

Authorization ID: PRI2008
Contact Name: CANYON FUEL COMPANY, LLC
Expiration Date: 12/31/2050
Use Code: 643

FS-2700-4j(VER. 03/17)
OMB No. 0596-0082

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

ELECTRIC TRANSMISSION LINE PERMIT FOR NON-FEDERAL ENTITIES

AUTHORITY:

Section 501(a)(4) of the Federal Land Policy and Management Act, 43 U.S.C. 1761(a)(4)

This electric transmission line permit for the 46 kV, Swens Canyon Transmission Line, Skyline Mine (the permit), dated _____, is issued by the United States Department of Agriculture, Forest Service (the Forest Service), to Canyon Fuel Company, LLC - Skyline Mine (the holder).

This permit gives the holder, subject to existing rights-of-way and other valid existing rights, a non-exclusive right-of-way for an electric transmission line ("right-of-way"), consisting of towers, poles, or other structures (including all necessary foundations, footings, cross-arms, and other fixtures), cables, underground and overhead wires, and fiber (including fiber optic cable, conduit space, or space within fiber optic regeneration or amplification sites) for the transmission of electric energy, as well as communications equipment for communications uses ("communications uses") that directly support the holder's operation and maintenance of the electric transmission line, hereinafter collectively referred to as "transmission facilities."

This right-of-way is located across National Forest System lands in the Counties of Carbon and Emery, State of Utah. This right-of-way is **50 feet wide and 2700 feet long** and covers approximately 3.1 acre(s) in the **Sec. 23, T. 13 S., R. 6 E., SALT LAKE MERIDIAN, Sec. 24, T. 13 S., R. 6 E., SALT LAKE MERIDIAN**, as shown on the map attached as Appendix A. This and any other appendices are hereby incorporated into this permit. The right-of-way and access roads and trails, as defined below, shall be referred to collectively as "the permit area."

In addition, this permit gives the holder:

1. The right of ingress to and egress from the right-of-way along private roads and trails that are necessary to access the right-of-way (hereinafter "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:

(a) All plans for development, layout, construction, reconstruction, or alteration of access roads and trails, as well as revisions to those plans, must be prepared by a professional engineer (PE) or other qualified professional acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

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

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

2. The right to install, maintain, and use gates and fences in the permit area with the prior written approval of the authorized officer. All gates shall have reflective markings in accordance with Forest Service Engineering Manual EM 7100-15.

The following are attached to and incorporated into this permit:

APPENDIX A: Maps, with Location of Access Road

APPENDIX B: Operating Plan (Due to National Forest By 10/01/2020)

This permit is issued subject to the following terms and conditions.

I. GENERAL TERMS

A. AUTHORITY. This permit is issued pursuant to Section 501(a)(4) of the Federal Land Policy and Management Act, 43 U.S.C. 1761(a)(4), and 36 CFR Part 251, Subpart B, as amended, and is subject to their provisions.

B. AUTHORIZED OFFICER. The authorized officer is the Regional Forester or Forest Supervisor or a subordinate officer with delegated authority.

C. TERM. This permit shall expire at midnight on 12/31/2050, 30 Years, depending on application of the criteria in 36 CFR 251.56(b)(1) years from the date it is issued.

D. RENEWAL. The use and occupancy authorized by this permit shall be renewed upon expiration, provided that, as determined by the authorized officer, (1) the holder desires to renew this permit; (2) the transmission facilities are still being used for the purposes authorized; (3) the transmission facilities are being operated and maintained in accordance with all the provisions of the permit; and (4) the holder is in compliance with all the terms and conditions of this permit. The authorized officer may prescribe new terms and conditions when a new permit is issued.

E. 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 36 CFR Part 215. The authorized officer shall review this permit every 10 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.

F. COMPLIANCE WITH LAWS, REGULATIONS, AND OTHER LEGAL REQUIREMENTS. In exercising the rights and privileges granted by this permit, the holder shall comply with all present and future federal laws and regulations and all present and future state, county, and municipal laws, regulations, and other legal requirements that apply to the permit area, to the extent they do not conflict with federal law, regulation, or policy. The Forest Service assumes no responsibility for enforcing laws, regulations, and other legal requirements that fall under the jurisdiction of other governmental entities.

