

## SECTION 4-5: EASEMENTS, LICENSES, AND USE PERMITS

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### 4-5-00 POLICY

#### A. EASEMENTS

The granting of a right-of-way through Federal lands for a specified purpose, such as a highway or utility line for other than a temporary use, is a grant of an interest in the property of the Government, and under the Constitution it must be authorized by Congress. Section 1 of P.L. 87-852 (40 USC 319) granted the authority to grant easements in, over, and upon such property (other than public domain or property held in trust for Indians) for a right-of-way or other purpose with or without consideration and upon such terms as are deemed appropriate to protect the interests of the United States. Legislative jurisdiction over the subject real property may be relinquished to states, as deemed necessary or desirable.

#### B. REVOCABLE LICENSES

The Attorney General has ruled that the Government has the inherent right to license the use of property under its control for non-federal purposes, provided that the license is revocable at will. Such a revocable license does not convey any interest in the real property. An additional basis for the authority to license the temporary use of property under HHS control is 5 U.S.C. 301, which, among other things, authorizes the head of an Executive department to prescribe regulations for the custody, use and preservation of an agency's property. A revocable license issued by HHS must not interfere with the Government's use of the property and must not be adverse to the interests of the United States. Such a license must not be issued in a discriminatory manner or otherwise violate any statutory provision. Licenses are generally used for roof top antennas and associated space on Government owned property. Licenses are not to be used for sub-letting space.

#### C. USE PERMITS

HHS may acquire the right under a temporary permit to use the property of another Federal Government agency or, conversely, to permit another Federal Government agency to use HHS property. Permits granted under this authority are not permanent relinquishments of property. They merely provide permission for the temporary use of the property by another Federal agency so long as the property is not required by the permitter. They are revocable at will by the permitter, and are not assignable. Under the Federal Property Management Regulations (FPMR), HHS may acquire the right to use excess property prior to its declaration as surplus property pending its disposal. HHS assumes the responsibility for maintaining the real property while using it.

#### D. RIGHT-OF-WAY FOR FEDERAL AID HIGHWAY

Under 23 USC 317, HHS may transfer lands needed for a right-of-way for a Federal aid Highway to the Secretary of Transportation, who has the authority to make a grant of and transfer title to such land to State Governments for highways.

#### 4-5-10 PROCEDURES

##### A. TERMS AND CONDITIONS OF EASEMENTS

Grants of easements are usually made without monetary consideration if the easement is for the benefit of a Federal installation or the public.

Care should be exercised in providing terms that will protect the interests of the Government and restrict actions on the part of the grantee, which would create undue interference with the management and operation of the installation. When easements are granted without consideration, an assurance will be included that the grantee will not discriminate in the use of the property on the grounds of race, color, national origin, age, handicap, or sex, and will comply with the HHS regulations issued pursuant to Title VI of the Civil Rights Act of 1964 (P.L. 88-352), section 504 of the Rehabilitation Act of 1973 (P.L. 93-112), and Title III of the Age Discrimination Act of 1975 (P.L. 94-135). Title IX of the Education Amendments of 1972, Public Law 92-318 recipients of Federal financial assistance are prohibited from discriminating on the basis of sex in educational programs and activities. The easement document should at a minimum, contain the terms and conditions set forth in Exhibit 4-5-A.

Requests for the interim use of land pending the formal grant of easement may be granted with the prior approval of OFMP. All requests should contain sufficient information concerning the circumstances involved and the proposed effective date of interim use required in order that necessary action for approval may be taken and notice given thereof.

Upon receipt of the request for a grant of easement, and prior to delivery of the original easement document to the grantee, the grantee and the OPDIV shall inspect the land and then submit a formal report of the inspection, signed by both parties. This is essential for the future settlement of disputes.

