined by the Forest Service. The holder acknowledges that the property is owned solely by the Forest Service, the holder’s use of the property shall inure to the exclusive benefit of the Forest Service, and the holder shall not acquire any rights in the property through the holder’s use of it. Upon termination or revocation of this permit without issuance of a new permit to the holder, any permission granted by the authorized officer for use of the property terminates, the holder shall discontinue all use of the property, and the holder relinquishes all rights arising from the holder’s use of the property and waives any claim of rights arising from holder’s use of the property against the Forest Service and any subsequent holder’s use of the property.

52.4 - D Clauses: Resource Protection

D-4. Land Markers and Monuments.

Land Markers and Monuments. The holder shall protect in place all public land survey monuments, private property corners, and boundary markers on National Forest System lands. If any of these land markers or monuments is destroyed in connection with the authorized use and occupancy, the holder shall reestablish or reference them, as applicable, in accordance with (1) the procedures in the Manual of Instructions for the Survey of the Public Land of the United States; (2) the specifications of the county surveyor; or (3) the specifications of the Forest Service. The holder shall also amend any associated survey records as required by law. Nothing in this clause shall relieve the holder of liability for willful destruction or modification of any federal survey marker as provided in Title 18 United States Code, section 1858 (18 U.S.C. 1858).

D-5. Cutting, Disposal, and Planting of Vegetation.

Cutting, Disposal, and Planting of Vegetation. This permit does not authorize the cutting of trees, brush, shrubs, and other plants (“vegetation”). Vegetation may be cut, destroyed, or trimmed only after the authorized officer or the authorized officer's designated representative has approved in writing and marked or otherwise identified what may be cut,

destroyed, or trimmed. The holder shall notify the authorized officer when approved cutting, destruction, or trimming of vegetation has been completed. Felled trees in the permit area that meet utilization standards must be disposed of by the Forest Service per 36 CFR Part 223 by sale or without charge, as may be most advantageous to the United States as determined by the Forest Service. Planting of vegetation in the permit area must have prior written approval from the authorized officer.

D-9. Ground Surface Protection and Restoration.

Ground Surface Protection and Restoration. The holder shall prevent and control soil erosion and gulying on National Forest System lands in and adjacent to the permit area resulting from construction, operation, maintenance, and termination of the authorized use. The holder shall construct authorized improvements so as to avoid accumulation of excessive amounts of water in the permit area and encroachment on streams. The holder shall revegetate or otherwise stabilize (for example, by constructing a retaining wall) all ground where the soil has been exposed as a result of the holder's construction, maintenance, operation, or termination of the authorized use.

D-10. Invasive Species Prevention and Control.

Invasive Species Prevention and Control. The holder shall be responsible for the prevention and control of invasive species, including invasive plants, within the permit 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 holder shall follow invasive species prevention and control measures prescribed by the operating plan.

D-11. Protection of Habitat of Threatened and Endangered Species, Sensitive Species and Species of Conservation Concern and Their Habitat

Protection Of Habitat 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, Title 16 United States Code, section 1531 *et seq.*, as amended, or within designated critical habitat shall be shown in the communications site management plan or 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 in the communications site management plan or on a map in an appendix to this lease shall be promptly reported to the other party and shall be added to the communications site management plan or 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 Forest Service Manual 2670 shall be shown in the communications site management plan or 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 in the communications site management plan or on a map in an appendix to this lease shall be promptly reported to the other party and shall be added to the communications site management plan or to the map.

D-16. GT - Alteration of Federally Owned Improvements. Include clause D-16 in any authorization for federally owned improvements, other than form FS-2700-4h and FS-2700-13.

Alteration of Federally Owned Improvements. If during the term of this permit any federally owned improvements are altered in any way, the material, equipment, fixtures or other appurtenances that are affixed to or made a part of those improvements in connection with the alteration shall become the property of the United States, regardless of whether the work is performed by the holder or any other party. The holder shall not be entitled to any compensation for that property, other than to the extent it qualifies for fee offset.

D-17. Timber Payment.

Timber Payment. All National Forest timber cut or destroyed in the construction of the authorized improvements shall be paid for at current stumpage rates for similar timber in the National Forest. Young-growth timber below merchantable size will be paid for at current damage-appraisal value; and all slash and debris resulting from the cutting or destruction of such timber shall be disposed of as necessary or as the Forest Service may direct.

D-18. Pesticide Use.

Pesticide Use

1. **Authorized Officer Concurrence.** Pesticides may not be used outside of buildings in the permit 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 holder shall, on the due date established by the authorized officer, submit requests for any new, or continued, pesticide usage. The Pesticide-Use Proposal shall cover a 12-month period of planned use. The Pesticide-Use Proposal shall be submitted at least 60 days in advance of pesticide application. Information essential for review shall be provided in the form specified. Exceptions to this schedule may be allowed, subject to emergency request and approval, only when unexpected outbreaks of pests require control measures which were not anticipated at the time a Pesticide-Use Proposal was submitted.
3. **Safety Plan.** Before applying pesticides in the permit area, the holder shall submit to the authorized officer a safety plan that includes, at a minimum, a precise statement of the treatment objectives; a description of the equipment, materials, and supplies to be used, including pesticide formulation, quantities, and application methods; a description of the lines of responsibility for project planning, project monitoring, and after-action review; a description of any necessary interagency coordination; a copy of the current Pesticide-Use Proposal for the permit; a description of the process by which treatment effectiveness will be determined; and a spill plan, communications plan, security plan, and when required by applicable local requirements, a provision for prior notification to sensitive individuals.
4. **Reporting.** By September 30th annually, the holder shall submit to the authorized officer a written report of each pesticide application project completed during the previous 12- month period. The report shall contain information pertaining to the pesticide application projects as requested by the authorized officer.
5. **Labeling, Laws, and Regulations.** Label instructions and all applicable laws and regulations shall be strictly followed in the application of pesticides and disposal of excess materials and containers. No pesticide waste, excess materials, or containers shall be disposed of in any area administered by the Forest Service.

D-23. Water Wells and Associated Pipelines.

Water Wells and Associated Pipelines

1. **State and Local Documentation for Water Wells.** The holder shall obtain all required state and local water permits, licenses, registrations, certificates, and rights for existing and proposed water wells and shall provide a copy of this documentation to the authorized officer. For proposed water well construction, development, or redevelopment, this documentation shall be provided prior to commencement of work.
2. **Water Well Construction and Development.** For water well construction and development (or redevelopment), the holder shall prepare a well construction and development plan and submit it to the authorized officer for approval. The well construction and development plan must have written approval from the authorized officer before well construction or development commences. The holder shall follow applicable federal, state, and local standards for design, construction, and development of new wells or redevelopment of existing wells. If these standards do not exist, the holder 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 and development. Only non-chlorinated, potable water may be injected during construction and development of wells that will be used for monitoring or water withdrawal. Copies of all documentation for drilling, constructing, or developing wells, including all drilling, boring, and well construction or development logs, shall be provided to the authorized officer within 60 days of completion of work.
3. **Water Conservation Plan.** For new or redeveloped wells, as part of a well development plan, the holder shall prepare and submit for written approval by the authorized officer a water conservation plan utilizing appropriate strategies to limit the amount of water removed from National Forest System lands.
4. **Water Well Decommissioning.** The holder shall properly decommission and abandon all water wells that are no longer needed or maintained in accordance with applicable federal, state, and local standards for water well abandonment. If these standards do not exist, the holder shall follow applicable standards issued by the ASTM, AWWA, or NGWA. At least 30 days prior to initiation of well decommissioning, the holder shall submit a well decommissioning plan to the authorized officer. The well decommissioning plan must have written approval from the authorized officer before well decommissioning commences. All documentation of well decommissioning shall be provided to the authorized officer within 60 days of completion of the work.

D-24 through D-27. Water Facilities and Water Rights. One or more of these clauses apply to all special use authorizations for use or occupancy that utilizes water, including surface and ground water, and that requires water rights, including riparian and appropriative water rights. Choose the appropriate clauses in consultation with the local Forest Service Water Rights Program Manager. Maintain documentation of privately held water rights in the permit file that includes, at a minimum, the owner's name, state water right identification number, legal documentation of the rights, the purpose of the water use, and the quantity of water used. See FSM 2541.32 for related policy and delete all user notes prior to printing.

D-24. Water Facilities and Water Rights. Include clause D-24 in authorizations for new or existing special uses when they will involve the use of water and the water development and use will occur on National Forest System lands. Do not include clause D-24 in ski area permits. The Ski Area Term Special Use Permit (form FS-2700-5b) contains its own water rights and water facilities clause for water rights and uses for authorized purposes within the permit boundary. Select or fill in the appropriate use in brackets and delete the remaining bracketed language.

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 lands may be initiated, developed, certified, or adjudicated by the holder unless expressly authorized in this permit. The authorization of any water facilities in the permit area is granted to allow use of water only in connection with the [recreation residence, resort, marina, or other use] authorized by this permit. If the use of any water facilities in connection with this [recreation residence, resort, marina, or other use] ceases, the authorization to use any associated water facilities also ceases. 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 National Forest System 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 permit shall result in termination of the authorization for that water facility.
2. **Water Rights.** This permit 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, local, or other law and all water rights otherwise recognized under state law. Any necessary water rights must be acquired and maintained by the holder in accordance with state law and the terms of this permit. After this permit is issued, all water rights obtained by the holder for facilities that divert or pump water from sources located on National Forest System lands for use on National Forest System 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 water rights shall be the responsibility of the holder and not the responsibility of the United States.

<USER NOTES FOR PARAGRAPH 3>

<Include paragraph 3 when water rights required for the use to be authorized have already been obtained in accordance with state law in the name of the holder; acquisition of those water rights did not violate the terms of the permit; and the water development and use will occur on National Forest System lands. Otherwise delete paragraph 3. Select or fill in the appropriate use in brackets and delete the bracketed language as appropriate. When paragraph 3 is included in a permit, the notary clause must be added to the permit after the signature block. Additionally, when the authorized officer is exercising the power of attorney under clause 3.d to effectuate transfer of water rights to a succeeding permit holder or the United States, the permit and the deed transferring title must be provided to the state engineer's office and the appropriate County Recorder's office.>

3. Water Rights Acquired in the Name of the Holder

- (a) **Identification of Water Rights.** The holder has obtained the following water rights for use under this permit in the holder's name:

State ID #: _____

Owner: _____

Purpose of Use: _____

Decree, License, or Certificate: _____

Point of Diversion: _____

- (b) **Termination or Revocation for Reasons Other Than Nonuse.** Upon termination or revocation or of this permit, other than revocation for nonuse, the holder shall transfer the water rights enumerated in clause 3a to any succeeding permit holder, for use only in connection with the [recreation residence, resort, marina, or other use] authorized by this permit, provided that if that use is not reauthorized, the holder shall promptly petition in accordance with state law to remove from NFS lands the point of diversion and water use associated with the water rights enumerated in clause 3a or shall transfer these water rights to the United States.
- (c) **Revocation for Nonuse.** Upon revocation of this permit for nonuse, the holder shall transfer any of the water rights enumerated in clause 3a that remain in the name of the holder at the time of revocation to the United States to hold for the benefit of

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any succeeding permit holder for use only in connection with that [recreation residence, resort, marina, or other use], provided that if that use is not reauthorized and the holder has not petitioned to remove those water rights per clause 3b, the holder shall transfer the water rights to the United States.