G. RESERVATIONS. All rights not specifically and exclusively granted to the holder are reserved to the Forest Service, including:

1. The right of access to the permit area, including a continuing right of physical entry to the permit area for inspection, monitoring, or any other purpose consistent with any right or obligation of the United States under any law or regulation.
2. The right to use, administer, and dispose of all natural resources and improvements other than the transmission facilities, including the right to use roads and trails and authorize rights-of-way and other uses in the permit area in any way that is not inconsistent with the holder's rights and privileges under this permit, after consultation with all parties involved. Except for any restrictions that the holder and the Forest Service agree are necessary to protect public health and safety, property, and the installation and operation of the transmission facilities, the permit area shall remain open to the public for all lawful purposes.

H. ASSIGNABILITY. This permit is not assignable or transferable.

I. TRANSFER OF TITLE TO THE IMPROVEMENTS.

1. **Notification of Transfer.** The holder shall notify the authorized officer when a transfer of title to all or part of the authorized improvements is planned.

2. **Transfer of Title.** Any transfer of title to the improvements covered by this permit shall result in termination of the permit. The party who acquires title to the improvements must submit an application for a permit. The Forest Service is not obligated to issue a new permit to the party who acquires title to the improvements. The authorized officer shall determine that the applicant meets requirements under applicable federal regulations.

J. CHANGE IN CONTROL OF THE BUSINESS ENTITY.

1. **Notification of Change in Control.** The holder shall notify the authorized officer when a change in control of the business entity that holds this permit is planned.

(a) In the case of a corporation, control is an interest, beneficial or otherwise, of sufficient outstanding voting securities or capital of the business so as to permit the exercise of managerial authority over the actions and operations of the corporation or election of a majority of the board of directors of the corporation.

(b) In the case of a partnership, limited partnership, joint venture, or individual entrepreneurship, control is a beneficial ownership of or interest in the entity or its capital so as to permit the exercise of managerial authority over the actions and operations of the entity.

(c) In other circumstances, control is any arrangement under which a third party has the ability to exercise management authority over the actions or operations of the business.

2. **Effect of Change in Control.** Any change in control of the business entity as defined in clause I.J.1 shall result in termination of this permit. The party acquiring control must submit an application for a special use permit. The Forest Service is not obligated to issue a new permit to the party who acquires control. The authorized officer shall determine whether the applicant meets the requirements established by applicable federal regulations.

II. IMPROVEMENTS

A. LIMITATIONS ON USE. Nothing in this permit gives or implies permission to build or maintain any structure or facility or to conduct any activity unless specifically provided for in this permit. Any use not specifically authorized by this permit must be proposed in accordance with 36 CFR 251.54. Approval of such a proposal through issuance of a new permit or permit amendment is at the sole discretion of the authorized officer.

B. PLANS. All plans for development, layout, construction, reconstruction, or alteration of improvements in the permit area, as well as revisions to those plans, must be prepared by a PE, architect, landscape architect, or other qualified professional based on federal employment standards who is acceptable to the authorized officer. These plans and plan revisions must have written approval from the authorized officer before they are implemented. The authorized officer may require the holder to furnish as-built plans, maps, or surveys upon completion of the work.

C. RELOCATION. This permit is issued with the express understanding that should future location of federally owned improvements or road rights-of-way require relocation of the transmission facilities, the relocation will be conducted by and at the expense of the holder within a reasonable period specified by the authorized officer.

III. OPERATIONS

A. OPERATING PLAN.

1. **Preparation.** The holder shall prepare an operating plan in consultation with the authorized officer or the authorized officer's designated representative. The operating plan 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. The operating plan shall be reviewed and updated as necessary by the holder and reapproved by the authorized officer at least every 5 years.

2. **Contents.** The operating plan 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 and conditions of this permit. At a minimum, the operating plan shall address access to and operation and maintenance performed by the holder or its lessees of all authorized transmission facilities, including dates or season of operations; activities and procedures to prevent and control the spread of invasive species; a vegetation management plan; any plan for pesticide use developed pursuant to clause V.E; and restrictions on use, such as fire restrictions, established by the Forest Service.