##### B. TERMS AND CONDITIONS FOR REVOCABLE LICENSES

Licenses may be executed only by HHS officials who have authority based on a specific delegation. This authority has been redelegated, through channels, to the OPDIVs. The license must be revocable at the will of the Government, and must be of benefit to the Government. The nature of the benefit shall be stated in the license. The license must be without consideration, as consideration implies an interest in the property. Terms and conditions contained in X4-5-B must be included in the license, with any additional terms necessary to fit the particular circumstances. Care should be taken to assure that any modifications or additional conditions will not convey an interest in the land or be detrimental to the operation of the installation involved or to the Government. In some cases, the granting official may determine that the best interests of the Government will be served by requiring a performance or damage deposit (in the form of a bond).

Licenses may be terminated at any time in accordance with its terms by sending the licensee a formal notice of termination, signed by the approving authority, as in the granting thereof. The notice shall cite the license number and the reason for its termination. A termination inspection will be made in the same manner as prescribed for the initial inspection, and a report signed by both parties will be attached to the notice. The OPDIV will take necessary measures to ensure that any restoration required is accomplished

by the licensee. A termination request should be made in the same manner as the request for the initial license.

### C. USE PERMITS TO OTHER FEDERAL AGENCIES

The Use Permit, form HHS-588, shown in X4-5-C, should be utilized by HHS agencies when permitting use of real property under its control. The conditions included in the form are minimum requirements; additional provisions peculiar to the specific permit should also be included. Permits shall not be granted for the use of HHS land, buildings, or space within buildings, in order to circumvent or delay disposal of unneeded real property. Property held for foreseeable future use may be made available for temporary use by others in accordance with this Section. Ordinarily no money consideration will be required for permits to other Federal agencies. However, the permittee will reimburse HHS for utilities and services furnished. If property leased by HHS is temporarily unneeded and a permit to use it is granted to another agency, the permittee will reimburse HHS for its proportionate share of the rental and other operating costs. All proposed permits will be submitted by the OPDIV to HHS/OFMP for review, recommendation, and approval. After approval, the permit will be returned, through channels, to the OPDIV, who should obtain acceptance by permittee and return a fully executed copy to OFMP.

### D. HHS USE OF OTHER FEDERAL SPACE

Prior to obtaining the use of real property by permit, the benefits accruing from any needed alterations must be considered carefully and weighed against the anticipated term of tenure. Alterations should not be planned for space occupied on a minimum term arrangement. Permits will be executed by OFMP. The permit shall be submitted for approval, through agency headquarters, and contain sufficient justification for the proposed action. After approval, the original will be returned to the requesting office, which should ensure that the agency financial accounting office receives a copy when reimbursements are involved.

### E. TERMINATION OF EASEMENTS

Requests to terminate an easement should be forwarded in writing, through channels, to OFMP. The request should specify the basis for the termination, and should include an estimate of any anticipated cost of restoration.

Upon termination of an easement, the OPDIV will inspect the land and accompanying improvements and will then prepare a formal report, which will be compared with the initial inspection report to determine the nature and extent of restoration that the grantee will be required to perform.

## 4-5-20 GUIDANCE AND INFORMATION

### A. MANAGEMENT OF EASEMENT

The OPDIV administering the easement shall periodically inspect the property to ensure that the terms and conditions of the easement are being complied with, and will initiate, if necessary, measures to modify or terminate the easement.

The OPDIV must ensure that the payment of monetary consideration is made when the instrument granting the easement provides for such payment to the Government. Such collections shall be deposited into the Miscellaneous Receipts Account of the Treasury. If the circumstances warrant, a performance or damage deposit may be required to protect the Government's interest.

AGREEMENT AND GRANT OF EASEMENT

This AGREEMENT AND GRANT OF EASEMENT made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2\_\_\_\_, by and between the UNITED STATES OF AMERICA acting by and through the Department of Health and Human Services, hereinafter referred to as the Grantor and \_\_\_\_\_ hereinafter referred to as the GRANTEE.