- (d) **Documentation of Transfer.** The holder and the holder's assigns shall execute and properly file any document necessary to transfer ownership of the water rights enumerated in clause 3.a to a succeeding permit holder or the United States. By executing this permit, the holder hereby grants limited power of attorney to the authorized officer to execute any document on behalf of the holder as may be necessary to transfer the water rights enumerated in clause 3.a to a succeeding permit holder or the United States.

Holder's initials and date: _____

- (e) **Waiver.** The holder waives any claims against the United States for compensation for any water rights that are transferred, removed, or relinquished as a result of revocation, including revocation for nonuse, or termination of this permit, or for compensation in connection with imposition of any conditions on installation, operation, maintenance, and removal of water facilities associated with water rights enumerated in clause 3a.

<USER NOTES FOR NOTARY CLAUSE>

<Include the following clause after the signature block in the permit when paragraph 3 has been included in the permit. A limited power of attorney must be notarized.>

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

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

D-25. Water Facilities and Water Rights. Include clause D-25 in authorizations for a right-of-way across National Forest System lands to divert, pump, store, or convey water for a non-Forest Service use off National Forest System lands. Water rights associated with use of that right-of-way may be acquired in the name of the holder. Examples include water rights associated with ditch bill easements and water rights associated with a right-of-way across National Forest System lands for a facility licensed by the Federal Energy Regulatory Commission, a reservoir, or a municipal water pipeline.

Water Facilities and Water Rights. This permit does not confer any water rights on the holder. Any necessary water rights must be acquired by the holder in accordance with state

law. Any expenses for acquiring water rights shall be the responsibility of the holder. The United States reserves the right to place any conditions on installation, operation, maintenance, and removal of facilities to pump, divert, store, or convey water on National Forest System lands covered by this permit that are necessary to protect public property, public safety, and natural resources on National Forest System lands in compliance with applicable law. The holder waives any claims against the United States for compensation in connection with imposition of any conditions on installation, operation, maintenance, and removal of water facilities under this permit.

D-26. Nullification or Modification of Water Rights. In consultation with the local OGC, include clause D-26 following clause D-24, D-25, or D-29 if a water right has been properly claimed under state law, but a final order regarding that claim has not been issued.

Nullification or Modification of Water Rights

1. **Nullification.** Authorization of any facilities to pump, divert, store, or convey water under this permit shall cease upon nullification in a state proceeding of the holder's right to use water being pumped, diverted, stored, or conveyed by those facilities.
2. **Modification.** Authorization of any facilities to pump, divert, store, or convey water under this permit shall be modified to make use of those facilities consistent with any modification of the holder's water rights that occurs as a result of any state proceedings.

D-27. Minor Water Uses. Include clause D-27 in authorizations for minor water uses that do not require water rights, such as water use in connection with recreation residences in a state that does not require water rights for domestic use or water use in connection with priority use outfitting and guiding permits. Consult the local Forest Service Water Rights Program Manager regarding applicable state requirements.

Water Rights. This permit does not confer any water rights on the holder. Water rights are not required by state law and may not be acquired to exercise the minor water uses authorized by this permit.

D-28 and D-29. Alternate Water Rights and Water Facilities Clauses for Recreation Residences When Water Rights and Water Facilities are Held by an Association.

D-28. Water Rights and Water Facilities. Include clause D-28 in recreation residence permits when a separate permit will be issued to authorize water rights acquired by the holders' recreation residence association.

Water Facilities and Water Rights. This permit does not confer any water rights on the holder. Water rights and water facilities associated with this permit are addressed in [authorization ID], which is a separate permit issued to [name of association] and which is incorporated into this permit as an attachment.

D-29. Water Facilities and Water Rights. Include clause D-29 in permits issued to a recreation residence association for water rights and water facilities held by the association.

Water Facilities and Water Rights. This permit is issued to [name of association] to address water rights and water facilities that serve recreation residences authorized by the following permits: [authorization IDs]. All these recreation residence permits are incorporated into this permit by reference.

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 lands may be initiated, developed, certified, or adjudicated by the holder unless expressly authorized in this permit. The authorization of any water facilities in the permit area is granted to allow use of water only in connection with the recreation residences authorized by the permits identified in this clause. If the use of any water facilities in connection with these recreation residences ceases, the authorization to use any associated water facilities also ceases. 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 National Forest System lands in compliance with applicable law. Any change in a water facility, including a change in the ownership of or beneficial use of water or location of use of water from a water facility that is not expressly authorized in this permit shall result in termination of the authorization for that water facility.
2. **Water Rights.** This permit 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, local, or other law and all water rights otherwise recognized under State law. Any necessary water rights must be acquired and maintained by the holder in accordance with state law and the terms of this permit. After this permit is issued, all water rights obtained by the holder for facilities that divert or pump water from sources located on National Forest System lands for use on National Forest System 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 water rights shall be the responsibility of the holder and not the responsibility of the United States.

<USER NOTES FOR PARAGRAPH 3>

<Include paragraph 3 when water rights required for the use to be authorized have already been obtained in accordance with state law in the name of the holder; acquisition of those water rights did not violate the terms of the permit; and the water development and use will occur on National Forest System lands. Otherwise delete paragraph 3. When paragraph 3 is included in a permit, the notary clause must be added to the permit after the signature block. Additionally, when the authorized officer is exercising the power of attorney under paragraph

3.d to effectuate transfer of water rights to a succeeding permit holder or the United States, the permit and the deed transferring title must be provided to the state engineer's office and the appropriate county recorder's office.>

3. Water Rights Acquired in the Name of the Holder

- (a) **Identification of Water Rights.** The holder has obtained the following water rights for use under this permit in the holder's name:

State ID #: _____

Owner: _____

Purpose of Use: _____

Decree, License, or Certificate: _____

Point of Diversion: _____

- (b) **Termination or Revocation for Reasons Other Than Nonuse.** Upon termination or revocation of this permit, other than revocation for nonuse, the holder shall transfer the water rights enumerated in clause 3a to any succeeding permit holder, for use only in connection with the recreation residences authorized by the permits identified in this clause, provided that if none of the recreation residences are reauthorized, the holder shall promptly petition in accordance with state law to remove from National Forest System lands the point of diversion and water use associated with the water rights enumerated in clause 3.a or shall transfer these water rights to the United States.
- (c) **Revocation for Nonuse.** Upon revocation for nonuse of the recreation residence permits identified in this clause, the holder shall transfer any of the water rights enumerated in clause 3a that remain in the name of the holder at the time of revocation to the United States to hold for the benefit of any succeeding permit holder for use only in connection with the recreation residences authorized by the permits identified in this clause, provided that if none of those recreation residences is reauthorized, and the holder has not petitioned to remove those water rights per clause 3.b, the holder shall transfer the water rights to the United States.
- (d) **Documentation of Transfer.** The holder and the holder's assigns shall execute and properly file any document necessary to transfer ownership of the water rights enumerated in clause 3.a to a succeeding permit holder or the United States. By executing this permit, the holder hereby grants limited power of attorney to the authorized officer to execute any document on behalf of the holder as may be necessary to transfer the water rights enumerated in clause 3.a to a succeeding

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permit holder or the United States.

Holder's initials and date: _____

- (e) **Waiver.** The holder waives any claims against the United States for compensation for any water rights that are transferred, removed, or relinquished as a result of revocation, including revocation for nonuse, or termination of this permit, or for compensation in connection with imposition of any conditions on installation, operation, maintenance, and removal of water facilities associated with water rights enumerated in clause 3a.

<USER NOTES FOR NOTARY CLAUSE>

<Include the following clause after the signature block in the permit when paragraph 3 has been included in the permit. A limited power of attorney must be notarized.>

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

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

D-30. Water Facilities and Water Rights - Ski Areas in Prior Appropriation Doctrine States.

Include clause D-30 in ski area permits in prior appropriation doctrine states when these permits are issued, reissued, or modified under 36 CFR 251.61. Do not use clause D-30 in eastern states utilizing a riparian doctrine system. Clause D-30 supersedes all previous ski area water rights clauses in the Directive System. When inserting Clause D-30, remove any prior ski area water rights clauses from the ski area permit. If there is a conflict between this ski area water clause and any other Forest Service permit clause regarding water rights or water facilities, this clause shall control. Do not apply the possessory interest policy in FSM 2541.32, paragraph 2, to ski area permits.

Before issuing a new or modified ski area permit in a prior appropriation doctrine state, the authorized officer shall:

1. Ensure that water facilities on National Forest System (NFS) lands that are used primarily for operation of the ski area are authorized by the ski area permit, designated on a map attached to the permit, and included in an inventory in Appendix [letter] to this permit. However, existing water facilities on NFS lands which are authorized by a separate, valid special use permit may remain under such separate authorization, including upon reissuance, if eligible.

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2. Require the applicant to submit documentation prepared by the applicant's qualified hydrologist or licensed engineer demonstrating that the applicant holds or can obtain a sufficient quantity of water to operate the permitted portion of the ski area. The documentation submitted shall identify all water sources, water rights, and water facilities necessary to demonstrate a sufficient quantity of water to operate the ski area, including all original water rights as defined in paragraph F.3.a(2) of clause D-30, all water facilities to be authorized by the ski area permit, and any existing restrictions on withdrawal or diversion of water that are required to comply with a statute or an involuntary court order that is binding on the Forest Service.

Before authorizing a new water facility under a ski area permit, the authorized officer shall require the holder to submit documentation prepared by the holder's qualified hydrologist or licensed engineer demonstrating that the holder has sufficient water or water rights to operate the water facility.

