

## **LEASE TEMPLATE FOR NON-FEDERAL USE OF THE PUBLIC LANDS**

BUREAU OF LAND MANAGEMENT (BLM)

and

[LESSEE]

On DATE, by this instrument, on the one side, in the capacity of Lessor, The United States Department of the Interior, Bureau of Land Management (hereinafter referred to as “BLM”) and on the other side, in the capacity of Lessee, \_\_\_\_\_, a (form of business entity), with main place of business at [address], City of [ ], State of [ ] hereby enter into this Lease Serial No. \_\_\_\_\_, made on \_\_\_\_\_ under the provisions of the Federal Land Policy and Management Act (FLPMA) of 1976, 43 U.S.C. §§ 1701-1785 and the Code of Federal Regulations, Title 43, Part 2920.

### **AUTHORITIES**

Sections 302, 303 and 310 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. §§ 1732, 1733 and 1740 and regulations at 43 C.F.R. § 2920 *et seq.* authorize the Secretary of the Interior to regulate for the use, occupancy, and development of the public lands through the use of leases, permits, and easements. If more suitable Federal statutory or regulatory authorities are promulgated into law after this agreement is signed, BLM and Lessee shall make amendments, modifications or revisions to this agreement in accordance with these new laws and regulations.

### **PURPOSE**

The purpose of the agreement is for \_\_\_\_\_.

### **TERM OF LEASE**

The term of this lease shall be for a period of \_\_\_\_ years, commencing on (insert date) or as determined in accordance with 43 C.F.R. § 2920.1-1.

### **USE AUTHORIZATION**

The BLM hereby authorizes the Lessee to use, occupy or develop the public lands, for the purposes set forth herein, the lands and improvements, if any, described in Appendix A, Part 1, attached hereto, and by reference made a part hereof, and said use shall be consistent with a possessory interest that is only revocable in accordance with 43 C.F.R. § 2920.9-3 (Termination and Suspension).

The possessory interest herein given to the Lessee does not exclude the general public from the Premises. The use by the general public, however, is limited by the terms and conditions of the possessory interest given herein. This lease is not intended to confer third party beneficiary status to any member of the public who is benefitted by the terms of this lease.

### **CONDITION OF LOCATION FOR USE**

The taking of possession of the location by the Lessee, in itself, shall constitute acknowledgement that the location is in good and sufficient condition for the purposes for which the Lessee is entering into this Lease. Lessee agrees to accept the location to use, occupy or develop the public lands in their presently existing condition, "AS IS", and that the BLM shall not be obligated to make any alterations, additions, or betterments to the location for the use except as otherwise provided in this lease.

### **INVENTORY, MAINTENANCE, OPERATIONS, AND RECLAMATION PLANS**

1. Inventory Plan. The Lessee shall submit an inventory plan developed with the BLM and approved by the Authorized Official ("AO") that assesses resource values on the land with other resource considerations.

#### **[Include the specifics to be included in the Inventory Plan]**

2. Operations Plan. The Lessee shall submit an annual Operations Plan. The plan shall clearly describe daily operating requirements, general personnel or staffing functions and periodic procedures and responsibilities related to ensuring that public encounters the highest possible quality and services offered. The Lessee will publish in the Operations Plan the retail rates charged for services or products specified by and subject to approval of the AO. Retail rates must be within a comparable range of prices based on similar business operations conducted in the local area.

The AO may conduct surveys to develop a comparable range of appropriate prices based on similar business operations conducted under similar business conditions. The AO and Lessee will together carry out regularly scheduled periodic inspections on lease facilities. The results of these inspections will be used to ascertain compliance with the Operations Plan, assess the quality of operations, and to develop indicators needed for maintenance and improvements.

The current Operations Plan is attached as Appendix B.

3. Maintenance Plan. Lessee shall submit Annual and 5-year Maintenance Plans to be approved by the AO. The Annual Plan shall describe the immediate custodial needs, cyclic maintenance, repair and rehabilitation for all facilities used in the operation. It shall contain estimated costs and expenditures for the maintenance described.

The Lessee shall create and manage a Maintenance Fund in support of the Maintenance Plan, so that preventative maintenance and preservation of facilities may be paid for, up to an amount specified herein. The AO shall approve Maintenance Fund expenditures, in order to ensure that capital improvements are not funded. The maintenance priorities and order of expenditures shall

be decided by the Lessee, who shall be guided generally by those needs indicated in regular inspections.

The annual and 5-year Maintenance Plans shall be renewed on their anniversaries but may be amended with the concurrence of the AO.