3. **Vegetation Management Plan.** The vegetation management plan shall enumerate criteria and methods for removal, destruction, and trimming of vegetation that are in conformance with generally accepted practices for vegetation management. The vegetation management plan shall address prevention and control of noxious weeds and exotic plants arising from the authorized use. For purposes of this clause, noxious weeds and exotic plants include those species

recognized as such by federal, state, or local authority. The holder shall follow prevention and control measures prescribed by federal, state, or local authority. In addition, the vegetation management plan shall provide for integration of native, non-invasive, low-growing vegetation that does not interfere with the transmission facilities and that promotes their reliability, reduces their maintenance costs, and is compatible with the aesthetics and health of the native plant and animal life in the permit area.

B. REMOVAL AND PLANTING OF VEGETATION. Non-emergency and emergency removal of trees, brush, shrubs, and other plants ("vegetation") and planting of vegetation, both inside and outside the right-of-way, must be conducted in accordance with the vegetation management plan in Appendix C and clauses III.B.1 through III.B.3.

1. Non-Emergency Removal and Planting of Vegetation. Except as provided in emergencies pursuant to clause III.B.2, vegetation may be removed, destroyed, or trimmed only after the authorized officer or the authorized officer's designated representative has marked or otherwise identified what may be removed, destroyed, or trimmed. Planting of trees, shrubs, and other plants in the permit area must have prior written approval from the authorized officer.

2. Emergency Removal of Vegetation. When vegetation has compromised or threatens to compromise a power line and there has been loss of power or loss of power is imminent, the holder may remove, destroy, or trim the vegetation, either inside or outside the right-of-way, without the 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 emergency removal under this clause.

3. Payment and Disposal. Timber cut or destroyed shall be paid for at current stumpage rates for similar timber in the MANTI-LASAL 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.

C. USE OF NATIONAL FOREST SYSTEM ROADS AND TRAILS. The holder's use of National Forest System roads and National Forest System trails shall comply with applicable requirements in 36 CFR Part 212, Subpart A; 36 CFR Part 261, Subpart A; and orders issued under 36 CFR Part 261, Subpart B. Motor vehicle use shall be consistent with designations made under 36 CFR Part 212, Subpart B, unless specifically provided otherwise in the operating plan. Over-snow vehicle use shall be consistent with designations made under 36 CFR Part 212, Subpart C, unless specifically provided otherwise in the operating plan.

D. RESERVATION OF EXCESS CAPACITY AND LEASING.

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

2. Leasing of Operation and Maintenance of the Transmission Facilities. Leasing of operation and maintenance of transmission facilities authorized by this permit must have prior written approval from the authorized officer. The Forest Service reserves the right to disapprove requests to lease transmission facilities. The holder shall remain responsible for the lessees' compliance with all the terms and conditions of this permit. The holder shall pay a land use fee of \$ Amount for the lessees' use of transmission facilities, provided that the lessees are not exempt from a land use fee. The land use fee for any leased transmission facilities shall be adjusted annually in accordance with the fee schedule in 43 CFR 2806.20. The holder shall include in the lease provisions requiring the lessee to obtain liability insurance for the lessee's operation or use of the transmission facilities that names the United States as an additional insured.

3. Transmission Facility Map. Upon request, the holder shall submit to the authorized officer a transmission facility map reflecting ownership of and leases for operation and maintenance for all authorized transmission facilities, which shall be attached to this permit as an appendix. The transmission facility map must specify the total number of transmission facilities (for fiber optic cable, the total number of installed conduits and fibers); the total number of transmission facilities (for fiber optic cable, the total number of conduits and fibers) in active use; and the type of use (holder's, commercial, or public purpose) for transmission facilities (for fiber optic cable, for conduits and fibers) in active use. The authorized officer may request any additional information from the holder deemed necessary for proper administration of the leased transmission facilities. The holder shall update the transmission facility map annually as necessary.

E. CONDITION OF OPERATIONS. The holder shall maintain the transmission facilities and permit area to standards of repair, orderliness, neatness, sanitation, and safety acceptable to the authorized officer and consistent with other

provisions of this permit. Standards are subject to periodic change by the authorized officer when deemed necessary to meet statutory, regulatory, or policy requirements or to protect national forest resources.