"Used primarily for operation of the ski area" in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than any other use.

"Sufficient quantity of water to operate the ski area" means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the applicant's qualified hydrologist or licensed engineer, the applicant has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities to be authorized under the ski area permit in accordance with the proposed operating plan.

Optional paragraph F.1.f should be added to ski area permits in California, which has both prior appropriation doctrine and riparian doctrine systems.

F. Water Facilities and Water Rights

"Used primarily for operation of the ski area" in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than for any other use.

"Sufficient quantity of water to operate the ski area" means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the holder's qualified hydrologist or licensed engineer, the holder has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities authorized under the ski area permit in accordance with the approved operating plan.

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1. Water Facilities.

- (a) The term “water facility” means a facility located on NFS lands that diverts withdraws, stores, or distributes water, such as a diversion, ditch, pipeline, reservoir, well, tank, impoundment structure, or similar facility or feature.
- (b) The term “ski area water facility” means any water facility on NFS lands that is authorized by this permit and used primarily for operation of the ski area authorized by this permit (hereinafter “ski area”).
- (c) The authorized officer may place conditions, as necessary to protect public property, public safety, cultural resources, and natural resources on NFS lands, on the installation, operation, maintenance, and removal of any water facility, but only in accordance with applicable law. Clause [Cite to IV.F or corresponding section and clause letter for the entire Water Facilities and Water Rights clause where it is included in the permit] does not expand or contract the agency’s authority to place conditions on the installation, operation, maintenance, and removal of water facilities at issuance or reissuance of the permit, throughout the permit term, or otherwise. The holder must comply with present and future laws, regulations, and other legal requirements in accordance with section I of this permit.
- (d) Only ski area water facilities may be authorized by this permit.
- (e) If due to a change (for example, due to a change in the ownership of the water facility or the associated water rights or a change in the beneficial use, location, or season of use of the water) a ski area water facility will primarily be used for purposes other than operation of the ski area, the authorization for that ski area water facility under this permit shall terminate. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, the holder must obtain a separate special use authorization to operate that water facility or to develop any new water facility on NFS lands that is used primarily for purposes other than operation of the ski area. When such facilities continue to support approved ski area operations at any time of year, the separate special use authorization for these water facilities shall not contain any possessory interest policy based on FSM 2541.32, paragraph 2 (or similar clauses), any waiver provision, or any power of attorney provision. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, if the holder does not obtain a separate special use authorization for these water facilities, the holder shall remove them from NFS lands.

<USER NOTE FOR PARAGRAPH F.1.f>

<Insert paragraph F.1.f in permits issued in California, which has both prior appropriation doctrine and riparian doctrine systems. Otherwise, omit this paragraph.>

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(f) This permit does not convey, dispose of, extinguish, or otherwise effect a transfer of any title, rights, or interest of the United States or the holder as a riparian or littoral landowner. The United States and the holder retain all rights, title, and interests they have as riparian or littoral landowners.

2. **Water Rights.** The term “water right” as used below means a right to use water that is recognized under state law under the prior appropriation doctrine. This permit does not confer any water rights.

3. **Acquisition and Maintenance of Water Rights**

(a) **Terms**

(1) The term “ski area water right” means any water right for use of water from a point of diversion on NFS lands, either inside or outside the permit boundary, that is primarily for operation of the ski area.

(2) The term “original water right” means any existing or new ski area water right with a point of diversion that was or is, at all times during its use, located within the permit boundary for this ski area and originally established under state law through an application for a decree to state water court, permitting, beneficial use, or otherwise recognized method of establishing a new water right, in each case by the holder or a prior holder of the ski area permit. The term “original water right” shall not include any “acquired water right” and shall not be deemed to become an “acquired water right” by virtue of the sale of the original water right to a subsequent holder of the ski area permit.

(3) The term “acquired water right” means any ski area water right that is purchased, bartered, exchanged, leased, or contracted by the holder or by any prior holder, except as expressly provided in the last sentence of paragraph F.3.a(2).

(b) An inventory of all ski area water facilities and original water rights is included in Appendix [letter] of this permit and shall be updated by the holder upon reissuance of this permit, upon installation or removal of a ski area water facility, when a listed ski area water facility is no longer authorized by this permit, or when an original water right is no longer used for operation of the ski area.

(c) Original water rights must be established in accordance with applicable state law. The holder, not the United States, shall bear the cost of establishing, acquiring, maintaining, and perfecting original water rights, including any original water rights owned solely or jointly by the United States.

(d) Original water rights owned solely by the United States and the United States’

interest in jointly owned original water rights shall remain in federal ownership. Notwithstanding the holder's obligation to maintain original water rights owned by the United States, the United States reserves the right to take any action necessary to maintain and protect those water rights, including submitting any applications or other filings that may be necessary to protect the water rights.

4. Ensuring Sufficiency of Water Rights and Water for Permitted Ski Area Operations

- (a) Where the United States solely or jointly owns water rights used by the holder, the Forest Service shall not divide or transfer ownership of or seek any change in those water rights that would adversely affect their availability for operation of the ski area during the term of this permit, unless required to comply with a statute or an involuntary court order that is binding on the Forest Service.
- (b) Where the holder solely or jointly owns original water rights, the holder shall not divide or transfer ownership of or seek any change in those water rights that would adversely affect their availability for operation of the ski area during the term of this permit, unless approved in writing in advance by the authorized officer. In deciding whether to grant this approval, the authorized officer shall consider any documentation prepared by the holder's qualified hydrologist or licensed engineer demonstrating that such action will not result in a lack of a sufficient quantity of water to operate the permitted portion of the ski area.
- (c) At any time and solely within its discretion, the holder may seek to change, abandon, lease, divide, or transfer ownership of or take other actions with respect to acquired water rights. Following such actions, paragraph F.1.e shall apply to the associated ski area water facilities.

5. Transfer of Certain Water Rights with Sale of the Ski Area Improvements

- (a) Upon termination or revocation of this permit, the holder shall offer to sell the holder's interest in any solely or jointly owned original water rights at market value to the succeeding permit holder. If the succeeding permit holder declines to purchase original water rights owned solely by the holder, the holder may transfer them to a third party. If the succeeding permit holder declines to purchase the holder's interest in original water rights jointly held with the United States, the holder shall offer to sell that interest at market value to the United States. If the United States declines to purchase that interest, the holder may abandon, divide, lease, or transfer its interest at its sole discretion. This clause imposes no restrictions on acquired water rights. There are no restrictions on the transfer or abandonment of acquired water rights. In all instances, the holder shall retain the full amount of any consideration paid for water rights. Following such actions, paragraph F.1.e shall apply to the associated ski area water facilities.

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- (b) If the Forest Service does not reauthorize the ski area, the holder may submit a proposal to the Forest Service for a permit authorizing a different use for the ski area water facilities. If a different use is not authorized for those water facilities, the holder shall remove them from NFS lands. The holder may, in its sole discretion, abandon, divide, lease, or transfer any water rights solely owned by the holder. The holder shall offer to sell to the United States the holder's interest in original water rights jointly owned with the United States at market value. If the United States declines to purchase that interest, the holder may abandon, divide, lease, or transfer its interest at its sole discretion.

Appendix [Letter]

Inventory of Ski Area Water Facilities and Original Water Rights

<List only ski area water facilities authorized by this permit and original water rights.>

Ski Area Water Facilities (if none, so state)

Facility Name	Facility Location	Type of Facility	Capacity	Purpose of Use

Original Water Rights (if none, so state)

State ID #	Owner	Purpose of Use	Decree, License, or Certificate #	Point of Diversion	State-Approved Place of Use

D-31. Water Facilities and Water Rights – Ski Areas in Riparian Doctrine States. Include clause D-31 in ski area permits in riparian doctrine states when these permits are issued, reissued, or modified under 36 CFR 251.61. Do not use clause D-31 in western states utilizing a prior appropriation doctrine system. Clause D-31 supersedes all previous ski area water rights clauses in the Directive System. When inserting clause D-31, remove any prior ski area water rights clauses from the ski area permit. If there is a conflict between this ski area water clause and any other Forest Service permit clause regarding water rights or water facilities, this clause shall control. Do not apply the possessory interest policy in FSM 2541.32, paragraph 2, to ski area permits.

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Before issuing a new or modified ski area permit in a riparian doctrine state, the authorized officer shall:

1. Ensure that all water facilities on National Forest System (NFS) lands that are used primarily for operation of the ski area are authorized by the ski area permit, designated on a map attached to the permit, and included in an inventory in Appendix [letter] to this permit. However, existing water facilities on NFS lands which are authorized by a separate, valid special use permit may remain under such separate authorization, including upon reissuance, if eligible.
2. Require the applicant to submit documentation prepared by the applicant's qualified hydrologist or licensed engineer demonstrating that the applicant holds or can obtain a sufficient quantity of water to operate the permitted portion of the ski area. The documentation submitted shall identify all water sources, water rights, and water facilities necessary to demonstrate a sufficient quantity of water to operate the ski area, all water facilities to be authorized by the ski area permit, and any existing restrictions on withdrawal or diversion of water that are required to comply with a statute or an involuntary court order that is binding on the Forest Service.

Before authorizing a new water facility under a ski area permit, the authorized officer shall require the holder to submit documentation prepared by the holder's qualified hydrologist or licensed engineer demonstrating that the holder has sufficient water or water rights to operate the water facility.

"Used primarily for operation of the ski area" in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than any other use.

"Sufficient quantity of water to operate the ski area" means that under typical conditions, taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the applicant's qualified hydrologist or licensed engineer, the applicant has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities to be authorized under the ski area permit in accordance with the proposed operating plan.

F. Water Facilities and Water Rights

"Used primarily for operation of the ski area" in relation to a water facility or water right means that the water facility or water right provides significantly more water for operation of the permitted portion of the ski area than for any other use.

"Sufficient quantity of water to operate the ski area" means that under typical conditions,

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taking into account fluctuations in utilization of the authorized improvements, fluctuations in weather and climate, changes in technology, and other factors deemed appropriate by the holder's qualified hydrologist or licensed engineer, the holder has sufficient water rights or access to a sufficient quantity of water to operate the permitted facilities, and to provide for the associated activities authorized under the ski area permit in accordance with the approved operating plan.