4. Reclamation Plan: The Lessee shall maintain and submit a Reclamation Plan. The AO shall determine whether the Reclamation Plan is adequate for the intended use, occupation or development of the land by the Lessee and sufficiently covers reclamation in the event of abandonment and termination due to breach. Once the AO approves the Lessee's Reclamation Plan, the Lessee shall post a reclamation bond for the period of five (5) years in the amount of \$\_\_\_\_\_ as determined by the AO. The AO and the Lessee shall participate in reassessment of the bond every five (5) years.

### **INSPECTIONS**

The AO may make inspections as needed to assure compliance with the Maintenance Plan. The current plans are attached as Appendix C.

1. Inspections. The AO may also carry out scheduled or unscheduled inspections, progress checks, or verifications of other Lessee activities. Where desirable, the AO may utilize cooperative agencies or personnel. Thirty days before each annual anniversary date of the Lease, the AO will publish commentary and findings related to the results of all inspections and checks, and formally declare the Lessee's performance as Satisfactory, Unsatisfactory, or Marginal. This designation shall be known as the Annual Overall Rating.

### **RENEWAL**

Any lessee with a satisfactory overall rating in the final year of its term may request to renew its lease, but the Government shall always secure no less than fair market value for the value of the lease.

The Government shall conduct studies or appraisal prior to the lease renewal or assignment, in order to determine and document full fair market value for the use of the lease premises for commercial purposes, and the Lessee shall pay a minimum of fair market value by such method as approved by the AO.

A lessee with a satisfactory overall rating shall upon the filing of a request for renewal, be the preferred user for a new land use authorization provided that the public lands are not needed for another use. Renewals shall be subject to new terms and conditions.

Any Unsatisfactory Annual Overall Rating at the end of any 1 year of operation shall constitute breach of lease and the lease shall immediately be subject to termination under 43 C.F.R. § 2920.9-3.

No notice is required for temporary or partial termination, or termination from catastrophic events, consistent with provisions in this lease contained herein. Any lessee receiving a marginal

designation by the AO for 2 years in a row shall be subject to termination under 43 C.F.R. § 2920.9-3.

The AO may declare a Lessee's performance unsatisfactory at any time in the event of criminal acts by the Lessee, unauthorized failure to pay fees required herein, or other acts of breach or circumstances created by the Lessee.

### **PROPERTY RIGHTS**

#### **1. Federal Lands**

Nothing contained in this lease vests in the Lessee any property interest in the Federal lands described herein. No lien or encumbrance shall be placed upon said lands by the Lessee.

#### **2. Real Property**

Real Property shall not be altered, modified, or rehabilitated without the authorization of the AO. The Lessee, however, shall have the following lease rights relating to such property:

The authorization to use all real property during the term of the lease, subject to the provisions contained herein.

The option to salvage any such compensation as provided for in this lease, as directed by the AO, or in instances of overwhelming public need or safety, when it has been determined by the AO that commercial operations on these lands will be discontinued.

The transfer or assignment of rights in this lease to another only with approval by the AO and in accordance with 43 C.F.R. §§ 2920.2-3 and 2920.7(j).

If the Lessee exercises the option to salvage the improvements, the Lessee shall leave the lands in a condition satisfactory to the AO and consistent with an approved reclamation plan. In addition to the above, the Lessee agrees to hold harmless the United States and its employees or agents against assertions of title or rights to possession of real property or improvements, and to indemnify the United States for any claims of any parties based on assertion of title or rights to possession of any improvements or real property.

### **MAINTENANCE**

The Lessee will physically maintain and repair all facilities and improvements used in the operation of his business, including maintenance of all leased lands and all necessary housekeeping activities associated with the operation to the satisfaction of the AO. In order that a high standard of physical appearance, operations, repair, and upkeep will be maintained, regular maintenance examinations will be carried out by the AO and the Lessee, on a regular basis, as designated by the AO. The Lessee may be required to post a maintenance bond when the AO finds that repairs exceed \$25,000.

In order to meet the requirements under this lease, the Lessee shall provide the funds to accomplish the repairs and maintenance in the amount equal to [specify the amount]. The Lessee shall deposit and exercise control of these funds. The Lessee shall deposit the funds every three months in a special interest bearing account named "Maintenance Fund for Repair, Rehabilitation, or Improvements to Government Owned Facilities." The Government shall not

be an account holder. The Lessee shall maintain and operate the fund consistent with the Maintenance Plan previously submitted and approved by the AO. Lessee shall itemize all maintenance expenditures.