F. GROUND SURFACE PROTECTION AND RESTORATION. The holder shall prevent and control soil erosion and gully 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 (e.g., 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.

G. MONITORING BY THE FOREST SERVICE. The Forest Service shall monitor the holder's operations and reserves the right to inspect the permit area and transmission facilities at any time for compliance with the terms of this permit. The holder shall comply with inspection requirements deemed appropriate by the authorized officer. The holder's obligations under this permit are not contingent upon any duty of the Forest Service to inspect the permit area or transmission facilities. A failure by the Forest Service or other governmental officials to inspect is not a justification for noncompliance with any of the terms and conditions of this permit.

IV. RIGHTS AND LIABILITIES

A. LEGAL EFFECT OF THE PERMIT. This permit, which is revocable and terminable, is not a contract or a lease, but rather a federal license. The benefits and requirements conferred by this authorization are reviewable solely under the procedures set forth in 36 CFR Part 214 and 5 U.S.C. 704. This permit does not constitute a contract for purposes of the Contract Disputes Act, 41 U.S.C. 601. The permit is not real property, does not convey any interest in real property, and may not be used as collateral for a loan.

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

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

D. SERVICES NOT PROVIDED. This permit is for the use and occupancy of land for the purposes stated in this permit and does not provide for the furnishing of road maintenance, water, fire protection, or any other such service by a government agency, association, or individual.

E. RISK OF LOSS. The holder assumes all risk of loss to the transmission facilities. Loss to the transmission facilities may result from but is not limited to theft, vandalism, fire and any fire-fighting activities (including prescribed burns), avalanches, rising waters, winds, falling limbs or trees, and other forces of nature. If the transmission facilities are destroyed or substantially damaged, the authorized officer shall, in consultation with the holder and other affected agencies, conduct an analysis to determine whether the transmission facilities can be safely used in the future and whether rebuilding should be allowed. If rebuilding is not allowed, the permit shall terminate.

F. DAMAGE TO UNITED STATES PROPERTY. The holder has an affirmative duty to protect from damage the land, property, and other interests of the United States. Damage includes but is not limited to fire suppression costs and damage to government-owned improvements covered by this permit.

1. The holder shall be liable for all injury, loss, or damage, including fire suppression, prevention and control of the spread of invasive species, or other costs resulting from rehabilitation or restoration of natural resources, associated with the holder's use and occupancy of the permit area. Compensation shall include but is not limited to the value of resources damaged or destroyed, the costs of restoration, cleanup, or other mitigation, fire suppression or other types of abatement costs, and all associated administrative, legal (including attorney's fees), and other costs. Such costs may be deducted from a performance bond required under clause IV.K.

2. The holder shall be liable for damage other than ordinary wear and tear caused by use of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees to all roads and trails of the United States to the same extent as provided under clause IV.E.1.

G. HEALTH AND SAFETY. The holder shall take all measures necessary to protect the health and safety of all persons affected by the use and occupancy authorized by this permit. The holder shall promptly abate as completely as possible

and in compliance with all applicable laws and regulations any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during the term of this permit, that causes or threatens to cause a hazard to the health or safety of the public or the holder's employees or agents. The holder shall as soon as practicable notify the authorized officer of all serious accidents that occur in connection with these procedures, activities, events, or conditions. The Forest Service has no duty under the terms of this permit to inspect the permit area or operations of the holder for hazardous conditions or compliance with health and safety standards.

H. ENVIRONMENTAL PROTECTION.

1. For purposes of clause IV.H and section V, "hazardous material" shall mean (a) any hazardous substance under section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601(14); (b) any pollutant or contaminant under section 101(33) of CERCLA, 42 U.S.C. 9601(33); (c) any petroleum product or its derivative, including fuel oil, and waste oils; and (d) any hazardous substance, extremely hazardous substance, toxic substance, hazardous waste, ignitable, reactive or corrosive materials, pollutant, contaminant, element, compound, mixture, solution or substance that may pose a present or potential hazard to human health or the environment under any applicable environmental laws.