1. Water Facilities.

- (a) The term "water facility" means a facility located on NFS lands that diverts, withdraws, stores, or distributes water, such as a diversion, ditch, pipeline, reservoir, well, tank, impoundment structure, or similar facility or feature.
- (b) The term "ski area water facility" means any water facility on NFS lands that is authorized by this permit and used primarily for operation of the ski area authorized by this permit (hereinafter "ski area").
- (c) The authorized officer may place any conditions, as necessary to protect public property, public safety, cultural resources, and natural resources on NFS lands, on the installation, operation, maintenance, and removal of any water facility, but only in accordance with applicable law. Clause [Cite to IV.F or corresponding section and clause letter for the entire Water Facilities and Water Rights clause where it is included in the permit] does not expand or contract the agency's authority to place conditions on the installation, operation, maintenance, and removal of water facilities at issuance or reissuance of the permit, throughout the permit term, or otherwise. The holder must comply with present and future laws, regulations, and other legal requirements in accordance with section I of this permit.
- (d) Only ski area water facilities may be authorized by this permit.
- (e) An inventory of all ski area water facilities is included in Appendix [letter] of this permit and shall be updated by the holder upon reissuance of this permit, upon installation or removal of a ski area water facility, or when a listed ski area water facility is no longer authorized by this permit.
- (f) If due to a change (for example, due to change in ownership of the water facility or the associated water rights or a change in the use, location, or season of use of the water) a ski area water facility will primarily be used for purposes other than operation of the ski area, the authorization for that water facility under this permit shall terminate. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, the holder must obtain a separate special use authorization to operate that water facility or to develop any new water facility on NFS lands that is used primarily for purposes other than operation of the ski area.

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When such facilities continue to support approved ski area operations at any time of year, the separate special use authorization for these water facilities shall not contain any possessory interest policy based on FSM 2541.32, paragraph 2 (or similar clauses), any waiver provision, or any power of attorney provision. Unless the holder has a valid existing right for the water facility to be situated on NFS lands, if the holder does not obtain a separate special use authorization for these water facilities, the holder shall remove them from NFS lands.

(g) Upon termination or revocation of this permit, if the Forest Service does not reauthorize the ski area, the holder may submit a proposal to the Forest Service for a permit authorizing a different use for the ski area water facilities. If a different use is not authorized for those water facilities, the holder shall remove them from NFS lands.

2. **Water Rights.** This permit does not convey, dispose of, extinguish, or otherwise effect a transfer of any title, rights, or interest of the United States or the holder as a riparian or littoral landowner. The United States and the holder retain all rights, title, and interest they have as riparian or littoral landowners.

Appendix [Letter]

Inventory of Ski Area Water Facilities

<List only ski area water facilities authorized by this permit.>

Ski Area Water Facilities (if none, so state)

Facility Name	Facility Location	Facility Type	Capacity	Purpose of Use

52.5 - E Clauses: Tenure, Termination, Revocation, and Limit of Use

E-1. Continuation of Use and Occupancy in Conservation System Units in Alaska. Use clause E-1 instead of clause I.D in form FS-2700-4i for priority use outfitting and guiding permits when competition is required by 36 CFR part 251, Subpart E. Do not make this clause substitution for historical operators or the guiding of sport hunting or fishing.

Continuation of Use and Occupancy. This permit is not renewable. After it expires, continuation of the type of use and occupancy authorized by this permit shall be subject to competition at the sole discretion of the authorized officer.

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E-2. Wind Energy - Site Testing/Feasibility, Term/Continuation of Use and Occupancy. Include clause E-2 in form FS-2700-4 when it is being issued for wind energy site testing and feasibility. Insert the first sentence of clause E-2 as the purpose statement of the permit and insert clauses C and D of clause E-2 in section I of form FS-2700-4.

This [minimum or project] area permit is issued for site testing and feasibility of a wind energy project. Issuance of a site testing and feasibility permit does not ensure issuance of a permit for construction and operation of a wind energy facility.

C. Term. This permit shall expire at midnight on [date], [up to 3] years from the date of issuance, provided that:

1. If site testing and feasibility equipment is not installed and operational within 2 years after issuance of this permit, this permit shall terminate, unless a written justification for the delay is submitted and accepted by the authorized officer prior to the end of the 2-year period; and
2. If results from site testing and feasibility equipment are not reported to the Forest Service within 3 years after issuance of this permit, this permit shall terminate, unless a request for an extension is submitted at least 6 months before termination and is approved by the authorized officer. If an extension is properly requested and approved, the authorized officer may extend the term of this permit for up to 2 additional years, up to a maximum permit term of 5 years, for testing and feasibility studies.

D. Continuation of Use and Occupancy. This permit is not renewable.

E-3. Wind Energy - Construction/Operation, Term. Substitute clause E-3 for clause I.C in form FS-2700-4 to authorize construction and operation of a wind energy facility.

C. Term. This permit shall expire at midnight on [date], [up to 30] years from the date of issuance, provided that:

1. If construction has not commenced within 2 years after issuance of this permit, this permit shall terminate, unless a written justification for the delay is submitted and accepted by the authorized officer prior to the end of the 2-year period and the authorized officer establishes a new timeframe for commencing construction; and
2. If wind turbines are not operational within 5 years after issuance of this permit, this permit shall terminate, unless a written justification for the delay is submitted and accepted by the authorized officer prior to the end of the 5-year period and the authorized officer establishes a new timeframe for commencement of operation of the wind turbines.

E-5. Definite Tenure.

Definite Tenure. This authorization is issued for the period ending on _____, 20____.
The authorization will not be renewed or extended.

E-7. Oil and Gas Pipeline Authorization. For oil and gas pipeline authorizations, the term specified in clause I.C of form FS-2700-4 may not exceed 30 years. Substitute the following clauses for clauses VII.A through VII.D in form FS-2700-4 for oil and gas pipelines authorizations.

A. Revocation and Suspension. The authorized officer may revoke or suspend this authorization in whole or in part:

1. For noncompliance with applicable federal, state, or local laws and regulations, other than common carrier provisions in 30 U.S.C. § 185(r), which are enforced by the Secretary of the Interior.
2. For noncompliance with the terms of this authorization, other than common carrier provisions in clause VII.C, which are enforced by the Secretary of the Interior.
3. For abandonment of the right-of-way. Failure of the holder to use the right-of-way for a continuous 2-year period shall constitute a rebuttable presumption of abandonment of the right-of-way. Prior to revocation or suspension under this clause, other than immediate suspension under clause VII.B, the authorized officer or, for common carrier provisions, the Secretary of the Interior, shall give the holder written notice of the grounds for revocation or suspension and a reasonable period, not to exceed XXX days, to resume use of the right- of-way or to cure any noncompliance.

B. Immediate Suspension. The authorized officer may immediately suspend this authorization permit in whole or in part when necessary to protect public health or safety or the environment. The suspension decision shall be in writing. The holder may request an on-site review with the authorized officer's supervisor of the adverse conditions prompting the suspension. The authorized officer's supervisor shall grant this request within 48 hours. Following the on-site review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

C. Common Carrier Obligations

1. Pipelines and related facilities covered by this authorization shall be constructed, operated, and maintained as common carriers. The holder shall accept, convey, transport, or purchase without discrimination all oil or gas delivered to those pipelines without regard to whether the oil or gas was produced from federal or non-federal lands.

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2. Whenever the Secretary of the Interior has reason to believe that the holder is not operating any oil or gas pipeline in complete accord with its obligations as a common carrier, the Secretary of the Interior may request the Attorney General to prosecute an appropriate proceeding before the Secretary of Energy or Federal Energy Regulatory Commission or any appropriate state agency or federal district court for the district in which the pipeline or any part of it is located to enforce the holder's common carrier obligations or to impose any penalty provided for noncompliance with those obligations, or the Secretary of the Interior may suspend or revoke this authorization pursuant to clause VII.A.
3. In the case of oil and gas produced from federal lands or from resources on federal lands in the vicinity of the pipelines covered by this authorization, the Secretary of the Interior may, after notice to the interested parties, a full hearing, and proper finding of facts, determine the proportionate amounts of oil and gas to be accepted, conveyed, transported, or purchased.
4. The common carrier provisions in clause VII.C shall not apply to any natural gas pipeline covered by this authorization that is operated by any person subject to regulation under the Natural Gas Act, 15 U.S.C. 717 *et seq.* or by any public utility subject to regulation by a state or municipal regulatory agency with jurisdiction to regulate the rates and charges for the sale of natural gas to consumers in that state or municipality.
5. Where natural gas not subject to state regulatory or conservation laws governing its purchase by pipelines is offered for sale, pipelines covered by this authorization shall purchase without discrimination any such natural gas produced in the vicinity of those pipelines.

D. Appeals and Remedies. Written decisions by the authorized officer relating to administration of this authorization, other than revocation or suspension decisions, are subject to administrative appeal pursuant to Title 36 Code of Federal Regulations, Part 214—Postdecisional Administrative Review Process for Occupancy or use of National Forest System Lands and Resources, as amended (36 CFR part 214). Revocation and suspension of this authorization by the authorized officer are subject to administrative proceedings pursuant to Title 7 Code of Federal Regulations, Part 1, Subpart H-Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes, as amended. Revocation and suspension of this authorization by the Secretary of the Interior are subject to administrative proceedings pursuant to regulations promulgated by the U.S. Department of the Interior. Revocation or suspension of this authorization shall not give rise to any claim for damages by the holder against the Forest Service or the Secretary of the Interior.

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E-8. Amendment. Substitute clause E-8 for the standard amendment clause in special use permits with a term of more than 30 years other than the Ski Area Act Term Special Use Permit, form FS-2700-5b, unless the standard amendment clause provides for periodic review and revision.

Amendment. This permit 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 or desirable 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 Title 36 Code of Federal Regulations, Part 218—Project-Level Predecisional Administrative Review Process. The authorized officer shall review this permit every [number] years from the date of issuance and shall amend the permit in whole or in part when deemed necessary or appropriate by the authorized officer to reflect changes in applicable law, regulation, directive, the applicable land management plan, projects or activities implementing the plan, or other circumstances.

E-11. Termination for the Development of Hydroelectric Power or Reclamation Purposes. The following clause must be included in an authorization when the lands authorized for use are withdrawn for hydroelectric power or reclamation purposes.