The AO's decision to approve expenditures from the Maintenance Fund shall be to ensure that the Maintenance Fund is not used for capital improvements or construction or maintenance of personal property belonging to the Lessee.

Any balance remaining in this account at the time of the transfer of Lessee's interest shall remain in the account to be used by the transferee under the same conditions stated above. At the discretion of the AO, funds may be allowed to accrue for up to 5 years, with a requirement that they be expended totally by the end of the fifth year. The AO may require that the funds be expended annually, as designated in the annual Maintenance Plan. The Lessee shall be in breach of this contract if the accrued funds are not spent at the end of 5 years.

The Maintenance Fund shall be to provide for repairs, upkeep, and replacement. The term repairs and upkeep shall generally be defined at that classification normally defined under generally accepted accounting principles, including building repairs, electrical and mechanical equipment repairs, and equipment repairs, painting and decorating, plumbing, or others as designated by the AO. The term replacements shall be defined as to include furniture, and fixtures but excluding equipment or expendable items personal in nature, and excluding all capital improvements or construction. If a conflict exists as to the nature of the property, the AO shall have the property appraised in a standard manner and so direct or refuse the expenditure. All items, realty in nature, are the property of the Government. All replacement items, personal in nature, are the property of the Lessee. In the Annual Overall Rating of Lessee performance, the AO will consider the timeliness of payments made into the fund and Lessee compliance with the Maintenance Plan.

## **FEES**

### **1. Rental Fee (Rent)**

The AO shall obtain a fair market value of the use authorized at the time of the lease renewal in accordance with FLPMA regulations. The Lessee shall be responsible for the cost of obtaining a fair market value in the form of cost recovery.

The Lessee shall pay annually or otherwise, in advance, a rental fee as determined by the AO. The rental fee shall be due on the first day of every month in the sum of \_\_\_\_\_ (\$XXXX) dollars to the BLM. The amount of the rental fee charged by the BLM shall be based on fair market value (FMV) of the use authorized on the leased premises. The rental fee also may be based upon competitive bidding. In no case shall the rental fee be less than fair market value. The rent shall be adjusted annually based on \_\_\_\_\_. The monies received by the BLM for reasonable costs shall be deposited in the General Fund of the U.S. Treasury.

Rental fees for leases may be adjusted every 5 years or earlier, as determined by the AO, to reflect current market value.

If Lessee is late in paying the rental fee, the BLM shall charge a late charge of 1 percent per month of the unpaid amount or \$15 per month, whichever is greater, and shall be assessed if

subsequent billings are required. Failure to pay the rental fee in a timely manner by Lessee is cause for termination of the land use authorization.

### **COST RECOVERY**

In accordance with 43 U.S.C. § 1734(b), the Government may recover the costs of processing and monitoring it incurs from administering the Lease. Rental fees shall not be used to recover the costs of processing and monitoring that the Government incurs in administering leases. Each request for renewal, transfer, or assignment of lease or easement shall be accompanied by a non-refundable processing and monitoring fee in the amount of \$25.00. The AO may waive or reduce this fee for requests for permit renewals which can be processed with a minimal amount of work.

### **ACCOUNTING RECORDS AND REPORTS**

The Lessee shall maintain all accounting records necessary for verified administration of this lease, and shall keep records sufficient to enable a full audit of business transactions throughout the entire life of the lease term. The Lessee shall submit annual reports for each preceding calendar year, giving all necessary information required under this lease, which at a minimum shall consist of a financial statement reviewed by a Certified Public Accountant, in accordance with generally accepted accounting principles. However, no person with a financial interest in this lease may act as the Certified Public Accountant of Record.

The AO shall consider the timeliness, fullness, and correctness of accounting information submitted when evaluating Lessee performance. With reasonable notice, the AO may audit, partially or in full, all financial records of Lease operations.

### **GOVERNMENT REMEDIES FOR BREACH**

In the event of breach by the Lessee in connection with any provisions and responsibilities under this lease, the Government shall have the following remedies. These remedies are not exclusive; they are cumulative and are in addition to any other right or remedy in Federal law or in equity. The BLM may:

1. Re-enter the area used, occupied or developed by the Lessee on the public lands and terminate the Lessee's use, occupancy or development in the area without terminating the lease and assign the area to another Lessee.
2. Cure the breach of the Lessee at Lessee's expense.
3. Pursue any other remedy now or hereafter available to the BLM under the law.
4. Initiate an action for payment of back rental fees owed to the BLM from the Lessee.
5. Terminate of lessee's right to use, occupy or develop the public lands. Upon an event of default, the Government may terminate Lessee's right to use, occupy or develop the public lands at any time by reasonable written notice to the Lessee. In the absence of such written notice from

the Government, no act by the Government, including, but not limited to, acts of maintenance, efforts to reuse, reoccupy or redevelop and/or assign rights to use, occupy or develop the public lands, shall constitute an acceptance of the Lessee's surrender of the Premises, or constitute a termination of this lessee's or of lessee's right to use, occupy or develop the public lands.