2. The holder shall avoid damaging or contaminating the environment, including but not limited to the soil, vegetation (such as trees, shrubs, and grass), surface water, and groundwater, during the holder's use and occupancy of the permit area. Environmental damage includes but is not limited to all costs and damages associated with or resulting from the release or threatened release of a hazardous material occurring during or as a result of activities of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees on, or related to, the lands, property, and other interests covered by this permit. If the environment or any government property covered by this permit becomes damaged in connection with the holder's use and occupancy, the holder shall as soon as practicable repair the damage or replace the damaged items to the satisfaction of the authorized officer and at no expense to the United States.

3. The holder shall as soon as practicable, as completely as possible, and in compliance with all applicable laws and regulations abate any physical or mechanical procedure, activity, event, or condition existing or occurring in connection with the authorized use and occupancy during, or after the term of this permit that causes or threatens to cause harm to the environment including areas of vegetation or timber, fish or other wildlife populations, their habitats, or any other natural resources.

I. INDEMNIFICATION OF THE UNITED STATES. The holder 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 in connection with the use and occupancy authorized by this permit. This indemnification and hold harmless provision includes but is not limited to acts and omissions of the holder or the holder's heirs, assigns, agents, employees, contractors, or lessees in connection with the use and occupancy authorized by this permit which result in (1) violations of any laws and regulations which are now or which may in the future become applicable; (2) judgments, claims, demands, penalties, or fees assessed against the United States; (3) costs, expenses, and damages incurred by the United States; or (4) the release or threatened release of any hazardous material into the environment. The authorized officer may prescribe terms that allow the holder to replace, repair, restore, or otherwise undertake necessary curative actions to mitigate damages in addition to or as an alternative to monetary indemnification.

J. STRICT LIABILITY. The holder shall be strictly liable (liable without proof of negligence) to the United States for \$amount up to 1 million 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.

K. 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 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 name the United States as an additional insured, and the additional insured provision shall provide for insurance coverage for the United States as required under this clause and to the extent of the full limits of insurance available to the holder. The holder shall give 30 days prior written notice to the authorized officer of cancellation of or any modification to the insurance policy. The certificate of insurance, the authenticated copy of the insurance policy, and written notice of cancellation or modification of insurance policies should be sent to Manti-La Sal National Forest, Supervisors Office, 599 W Price River Drive, Price, UT 84501. 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.

The holder shall have in force liability insurance covering losses associated with the use and occupancy authorized by this permit arising from personal injury or death and third-party property damage in the minimum amount of \$300,000.00 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 use and storage of normal maintenance supplies in nominal amounts generally would not trigger financial assurance requirements.

L. BONDING. The authorized officer may require the holder to furnish a surety bond or other security for any of the obligations imposed by the terms and conditions of this permit or any applicable law, regulation, or order.

V. RESOURCE PROTECTION

A. COMPLIANCE WITH ENVIRONMENTAL LAWS. The holder shall in connection with the use and occupancy authorized by this permit comply with all applicable federal, state, and local environmental laws and regulations, including but not limited to those established pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 et seq., the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq., the Oil Pollution Act, as amended, 33 U.S.C. 2701 et seq., the Clean Air Act, as amended, 42 U.S.C. 7401 et seq., CERCLA, as amended, 42 U.S.C. 9601 et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. 2601 et seq., the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, 7 U.S.C. 136 et seq., and the Safe Drinking Water Act, as amended, 42 U.S.C. 300f et seq.

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

C. ESTHETICS. The holder shall protect the scenic esthetic values of the permit area and the adjacent land to the greatest extent possible during construction, operation, and maintenance of the transmission facilities.

D. VANDALISM. The holder shall take reasonable measures to prevent and discourage vandalism or disorderly conduct and when necessary shall contact the appropriate law enforcement officer to address these problems.