Termination for the Development of Hydroelectric Power or Reclamation Purposes. Any lands covered by this [permit/lease/easement] which have been withdrawn for hydroelectric power under the act of March 3, 1879, or the act of June 25, 1910, or are covered by an application or license governed by the Federal Power Act of June 10, 1920, are subject at any time to use for the development of hydroelectric power. Any lands covered by this [permit/lease/easement] which have been withdrawn under the Reclamation Act of June 17, 1902, are subject at any time to use for reclamation purposes. This [permit/lease/easement] is issued with the specific understanding that (1) the use and occupancy authorized by this [permit/lease/easement] shall not interfere with such development of hydroelectric power or reclamation and that (2) the [permit/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 [holder/lessee/grantee] shall have 90 days to remove the authorized facilities. Termination under this clause does not constitute revocation for specific and compelling reasons in the public interest under clause VII.B and shall not give rise to any claim by the [holder/lessee/grantee] against the Federal Power Commission, the Bureau of Reclamation, the Forest Service, or hydroelectric power licensees for damages, including lost profits and damage to authorized facilities, due to such development of hydroelectric power or reclamation.

E-17. Floodplain, Executive Order (EO) 11988. The following clause must be included in the Special Use Permit for Recreation Residence Caretakers, use code 124, form FS-2700-4, when structures are located, or presumed to be, in a floodplain or floodways as defined in EO 11988.

Floodplain. The National Forest System lands covered by this authorization have been determined to be in a floodplain (Executive Order 11988). This authorization is issued with the specific understanding that if the authorized improvements are substantially damaged and made uninhabitable by flood, the authorization shall terminate and that the remaining improvements shall be removed within 90 days. If damage to the authorized improvements is not substantial, they may be repaired and allowed to remain if they can be flood-proofed without affecting flows in the floodway. No expansion of existing improvements or new improvements shall be allowed in the floodway. Termination of the authorization due to flood damage shall not give rise to any claim against the United States for injury, loss, or damage.

52.6 - F Clauses: Fire

F-7. Fire Equipment.

Fire Equipment. The holder shall install fire extinguishers and firefighting apparatus of types, of capacities, in numbers, and at locations approved by the authorized officer. This equipment shall be in readiness at all times for immediate use, and shall be tested each year, at such times as may be required by the authorized officer.

F-15. Right-of-Way Clearing, Powerline Facility. Substitute clause F-15 for the removal and planting of vegetation clauses in authorizations for powerlines, other than forms FS-2700-4j and FS-2700-31.

Removal and Planting of Vegetation

- 1. Removal of Non-Hazardous Vegetation and Planting of Vegetation.** Except as provided in emergencies pursuant to paragraph 2, trees, shrubs, grasses, and other plants may be removed, destroyed, or trimmed only in accordance with the vegetation management plan in Appendix [letter] and only after the authorized officer's designated representative has marked or otherwise identified what may be removed, destroyed, or trimmed. Timber cut or destroyed shall be paid for at current stumpage rates for similar timber in the [name] National Forest. The Forest Service reserves the right to dispose of the merchantable timber to those other than the holder at no stumpage cost to the holder. Unmerchantable material shall be disposed of as directed by the authorized officer. Planting of trees, shrubs, and other plants in the permit area must have prior written approval from the authorized officer.

2. **Removal of Hazardous Vegetation.** The holder may remove, destroy, or trim hazardous vegetation in accordance with the vegetation management plan in Appendix [letter] without the hazardous vegetation being marked or otherwise identified by the authorized officer or the authorized officer's designated representative. The holder shall notify the authorized officer as soon as possible of any removal of hazardous vegetation under this clause. For purposes of this clause, "hazardous vegetation" is defined as "a live or dead standing tree or other vegetation having a defect, singly or combined, in the roots, butt, bole, or limbs or with unreasonable arcing potential and so situated that the tree or other vegetation poses the risk of imminent mechanical failure to all or part of a power line, pole, or tower," "defect" is defined as "an injury or disease that seriously weakens the stems, roots, or branches of a tree or vegetation, predisposing all or part of it to fall;" "arcing" is defined as "the flow of electricity across a gap through the air from one conductor to another or to a grounded object;" and "imminent mechanical failure" is defined as "damage to a power line, pole, or tower from hazardous vegetation that could occur at any time."

F-20. Fire Control Plan.

Fire Control Plan. The holder shall prepare a fire plan for approval by the authorized officer which shall set forth in detail the plan for prevention, reporting, control, and extinguishing of fires on the authorized areas and within the holder's area of responsibility defined on an attached map. Such plans shall be reviewed and revised at intervals of not more than 3 years.

52.7 - G Clauses: Roads

G-1. Secondary Use. Use the following only for private roads that are authorized as a secondary use to the primary use, such as water well and road. Terms for all other special use authorizations for roads are in FSM 2730 and FSH 2709.12.

Secondary Use Roads

1. All construction or reconstruction of the road shall be in accordance with plans, specifications, and written stipulations previously approved by the authorized officer.
2. Only the authorized officer may extend rights and privileges for use of the road constructed on the premises to other non-federal users on the condition that such users shall pay a fair share of the current replacement cost less depreciation of the road and any reconstruction costs necessary to accommodate its use.
3. The Forest Service retains the right to use and occupy the right-of-way and to allow others to use the right-of-way in any way that is not inconsistent with the holder's existing rights and privileges after consultation with all parties involved.

52.8 - X Clauses: Miscellaneous

X-14. Cooperative Utility Expenses. Include clause X-14 where the Forest Service owns and operates utilities, such as waste treatment or water systems, that serve the permit area or where the Forest Service pays for utilities, such as electricity and telephone service, that serve the permit area. Document the determination of the holder's proportionate share of cooperative utility expenses in an appendix to the permit.

Cooperative Utility Expenses. The holder shall pay the holder's proportionate share of the cost to operate and maintain utilities, such as waste treatment or water systems, that are owned and operated by the Forest Service and that serve the permit area, and the cost of utilities, such as electricity and telephone service, that are paid for by the Forest Service and that serve the permit area. The holder shall deposit funds into a cooperative account at times and in amounts specified by the authorized officer to cover the holder's proportionate share of the cost of these utilities and services. Any amounts deposited exceeding the cost of these utilities and services shall be refunded to the holder.

X-16. Use by Other Groups. This clause is mandatory in all organization camp authorizations.

Use by Other Groups. This authorization is issued with the understanding that the holder will make the camp and facilities available for use by other groups and organizations to the extent possible to obtain the greatest total use during the year; provided, that the use by other groups does not conflict with the scheduled use by the holder. The holder will furnish the authorized officer annually on or before a schedule of use, organizations using, and planned number of users.

X-17. Archaeological-Paleontological Discoveries.

Archaeological-Paleontological Discoveries. The holder shall immediately notify the authorized officer of any previously undiscovered archaeological or paleontological remains, including but not limited to historic or prehistoric ruins, fossils, artifacts, or human remains discovered in connection with the use and occupancy authorized by this permit. The holder shall discontinue work in the general area of the discovery, secure the area from further disturbance, and leave these discoveries intact and in place until otherwise directed by the authorized officer.

X-18. Superseded Authorization

Superseded Authorization. This [permit/lease] supersedes a special use authorization designated [Previous Holder, Previous Auth ID, Previous Issue Date].

X-20. Reservoir Storage Increase.

Reservoir Storage Increase. The Forest Service reserves the right to issue additional authorizations to other applicants to increase the storage capacity of this site if such action proves feasible. No authorization will be granted for additional facilities that will jeopardize the privileges granted by this authorization. Any additional authorizations permitting larger facilities will provide for payment of costs, including the cost of construction of the original project works, on a cost-benefit ratio mutually agreeable to the holder and the new applicant. If the holder and applicant cannot agree on division of costs, the Forest Service shall decide on an equitable division between the old and new works.

X-21. Damage Restoration. Include in all special use authorizations where work for other agencies, which is within their programs and not within Forest Service authority, is performed by the Forest Service.

Damage Restoration. [Agency] will reimburse the Forest Service for wages, salaries, travel, material, equipment use, and other expenses incurred by the Forest Service in performing work for [Agency] as provided by this authorization. Such repayment will be under the authority of section 601, Economy Act, June 30, 1932, and the expenses itemized and identified by project and will be billed quarterly by form SF-1081, Voucher and Schedule of Withdrawals and Credits. It is understood and agreed that Forest Service reimbursements will include an amount for general expense and for general supervision of project work by members of the regular organization not paid directly from project funds. It is also understood and agreed that the Forest Service will be reimbursed for annual and sick leave earned by project employees while employed on these projects.

X-22. Regulating Services and Rates.

Regulating Services and Rates. The Forest Service shall have the authority to check and regulate the adequacy and type of services provided the public and to require that such services conform to satisfactory standards. The holder may be required to furnish a schedule of prices for sales and services permitted by the authorization. Such prices and services may be regulated by the Forest Service: Provided, that the holder shall not be required to charge prices lower than those charged by comparable or competing enterprises.

X-23. National Recreation Reservation System.

Recreation.gov. Recreation.gov is the only authorized reservation service to be utilized by the holder. No other reservation service of any kind may be used by the holder. Operational procedures for Recreation.gov shall be developed and placed in the annual operating plan.

X-24. Gambling. Include this clause in authorizations for resorts, tourist accommodations, camps, and so forth.

Gambling. Gambling or gambling devices is prohibited on National Forest System lands, regardless of whether gambling or gambling devices are lawful under state or local law.

X-25. Sale of Alcoholic Beverages, Prohibited.

Sale of Alcoholic Beverages. The sale of alcoholic beverages is prohibited in the permit area.

X-26. Sale of Alcoholic Beverages, Allowed.

Sale of Alcoholic Beverages. The sale of [liquor, beer, wine, and other types of alcoholic beverages] is allowed in the permit area, provided the holder 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 holder shall be informed in writing by the authorized officer if the sale of alcoholic beverages must cease.

X-29. Signs.

Signs. Signs or advertising posted on National Forest System lands shall be subject to prior written approval of the authorized officer as to location, design, size, color, and content. Erected signs shall be maintained to standards determined by the Forest Service.

X-30. Advertising.

Advertising. The holder shall not misrepresent in any way, either orally; in its online or print circulars, brochures, advertising, and other media; or on its website, signs, or letterheads, any aspect of the use authorized by this permit, including services provided by the holder, the status of this permit, or the permit area. All the holder's online or print circulars, brochures, advertising, and other media regarding use of the permit area shall state that the permit area is located in the [name] National Forest or Grassland.

X-33. Relocation of Improvements.

Relocation of Improvements. This permit is granted with the express understanding that if future location of federally owned improvements or road rights-of-way requires relocation of the holder's improvements, the relocation will be conducted by and at the expense of the holder within a reasonable period specified by the authorized officer.

X-35. Airport Authorization Area, Federal Government Use.