### **RIGHT TO AMEND**

BLM retains the right to amend the Lease to comply with the applicable laws and regulations. BLM and Lessee may also make such amendments, modifications, revisions, supplements or deletions of any of the terms, conditions, or requirements of the Lease with the mutual consent of the parties and in accordance with federal law.

### **TERMINATION**

This lease shall terminate upon the expiration of its term and/or in accordance with terms and conditions in 43 C.F.R. § 2920.9-3.

### **PROCEEDINGS IN CASE OF LESSEE BREACH**

If Lessee fails to comply with applicable laws, now existing regulations, or the terms, conditions and stipulations of this lease, and noncompliance continues for 30 days after written notice thereof, this lease will be subject to cancellation or termination by the Government. This provision will not be construed to prevent the exercise by the Government of any other legal and equitable remedy, including waiver of the breach. Any such remedy or waiver will not prevent later cancellation or termination for the same breach occurring at any other time.

### **DAMAGE TO OR DESTRUCTION OF AREAS USED OR OPERATED BY LESSEE**

All damage to the leased areas resulting from any cause of any kind to other nature whatsoever due to carelessness, omission, neglect, improper conduct, or other causes of the Lessee, or their invitees, agents, or employees shall be repaired, restored, or replaced promptly by the Lessee within a reasonable period of time at Lessee's sole cost and expense to the satisfaction of BLM. Lessee shall be responsible for the cleanup of any and all environmental contamination on the leased premises and for the restoration of any and all damages to natural resources regardless of fault.

Lessee shall carry comprehensive general liability insurance in an amount specified by the AO. The Lessee also may be required to carry casualty insurance of a type, and in amounts typical of similar business operations, for example, fire and named perils, as directed by the AO, and consistent with good business practices. The Lessee will maintain a current original certificate of insurance. The Lessee shall provide 30 days notice in writing to the AO of any change in insurance coverage. Failure to meet the requirements of this provision will constitute a substantial breach of the lease by the Lessee.

If BLM is required to repair the damage caused by Lessee, proceeds of Lessee's insurance on the leased premises shall be applied to the cost of repairs and replacement of the leased areas. Lessee is responsible for payment of all repair and replacement costs and expenses exceeding insurance proceeds for all non-structural or structural portions of the leased areas only in the event the

damage resulted from the Lessee's negligent or intentional act or omission, provided this provision does not waive any claims against the Lessee.

BLM shall not be liable or responsible to the Lessee for any damage or destruction to the Lessee's property from any cause whatsoever.

### **INDEMNITY**

The Lessee shall save, hold harmless, and indemnify the United States of America and its agents and employees for all losses, damages, judgments, or expenses arising from any peril, injury, death, or property damage in the use of any Government property or improvements, without exception. This provision shall survive expiration or termination of this Agreement.

### **NONPERSONAL SERVICES**

This lease constitutes an agreement for "non-personal services". It is therefore, understood by the parties that the Lessee's and/or the Lessee's employees shall pursuant to the Government's right and obligation to inspect, accept or reject work, comply with such general direction of the AO, or the duly authorized representative, as is necessary to ensure accomplishment of the lease objectives.

### **NONDISCRIMINATION AND CIVIL RIGHTS**

#### **1. Nondiscrimination**

The Lessee, for itself, its personal representatives, successors in interest, and assigns, as a part of the consideration hereof, shall not discriminate or exclude on the grounds of race, color, national origin, sex, age, sexual orientation or handicap from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of facilities thereon, and Lessee shall use the Leased Premises in compliance with all other requirements imposed by or pursuant to Federal law.

#### **2. Civil Rights**

The Lessee shall comply with all pertinent statutes, Executive Orders and such rules that are promulgated to assure that no person shall on grounds of race, creed, color, national origin, sex, age, sexual orientation or handicap be excluded from participating in any activity on the public lands conducted with or benefitting from the operation of this lease with the BLM.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed this \_\_\_\_ day of \_\_\_\_\_, 2015.

Date: \_\_\_\_\_

Bureau of Land Management (BLM)

By: \_\_\_\_\_



Date: \_\_\_\_\_

By: \_\_\_\_\_