E. 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. **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.

F. ARCHAEOLOGICAL AND PALEONTOLOGICAL DISCOVERIES. The holder shall immediately notify the authorized officer of all antiquities or other objects of historic or scientific interest, including but not limited to historic or prehistoric ruins, fossils, or artifacts discovered in connection with the use and occupancy authorized by this permit. The holder shall follow the applicable inadvertent discovery protocols for the undertaking provided in an agreement executed pursuant to

section 106 of the National Historic Preservation Act, 54 U.S.C. 306108; if there are no such agreed-upon protocols, the holder shall leave these discoveries intact and in place until consultation has occurred, as informed, if applicable, by any programmatic agreement with tribes. Protective and mitigation measures developed under this clause shall be the responsibility of the holder. However, the holder shall give the authorized officer written notice before implementing these measures and shall coordinate with the authorized officer for proximate and contextual discoveries extending beyond the permit area.

G. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT (NAGPRA). In accordance with 25 U.S.C. 3002(d) and 43 CFR 10.4, if the holder inadvertently discovers human remains, funerary objects, sacred objects, or objects of cultural patrimony on National Forest System lands, the holder shall immediately cease work in the area of the discovery and shall make a reasonable effort to protect and secure the items. The holder shall follow the applicable NAGPRA protocols for the undertaking provided in the NAGPRA plan of action or the NAGPRA comprehensive agreement; if there are no such agreed-upon protocols, the holder shall as soon as practicable notify the authorized officer of the discovery and shall follow up with written confirmation of the discovery. The activity that resulted in the inadvertent discovery may not resume until 30 days after the forest archaeologist certifies receipt of the written confirmation, if resumption of the activity is otherwise lawful, or at any time if a binding written agreement has been executed between the Forest Service and the affiliated Indian tribes that adopts a recovery plan for the human remains and objects.

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

1. Threatened and Endangered Species and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals listed as threatened or endangered under the Endangered Species Act (ESA) of 1973, 16 U.S.C. 531 et seq., as amended, or within designated critical habitat shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder 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 holder or the Forest Service of other sites within the permit area containing threatened or endangered species designated critical habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

2. Sensitive Species and Species of Conservation Concern and Their Habitat. The location of sites within the permit area needing special measures for protection of plants or animals designated by the Regional Forester as sensitive species or as species of conservation concern pursuant to FSM 2670 shall be shown on a map in an appendix to this permit and may be shown on the ground. The holder 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 holder or the Forest Service of other sites within the permit area containing sensitive species or species of conservation concern or their habitat not shown on the map in the appendix shall be promptly reported to the other party and shall be added to the map.

I. CONSENT TO STORE HAZARDOUS MATERIALS. The holder shall not store any hazardous materials in the permit area without prior written approval from the authorized officer. This approval shall not be unreasonably withheld. If the authorized officer provides approval, this permit shall include, or in the case of approval provided after this permit is issued, shall be amended to include specific terms addressing the storage of hazardous materials, including the specific type of materials to be stored, the volume, the type of storage, and a spill plan. Such terms shall be proposed by the holder and are subject to approval by the authorized officer.

J. CLEANUP AND REMEDIATION

1. The holder shall immediately notify all appropriate response authorities, including the National Response Center and the authorized officer, of any oil discharge or of the release of a CERCLA hazardous material in the permit area in an amount greater than or equal to its reportable quantity, in accordance with 33 CFR Part 153, Subpart B, and 40 CFR Part 302. For the purposes of this requirement, "oil" is defined by section 311(a)(1) of the Clean Water Act, 33 U.S.C. 1321(a)(1). The holder shall immediately notify the authorized officer upon knowledge of any release or threatened release of any hazardous material at or in the vicinity of the permit area which may be harmful to public health or welfare or which may adversely affect natural resources under the management of the United States.

2. Except with respect to any federally permitted release as that term is defined under Section 101(10) of CERCLA, 42 U.S.C. 9601(10), the holder shall clean up or otherwise remediate any release, threat of release, or discharge of hazardous materials that occurs either in the permit area or in connection with the holder's activities, whether or not those activities are authorized under this permit. The holder shall perform cleanup or remediation immediately upon discovery of

the release, threat of release, or discharge of hazardous materials. The holder shall perform the cleanup or remediation to the satisfaction of the authorized officer and at no expense to the United States. Upon revocation or termination of this permit, the holder shall deliver the permit area to the Forest Service free and clear of contamination.