Airport Authorization Area, Federal Government Use. All departments and agencies of the

United States Government operating aircraft shall have free and unrestricted use of the airport.

X-36. Airport Authorization Area, Public Use.

Airport Authorization Area, Public Use. It is understood and agreed that if, in the opinion of the Forest Service, an increase in the private use of aircraft necessitates or justifies use of this field by the public, the Forest Service reserves the right to declare this field open to public use--commercial or noncommercial. The Forest Service also reserves the right, upon such declaration, to decide whether a fee may be charged by the holder, and if the latter, to determine the rates which may be charged for landing and other services. The rights reserved by the Forest Service in this clause will not be exercised, except after giving the holder 1 year written notice.

X-38. Airport Capacity.

Airport Capacity. The holder shall permit all qualified operators, on reasonable terms and without discrimination, to use the airport for any aeronautical business or operation up to capacity of the airport; however, compliance with this clause shall not be required if the Administrator of the Federal Aviation Administration, in the interest of safety, makes written waiver of the requirements herein stipulated. Proof of such waiver will be required.

X-39. Federal Airport Act, Forest Service Use. The following condition applies to airports transferred under section 16 of the Federal Airport Act.

Federal Airport Act, Forest Service Use. All facilities of the airport developed with federal aid and all those usable for the landings and takeoffs of aircraft shall be available without charge to the United States for use by the Forest Service at all times in the conduct of its official business, in common with other aircraft.

X-42. Leasing.

Leasing. The holder may lease the improvements authorized by this permit with prior written approval of the authorized officer. The Forest Service reserves the right to disapprove these leases. The holder shall continue to be responsible for the lessees' compliance with all terms of this permit.

X-44. Partnership Status Notification.

Partnership Status Notification. The holder shall notify the authorized officer within fifteen (15) days of the following changes:

1. Names of the individuals involved.
2. Partnership makeup changes due to the death, withdrawal, or addition of a partner.

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3. Party or parties assigned financed interest in the partnership by existing partner(s).
4. Termination, reformation, or revision of the partnership agreement.
5. The acquisition of partnership interest, either through purchase of an interest from an existing partner or partners, or contribution of assets, that exceeds 50 percent of the partnership permanent investment.

X-45. Partnership Representative.

Partnership Representative. The holder shall furnish the authorized officer:

1. A copy of the articles of a resolution of the partners specifically authorizing one or more of the partners to represent the authorization holder in dealings with the Forest Service if not specified in the articles or partnership.
2. A list of the name and address of each partner.

X-46. Corporation Status Notification.

Corporation Status Notification. The holder may furnish the authorized officer with the names and addresses of shareholders owning 3 percent or more of the shares, and number and percentage of any class of voting shares of the entity which such shareholder is authorized to vote. In addition, the holder shall notify the authorized officer within 15 days of the following changes:

1. Names of officers appointed or terminated.
2. Names of stockholders who acquire stock shares causing their ownership to exceed 50 percent of shares issued or who otherwise acquire controlling interest in the corporation.
3. A copy of the articles of incorporation and bylaws.
4. An authenticated copy of a resolution of the board of directors specifically authorizing a certain individual or individuals to represent the holder in dealing with the Forest Service.
5. A list of officers and directors of the corporation and their addresses.
6. Upon request, a certified list of stockholders and amount of stock owned by each.
7. The authorized officer may, when necessary, require the holder to furnish additional information as set forth in 36 CFR 251.54(d)(2)(ii)(D).

X-48. Powerline Facility Change Application.

Powerline Facility Change Application. The holder agrees that no substantial change or alteration shall be made in the design, location, construction, voltage, or capacity of this line until application for such change shall have been submitted to and approved by the authorized Officer.

X-49. Communications Use - Communications Site Management Plan. Include clause X-49 in all communications use permits (not leases) issued using form FS-2700-4.

Communications Site Management Plan. All operation and maintenance of improvements in the permit area and equipment installed in or on facilities in the permit area shall be consistent with the applicable communications site management plan and shall require prior written approval from the authorized officer. The Forest Service reserves the right to modify the communications site management plan as deemed necessary by the authorized officer.

X-50. Communications Use - Compliance with Applicable Communications Requirements. Include clause X-50 in all communications use permits (not leases) issued using form FS-2700-4.

Compliance with Applicable Communications Requirements. Use of communications equipment under this permit is contingent upon possession of a valid Federal Communications Commission (FCC) license or National Telecommunications and Information Administration (NTIA) authorization, as applicable, and must be in strict compliance with the requirements of the FCC or NTIA. A copy of each FCC license or NTIA authorization shall at all times be maintained by the holder for each transmitter being operated in or on the facilities. Upon request, the holder shall provide the authorized officer with a current copy of all FCC licenses or NTIA authorizations for communications equipment in or on the authorized facilities covered by this permit.

X-51. Communications Use - Operation of Communications Equipment. Include clause X-51 in all communications use permits (not leases) issued using form FS-2700-4.

Operation of Communications Equipment. The holder shall ensure that all equipment operated by the holder in or on the authorized facilities covered by this permit operates in a manner that will not cause harmful interference with the operation of existing communications equipment in or on the authorized facilities or in the vicinity of the #__ FCLTY_NAME# Communications Site. If the authorized officer or authorized FCC official determines that use of any equipment installed in or on the authorized facilities interferes with existing communications equipment, the holder shall promptly take the necessary steps to eliminate or reduce the harmful interference to the satisfaction of the authorized officer or FCC official.

X-52. Communications Use - Technical Information. Include clause X-52 in all communications use permits (not leases) issued using form FS-2700-4.

Technical Information. Upon request, the holder shall furnish the authorized officer technical information concerning the communications equipment located in or on the authorized facilities covered by this permit. Both the authorized officer and the holder shall follow federal guidelines when dealing with classified or sensitive security information.

X-63. Treasure Trove.

Treasure Trove. The holder agrees that if treasure or other antiquities are found:

1. Excavation will cease at the instant of discovery and the Forest Service will be notified so that scientific examination may be made. Excavation will not resume until approval is given in writing by the Forest Service.
2. This authorization confers no ownership rights to the treasure. All specimens found will be held in safekeeping for 1 year while ownership is established by applicable law. Such period will be used to establish the value, for claimants to come forward, and to negotiate or adjudicate ownership.
3. The United States as the landowner has a valid claim for all or a share of the treasure trove buried on its property. In addition, if specimens found are other than money, unmounted gems, or precious metals in the form of coin, plate, or bullion, the United States may claim all of it under the Antiquities Act (16 U.S.C. 432). Any such claims will be settled as provided for in paragraph 2.

X-96. Disputes.

Disputes. Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR Part 214, or revisions thereto.

53 - Special Use Authorization Forms

Standard terms in special use authorization forms may be modified, added, or deleted only as directed in the user notes in the authorization form or in this Handbook. Any other alterations, deletions, or additions must have prior written approval from the Washington Office, Director of the Lands, Minerals and Geology staff or the Washington Office, Director of the Recreation, Heritage, and Volunteer Resources staff, as appropriate, and the National OGC.

Without approval from the Washington Office, the authorized officer may add the supplemental terms in this Handbook at the end of a special use authorization form to address site-specific conditions (sec. 52), provided that added terms do not duplicate or conflict with standard provisions in the authorization form.

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Special Uses Data System (SUDS) is the sole electronic repository for special use authorization forms and billing documents. All special use authorizations must be created in SUDS.

Once a proposal for a special use has passed initial and second-level screening and been accepted as an application, the special use administrator must enter information from the application into the application screen in SUDS. These data are required to track the status of pending applications in accordance with law, formulate program budget needs, and establish a record of application processing.

If the application is granted, the special use administrator should use the data entered into SUDS to generate the special use authorization and bill for that authorized use. Additional information required for administration of the authorized use, such as insurance, bonding, licenses, reviews, inspections, and geographic location, should also be entered into SUDS.

Section 53, exhibit 01, lists current special use authorizations forms.

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Special Use Authorization Forms

Permits

Form Number	Title	Handbook Citation
FS-2700-4	Special Use Permit	Sec. 53.11a, 53.11b
FS-2700-4j	Powerline Facility Permit for Non-Federal Entities	Sec. 53.11c
FS-2700-4k	Powerline Facility Permit for Federal Entities	Sec. 53.11c
FS-2700-10c	Communications Use Permit for Federal Entities	Sec. 53.11f
FS-2700-32	Permit for Archaeological Investigations	Sec. 53.11d
FS-2800-22b	Permit for Paleontological Research of collection	Sec. 53.11c

Road Special Use Permits

Form Number	Title	Handbook Citation
FS-2700-4b	Forest Road Special Use Permit	Sec. 53.12a
FS-2700-4c	Private Road Special Use Permit	Sec. 53.12b
FS-2700-4d	Special Use Permit for a Temporary Road Covered by a Cost Share Agreement	Sec. 53.12c

Hydropower Special Use Permits (Reserved)

Short-Term Special Use Permits (term of 1 year or less)

Form Number	Title	Handbook Citation
FS-2300-43	Permit for Short-Term, Noncommercial use of Government-Owned Cabins and Lookouts	Sec. 53.13d
FS-2700-25	Temporary Special Use Permit	Sec. 53.13a
FS-2700-3b	Noncommercial Group Use Special Use Permit	Sec. 53.13b
FS-2700-3c	Special Use Application and Permit for Recreation Event	Sec. 53.13c
FS-2700-3f	Special use Application and Temporary Permit for Outfitting and Guiding	Sec. 53.13e

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Recreation Special Use Permits

Form Number	Title	Handbook Citation
FS-2700-4h	Campground and Related Granger-Thye Concessions Special Use Permit	Sec. 53.14a
FS-2700-4h, Appendix B	Appendix for Granger-Thye Fee-Offset Agreement	Sec. 53.14a
FS-2700-4h, Appendix F	Appendix for Operation of Government Owned Water System	Sec. 53.14b
FS-2700-4h, Appendix G	Appendix for Granger-Thye Fee-Offset Certification	Sec. 53.14a
FS-2700-4i	Special Use Permit for Outfitting and Guiding	Sec. 53.14c
FS-2700-4i, Appendix H	Appendix for Annual Stewardship Act Fee Offset Agreement	Sec. 53.14c
FS-2700-4i, Appendix I	Appendix for Stewardship Act Fee Offset Claim	Sec. 53.14c
FS-2700-5d	Supplement for Outfitting and Guiding under a Term Permit	Sec. 53.14d

Term Special Use Permits

Form Number	Title	Handbook Citation
FS-2700-5	Term Special Use Permit for Privately Owned Improvements	Sec. 53.21
FS-2700-5a	Term Special Use Permit for Recreation Residences (including Grand Island National Recreation Area)	Sec. 53.22
FS-2700-5b	Ski Area Term Special Use Permit	Sec. 53.23
FS-2700-5c	Resort/Marina Term Special Use Permit	Sec. 53.24

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Easements and Leases

Form Number	Title	Handbook Citation
FS-2700-10b	Communications Use Lease	Sec. 53.31
FS-2700-13	Historic Property Lease	Sec. 53.32
FS-2700-14	Forest Service Administrative Site	Sec. 53.33
FS-2700-9	Easement	Sec. 53.34
FS-2700-9a	Agricultural Irrigation and Livestock Watering System Easement	Sec. 53.35
FS-2700-31	Powerline Facility Easement	Sec. 53.36

Road Easements

Form Number	Title	Handbook Citation
FS-2700-9d	Cost Share Easement	Sec. 53.37a
FS-2700-9e	Non-Cost Share Easement	Sec. 53.37b
FS-2700-9f	Public Road Easement	Sec. 53.37c
FS-2700-9g	Forest Road Easement Issued Under the National Forest Roads and Trails Act	Sec. 53.37d
FS-2700-9h	Private Road Easement Issued Under the National Forest Roads and Trails Act	Sec. 53.37e
FS-2700-9i	Forest Road Easement Issued Under the Federal Land Policy and Management Act	Sec. 53.37f
FS-2700-9j	Private Road Easement Issued under the Federal Land Policy and Management Act	Sec. 53.37g

53.1 - Permits

53.11 - Form FS-2700-4, Special Use Permit

Use form FS-2700-4, Special Use Permit, to authorize use and occupancy under the Organic Act, Title 16 United States Code, section 551 (16 U.S.C. 551) and the FLPMA Title 43 United States Code, section 1701 *et seq*, FSM 2711.1. Form FS-2700-4 may also be used to authorize use and occupancy under other statutes that authorize use of National Forest System lands for limited duration and development.

1. Use form FS-2700-4 for communications uses:
 - a. When authorizing the use in or on a federally owned facility under Forest Service jurisdiction.

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- b. When authorizing a privately owned communications improvement (e.g., a generator and propane tank only).
- 2. Do not use form FS-2700-4 for:
 - a. Term permits (sec. 53.2), leases, or easements (sec. 53.3); or
 - b. Uses for which a specific authorization form has been developed (sec. 53.12 and 53.22 through 53.33).

53.11a - Use of Form FS-2700-4 for Federal Entities

Follow the instructions in sections I and IV in form FS-2700-4, Special Use Permit, for inclusion of appropriate clauses in permits issued to a federal entity.

53.11b - Use of Form FS-2700-4 for State and Local Governments

Follow the instructions in section IV in form FS-2700-4, Special Use Permit, for inclusion of appropriate clauses in permits issued to state and local governmental entities (sec. 52.2, cl. B-12).

53.11c - Use of Forms FS-2700-4j, Powerline Facility Permit for Non-Federal Entities, and FS-2700-4k, Powerline Facility Permit for Federal Entities

Use form FS-2700-4j, Powerline Facility Permit for Non-Federal Entities, to authorize all non-federal powerline facilities for which an easement is not approved by the regional forester (sec. 53.34) or that are operated by a non-federal entity deemed eligible by the Rural Utilities Service (RUS) for financing under the Rural Electrification Act (REA).

Use form FS-2700-4k, Powerline Facility Permit for Federal Entities, to authorize all powerline facilities under the jurisdiction of a power marketing administration (a federal utility such as Bonneville Power Administration or Western Area Power Administration).

53.11d - Use of Form FS-5700-4m, Permit for Archaeological Investigations

Use form FS-2700-4m to grant a permit to conduct archaeological investigations on National Forest System lands, which is authorized under the Archaeological Resources Protection Act (16 U.S.C. 470aa-mm), the Antiquities Act (16 U.S.C. 431-433), or the Organic Act (16 U.S.C. 551). See FSM 2367 and FSH 2309.12, Chapter 70 for further direction.

53.11e - Use of Form FS-2800-22b, Permit for Paleontological Resources Research or Collection

Use form 2800-22b to authorize Paleontological Resources Research or Collection on National Forest System lands.

53.11f - Use of Form FS-2700-10c, Communications Use Permit for Federal Entities

Use form FS-2700-10c to authorize a communications facility or other communications use related improvement that is under the jurisdiction of a federal agency other than the Forest Service.

53.12 - Road Special Use Permits

For additional direction on road use permits, see FSH 2709.12.

53.12a - Form FS-2700-4b, Forest Road Special Use Permit

Use form FS-2700-4b to issue special use permits for forest roads authorized under FLPMA.

53.12b - Form FS-2700-4c, Private Road Special Use Permit

Use form FS-2700-4c to issue special use permits for private roads authorized under FLPMA.

53.12c - Form FS-2700-4d, Special Use Permit for a Temporary Road Covered by a Cost Share Agreement

Use form FS-2700-4d to issue special use authorizations for a temporary cost share agreement road authorized under FLPMA.

53.13 - Short-Term Special Use Permits

53.13a - Form FS-2700-25, Temporary Special Use Permit

Use form FS-2700-25 to issue special use authorizations with a term of 1 year or less that involve temporary facilities, have few or no environmental impacts (are subject to a categorical exclusion), and present minimal risk to the federal government.

53.13b - Form FS-2700-3b, Noncommercial Group Use Special Use Permit

Use form FS-2700-3b to issue permits to noncommercial groups. Refer to regulations at 36 CFR part 251, Subpart B, and Part 261 for direction governing issuance of these permits. The application for noncommercial group use is included in form FS-2700-3b.

53.13c - Form FS-2700-3c, Special Use Application and Permit for Recreation Events

Use form FS-2700-3c to issue permits for short term, non-complex recreation events; 53.13d - Form FS-2300-43, Permit for Short-term, Noncommercial Use of Government-owned Cabins and Lookouts

53.13d - Form FS-2300-43, Permit for Short-term, Noncommercial Use of Government-owned Cabins and Lookouts

Use of form FS-2300-43 is authorized under the Federal Lands Recreation Enhancement Act. This form may also be used to issue permits for short-term, noncommercial occupancy of federally owned buildings for recreational purposes under section 7 of the Granger-Thye Act. If issued under Section 7 of the Granger-Thye Act, edit form to indicate that authority.

53.13e - Form FS-2700-3f, Special Use Application and Temporary Permit for Outfitting and Guiding

Use form FS-2700-3f to issue permits for non-priority use outfitting and guiding.

53.14 - Recreation Special Use Permits

53.14a - Form FS-2700-4h, Campground and Related Granger-Thye Concessions Special Use Permit

Use form FS-2700-4h for all campgrounds and other related Granger-Thye concessions. Use form FS-2700-4h, Appendix B, for Granger-Thye fee offset agreements. Use form FS-2700-4h, Appendix G, for fee offset certification.

53.14b - Form FS-2700-4h, Appendix F, Operation of Government-Owned Drinking Water System

Use form FS-2700-4h, Appendix F, for operation of federally owned drinking water systems.

53.14c - Form FS-2700-4i, Special Use Permit for Outfitting and Guiding

Use form FS-2700-4i for priority use outfitting and guiding that is not associated with a resort term permit.

53.14d - Form FS-2700-4i, Appendix H, Annual Stewardship Act Fee Offset Agreement

Use form FS-2700-4i, Appendix H for Stewardship Act Fee Offset Agreements.

53.14e - Form FS-2700-4i, Appendix I, Stewardship Act Fee Offset Claim

Use form FS-2700-4i, Appendix I for Stewardship Act fee offset certification.

53.14f - Form FS-2700-5d, Supplement for Outfitting and Guiding Under a Term Permit

Use form FS-2700-5d in conjunction with form FS-2700-5 or FS-2700-5c when authorizing outfitting and guiding under a term permit.

53.2 - Term Special Use Permits

53.21 - Form FS-2700-5, Term Special Use Permit

See FSM 2711.3 for direction on issuance of term permits, which are issued for privately owned improvements. Do not use this form for:

1. Temporary facilities or uses; or
2. Uses for which a specific special use authorization form has been developed (sec. 53.22 and 53.23);
3. Uses for which the fee is waived.

Insert the proper authority and use code (FSM 2701 and 2720 and section 19, example 03, of this handbook) in the spaces provided in the permit heading.

53.22 - Form FS-2700-5a, Term Special Use Permit for Recreation Residences

Use form FS-2700-5a to issue term permits for recreation residences.

53.23 - Form FS-2700-5b, Ski Area Term Special Use Permit

Use form FS-2700-5b to issue term permits for qualifying Nordic and alpine ski areas. See FSM 2721.61 and 36 CFR 251.52 for additional direction on issuance of these permits for qualifying uses.

53.24 - Form FS-2700-5c, Term Special Use Permit for Resorts and Marinas

Use form FS-2700-5c to issue term permits for resorts and marinas.

53.3 - Leases and Easements

Easements must be approved by the Regional Forester (FSM 2711.4).

53.31 - Form FS-2700-10b, Communications Use Lease

Use form FS-2700-10b to authorize non-federal owners of a communications facility. See section 53.11 and 53.11f of this chapter for direction on when to use form FS-2700-4 or form FS-2700-10c for authorizing a communications use.

53.32 - Form FS-2700-13, Historic Property Lease

Use form FS-2700-13 to authorize use and occupancy of historic properties under the National Historic Preservation Act.

53.33 - Form FS-2700-14, Lease for Forest Service Administrative Site

Use form FS-2700-14 to lease Forest Service administrative sites.

53.34 - Form FS-2700-9, Easement (Reserved)

53.35 - Form FS-2700-9a, Agricultural Irrigation and Livestock Watering System Easement

Use form FS-2700-9a to issue easements for a water conveyance system (ditch bill easements) under section 501 of the Federal Land Policy and Management Act of October 21, 1976, as amended by the Colorado Ditch Bill Act of October 27, 1986 (43 U.S.C. 1761). The description of the authorized facilities on form FS-2700-9a should identify only those facilities and modifications to those facilities in existence as of October 21, 1976. Issue a separate authorization, using form FS-2700-4, to authorize extensions or enlargements of a water conveyance system occurring after October 21, 1976.