VI. LAND USE FEE AND DEBT COLLECTION.

A. HOLDER'S USE AND OCCUPANCY. The holder shall pay an initial annual land use fee of \$102.58 for the period from 07/16/2020 to 12/31/2020, and thereafter on **January 01**, shall pay an annual land use fee of **\$102.58**. The land use fee shall be adjusted annually in accordance with the fee schedule in 43 CFR 2806.20.

B. MODIFICATION OF THE LAND USE FEE. The land use fee may be revised whenever necessary to reflect the market value of the authorized use or when the fee system used to calculate the land use fee is modified or replaced.

C. LESSEES' USE AND OCCUPANCY. The holder shall pay in advance an annual land use fee to the Forest Service as determined from the fee schedule in 43 CFR 2806.20 for each lessee's use of fiber under clause III.D.3 that is not exempt from a land use fee. The land use fee for any leased fiber shall be adjusted annually in accordance with the applicable fee schedule.

D. 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. Fees are due and payable by the due date. Disputed 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.

4. Administrative Offset and Credit Reporting. Delinquent fees and other charges associated with the 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 60 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.

VII. REVOCATION, SUSPENSION, AND TERMINATION

A. REVOCATION AND SUSPENSION. The authorized officer may revoke or suspend this permit in whole or in part:

1. For noncompliance with applicable federal, state, or local laws and regulations.
2. For noncompliance with the terms of this permit.
3. For failure to exercise the rights or privileges granted.
4. With the consent of the holder.
5. At the discretion of the authorized officer, for specific and compelling reasons in the public interest.

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

B. IMMEDIATE SUSPENSION. The authorized officer may immediately suspend this 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 onsite 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 onsite review, the authorized officer's supervisor shall promptly affirm, modify, or cancel the suspension.

C. APPEALS AND REMEDIES. Written decisions by the authorized officer relating to administration of this permit are subject to administrative appeal pursuant to 36 CFR Part 214, as amended. Revocation or suspension of this permit shall not give rise to any claim for damages by the holder against the Forest Service.

D. TERMINATION. This permit shall terminate when by its terms a fixed or agreed upon condition, event, or time occurs without any action by the authorized officer. For example, this permit terminates upon expiration or upon a change in ownership of the transmission facilities. Termination of this permit does not require notice, a decision document, or any environmental analysis or other documentation. Termination of this permit is not subject to administrative appeal and shall not give rise to any claim for damages by the holder against the Forest Service.

E. RIGHTS AND RESPONSIBILITIES UPON REVOCATION OR TERMINATION WITHOUT ISSUANCE OF A NEW PERMIT. Upon revocation of this permit or termination of this permit without issuance of a new permit, the holder shall remove all structures and improvements in the permit area, except those owned by the United States, within a reasonable period prescribed by the authorized officer and shall restore the site to the satisfaction of the authorized officer. If the holder fails to remove all structures or improvements in the permit area within the prescribed period, they shall become the property of the United States and may be sold, destroyed, or otherwise disposed of without any liability to the United States. However, the holder shall remain liable for all costs associated with their removal, including costs of sale and impoundment, cleanup, and restoration of the permit area.

F. CONTINUATION OF OBLIGATIONS AND LIABILITIES BEYOND TERMINATION OR REVOCATION. Notwithstanding the termination or revocation of this permit, its terms and conditions shall remain in effect and shall be binding on the holder and the holder's personal representative, successors, and assignees until all the holder's obligations and liabilities accruing before or as a result of termination or revocation of this permit have been satisfied.

VIII. MISCELLANEOUS PROVISIONS

A. MEMBERS OF CONGRESS. No member of or delegate to Congress or resident commissioner shall benefit from this permit either directly or indirectly, except to the extent the authorized use provides a general benefit to a corporation.

B. CURRENT ADDRESSES. The Forest Service and the holder shall keep each other informed of current mailing addresses.

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

D. Disputes (X-96). Appeal of any provisions of this authorization or any requirements thereof shall be subject to the appeal regulations at 36 CFR 214, as amended or revisions thereto.

THIS PERMIT IS GRANTED SUBJECT TO ALL ITS TERMS AND CONDITIONS.