Identify the location and dimensions of the authorized facilities, such as headgates, flumes, weirs, pipelines, tunnels, crossings, reservoirs, dam specifications, roads, and trails, on a map or plat. Attach the map or plat to the easement as an appendix. Centerline descriptions alone are appropriate only if the water conveyance system contains no other facilities besides a ditch or pipeline.

Other authorities or situations may require additional clauses in form FS-2700-9a to address specific circumstances. Additional requirements, including provisions in operation and maintenance plans, must comply with the National Environmental Policy Act (FSM 2729.16c) and must be reviewed and approved by the local OGC.

See section 52.2 for direction on the use of clause B-36 or B-37 to address dam safety associated with ditch bill easements.

53.36 - Form FS-2700-31, Powerline Facility Easement

Use form FS-2700-31, Powerline Facility Easement, to authorize powerline facilities that have a capacity of 115 kilovolts or more; that are not operated by a non-federal entity deemed eligible by RUS for financing under the REA; and for which the regional forester has determined that an easement is appropriate.

53.37 - Road Easements

For additional direction on road easements, see FSH 2709.12.

53.37a - Form FS-2700-9d, Cost-Share Easement

Use form FS-2700-9d to issue road easements under National Forest Roads and Trails Act (FRTA)

that are subject to a cost share agreement.

53.37b - Form FS-2700-9e, Non-Cost-Share Easement

Use form FS-2700-9e to issue road easements under FRTA that are not subject to a cost share agreement.

53.37c - Form FS-2700-9f, Public Road Easement

Use form FS-2700-9f to issue easements for a public road under FRTA.

53.37d - Form FS-2700-9g, Forest Road Easement

Use form FS-2700-9g to issue easements for a forest road under FRTA.

53.37e - Form FS-2700-9h, Private Road Easement

Use form FS-2700-9h to issue private road easements under FRTA.

53.37f - Form FS-2700-9i, Forest Road Easement

Use form FS-2700-9i to issue forest road easements under FLPMA.

53.37g - Form FS-2700-9j, Private Road Easement

Use form FS-2700-9j to issue private road easements under FLPMA.

54 - Supplemental Forms, Reports and Agreements

Standard supplemental forms, reports, and agreements may be modified, added, or deleted only as directed in the user notes in these documents or in this Handbook. Any other modifications, additions, or deletions of provisions in standard supplemental forms, reports, and agreements require prior written approval from the Washington Office Director of the Lands and Realty Management staff or the Washington Office Director of the Recreation, Heritage, and Volunteer Resources staff, as appropriate.

The authorized officer may add requirements to standard supplemental forms, reports, and agreements to address site-specific conditions without Washington Office approval, provided that the added requirements do not duplicate or conflict with standard provisions in the supplemental forms, reports, and agreements.

Standard supplemental forms, reports, and agreements are available at [Forms Management \(sharepoint.com\)](https://formsmanagement.sharepoint.com). Section 54, exhibit 01, lists current supplemental forms, reports, and agreements.

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Supplemental Forms, Reports, and Agreements

General

Form Number	Title	Direction in FSH 2709.11
SF-299	Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property	Sec. 54.11
W-9 (IRS form)	Request for Taxpayer Identification Number and Certification	Sec. 54.17
FS-2700-1	Monitoring or Inspection Report for Special Use Authorizations	Sec. 54.12
FS-2700-3a	Request for Revocation of a Special Use Authorization	Sec. 54.13
FS-2700-23	Amendment for Special Use Authorization	Sec. 54.14
FS-2700-30	Application for Permit for Archaeological Investigations	Sec. 54.15
FS-2700-33	Insurance Endorsement Special Use Authorization	Sec. 54.16
FS-2700-40	Standard Waiver of Liability Form for Good Samaritan Search and Recovery Missions Conducted on NFS Lands	See FSM 2723.86

Supplemental Recreation Special Use Forms and Reports

Form Number	Title	Direction in FSH 2709.11
FS-2700-6b	Recreation Residence Self-Inspection Report	Sec. 54.21
FS-2700-7	Reconciliation of Sales for Fee Calculation	Sec. 54.22
FS-2700-8	Reconciliation of Gross Fixed Assets to Booked Amounts	Sec. 54.22a
FS-2700-19	Fee Calculation for Concession Permits	Sec. 54.22b
FS-2700-19a	Fee Calculation for Ski Area Permits	Sec. 54.22c
FS-2700-34	Prospectus for Campground and Related Granger-Thye Concessions	Sec. 54.23

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Supplemental Lands Special Use Forms and Reports

Form Number	Title	Direction in FSM or FSH 2709.11
FS-2700-10	Technical Data Sheet	Sec. 54.31
FS-2700-10a	Facility Owner and Occupant Inventory of Communications Uses	Sec. 54.31a
FS-2700-14a	Prospectus for Leasing of Administrative Sites	2750

Agreements

Form Number	Title	Direction in FSH 2709.11
FS-2700-11	Agreement Concerning Small Business Administration Loan for Holder of Special Use Permit	Sec. 54.41
FS-2700-12	Agreement Concerning Loan for Holder of Special Use Permit	Sec. 54.41a
FS-2700-26	Category 6 Major Cost Recovery Agreement (Must create in I-Web/SUDS)	Sec. 54.42
FS-2700-26b	Category 5 Master Cost Recovery Agreement (Must create in I-Web/SUDS)	Sec. 54.42a

54.1 - Forms and Reports

54.11 - Form SF-299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property

A proponent shall use form SF-299 to submit a proposal to obtain a special use authorization or an applicant shall use form SF-299 to apply for a new special use authorization, a modification to an existing special use authorization, or an assignment, when applicable.

For additional direction on use of this form, see FSM 2712 and FSH 2709.11, chapter 10.

54.12 - Form FS-2700-1, Monitoring Report for Special Use Authorization

Use form FS-2700-1 to document monitoring of a permit area. For additional direction on use of this form, see FSM 2716.

54.13 - Form FS-2700-3a, Request for Revocation of a Special Use Authorization

Use form FS-2700-3a to facilitate issuance of a new permit when there is a change in ownership of authorized improvements or a change in control of the holder of a special use permit. It is not appropriate to use this form for a change in ownership of authorized improvements or a change in control of the holder of a lease or easement, as these are assignable. Use form FS-2700-3a to facilitate a holder-initiated revocation where the authorized improvements will be removed and use and occupancy will cease.

54.14 - Form FS-2700-23, Amendment for Special Use Authorization

Use form FS-2700-23 to amend a special use authorization. Do not use form FS-2700-23 to amend a special use authorization to extend the term. Issue a new authorization when a special use authorization expires.

54.15 - Form FS- 2700-30, Application for Permit for Archaeological Investigations

Use form FS-2700-30 to evaluate the financial and technical capability of an applicant to undertake archaeological investigations on National Forest System lands. Do not use form SF-299, Application for Transportation, Utility Systems, Telecommunications and Facilities on Federal Lands and Property, for this type of request.

54.16 - Form FS-2700-33, Insurance Endorsement Special Use Authorization

Form FS-2700-33 may be used by insurers to name the United States as an additional insured in an insurance policy issued to the holder of a special use authorization.

54.17 - IRS Form W-9, Request for Taxpayer Identification Number and Certification

Use IRS form W-9 to certify authorization holder federal tax classification as part of the special use authorization and administration process.

54.2 - Recreation Forms and Reports

54.21 - Form FS-2700-6b, Recreation Residence Self-Inspection Report

Use form FS-2700-6b to review and record any modifications made to a recreation residence.

54.22 - Form FS-2700-7, Reconciliation of Sales for Fee Calculation

Use form FS-2700-7 to determine land use fees that are based on sales revenue. For additional direction on use of this form, see FSM 2715.

54.22a - Form FS-2700-8, Reconciliation of Gross Fixed Assets to Booked Amounts

Use form FS-2700-8 to determine land use fees that are based on the gross fixed assets of the holder. For additional direction on use of this form, see FSM 2715.

54.22b - Form FS-2700-19, Fee Calculation for Concession Permits

Use form FS-2700-19 to determine the land use fee for concession permits under the graduated rate fee system. Directions for completing this form are found on the reverse side of the form. For additional direction on use of this form, see FSM 2715.

54.22c - Form FS-2700-19a, Fee Calculation for Ski Area Permits

Use form FS-2700-19a to determine the land use fee for ski area permits. Directions for completing the form are found on the reverse side of the form. For additional direction on use of this form, see FSM 2715.

54.23 - Form FS-2700-34, Prospectus for Campground and Related Granger-Thye Concessions

Use form FS-2700-34 for the competitive process used in selecting qualified applicant to operate a GT related concession campground.

54.3- Communications Use Forms and Reports

54.31 - Form FS-2700-10, Technical Data Sheet

Use form FS-2700-10 to evaluate and coordinate communications equipment at a communications site to minimize frequency interference and other compatibility concerns. For additional direction on use of this form, see chapter 90.

54.31a - Form FS-2700-10a, Facility Owner and Occupant Inventory of Communications Uses

Use form FS-2700-10a to determine the authorization holder and their occupant's type of use in and on the communications facility and to calculate the annual rent. For additional direction on use of this form, see chapter 90.

54.4 - Agreements

54.41 - Form FS-2700-11, Agreement Concerning Small Business Administration Loan for Holder of Special Use Permit

Use form FS-2700-11 to enter into an agreement with a holder, a lender, and the United States Small Business Administration (SBA) regarding a loan to be guaranteed by the SBA. Form FS-2700-11 should be used only for financing commercial public services under a term permit. Do not use form FS-2700-11 in conjunction with a recreation residence or a lease and note that the

recreation residence permit itself contains standard language that further states that the permit may not be used as collateral for a loan.

54.41a - Form FS-2700-12, Agreement Concerning Loan for Holder of Special Use Permit

Use form FS-2700-12 to enter into an agreement with a holder and a lender regarding a loan that will not be guaranteed by the SBA. Form FS-2700-12 should be used only for financing commercial public services under a term permit. Do not use FS-2700-12 in conjunction with a recreation residence or a lease. See FSM 2717.3 for additional guidance.

54.42 - Form FS-2700-26, Category 6 Cost Recovery Agreement

Use form FS-2700-26 to effectuate cost recovery for special use applications or authorizations involving over 50 hours to process or monitor.

54.42a - Form FS-2700-26b, Category 5 Master Cost Recovery Agreement

Use form FS-2700-26b to effectuate cost recovery for special use applications or authorizations involving multiple phases of development or similar applications or authorizations for the same applicant for a specified geographical area.