WITNESSETH

WHEREAS: the Grantor has need of \_\_\_\_\_ to operate facilities which it is required by law and public interest to operate; and

WHEREAS; in response to Grantor's need and request for \_\_\_\_\_ from Grantee, the Grantee has made application for the Grant of Easement in, under, upon, and across real property of said Department, situated in \_\_\_\_\_ County, in the State of \_\_\_\_\_, hereinafter more particularly described, said easement site to be used as a location of \_\_\_\_\_ for the purpose of providing \_\_\_\_\_ to said \_\_\_\_\_; and

WHEREAS, the (OPDIV Agency Head, or his/her designee) \_\_\_\_\_, of the Department of Health and Human Services, \_\_\_\_\_, has made an environmental assessment of this action in accordance with Section 102 of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) and has found that there would be no significant impact on the quality of the human environment; and

WHEREAS, the Department of Health and Human Services has custody and control of the aforesaid property and undersigned, acting pursuant to authority under 40 U.S.C. 1314 has determined that said easement will not be adverse to the interest of the United States, but will promote and enhance the ability of the United States to provide health services, through \_\_\_\_\_.

NOW THEREFORE WITNESSETH THAT:

The Grantor in consideration of the premises and other good and valuable considerations; receipt of which is hereby acknowledged, does hereby grant, bargain, sell, and convey unto the Grantee, its successors and assigns, subject to terms and conditions hereinafter stated, an easement for a \_\_\_\_\_ and related purposes, including the right, privilege, and authority to install, operate and maintain said \_\_\_\_\_ in, on, over, under, and across real property of the Grantor situated in \_\_\_\_\_ County, \_\_\_\_\_ the easement site herein granted being more particularly limited and described as follows, to wit:

\_\_\_\_\_  
\_\_\_\_\_  
its precise location shown and described on the plat which is identified as \_\_\_\_\_ and which is attached hereto and made a part hereof, SUBJECT TO all easements, liens, reservations, exceptions of interest or record now existing on the above-described easement site.

PROVIDED, HOWEVER, that the said easement is granted under and subject to the following terms and conditions, which the grantee hereby accepts:

1. The said easement shall be utilized continuously for the above-stated uses and for no other purpose.
2. The Grantee will neither conduct mining operations nor remove any mineral substance from the land.
3. The Grantee will at its own expense, construct, mark, keep, and maintain, in good condition and repair, any improvements it makes on the property.
4. The Grantor reserves the right to enter on occasion the premises which are the subject of the grant to assure that the terms of the grant are being complied with.
5. The Grantee shall give written notice to Grantor prior to onset of construction, renovation, or maintenance work in said easement site and shall cooperate in scheduling and locating such activities to the satisfaction of the Grantor so as to cause the minimum possible disruption to the Grantor's health service activities.
6. The Grantee will indemnify and save the Government harmless from any liability or responsibility whatever arising directly or indirectly from Grantee's use of the easement and activities on the premises.
7. The Grantee will minimize damage to the scenic and esthetic values of the premises and otherwise protect the environment.
8. The Grantee will comply with air and water quality standards established by or pursuant to Federal, State and local laws and all regulations issued pursuant to said laws.
9. The Grantee will otherwise protect Federal property and economic interests and public interest in the lands traversed by the easement or land adjacent thereto.
10. The Grantee will comply with all applicable Federal, State and local laws, regulations and standards for public health and safety, environmental protection, and the siting, construction, operation, and maintenance of the easement.
11. Upon termination or forfeiture of the grant, the Grantee, if so requested by the Government, will remove from the premises all structures or other improvements belonging to the Grantee and otherwise restore the premises to the satisfaction of, and at no cost to the Government.
12. The Grantee will correct at no expense to the Government any drainage conditions adversely affecting the Grantor's land or improvements thereon resulting from the Grantee's use and enjoyment of the easement, within a reasonable time after the occurrence thereof, to the satisfaction of the Grantor.

In the event of the Grantee's failure to comply with any of the forgoing terms and conditions whether caused by the legal or other inability of the Grantee to perform the same or in the event of the Grantee's failure for a continuous 2-year period to use the said easement for the purpose for which it is granted, or of the Grantee's abandonment of said easement, said easement will terminate in whole or in part at the option of the Grantor, which shall have the right to so terminate in addition to all other remedies for such breach, and the Grantee shall forfeit all rights under said easement. Written notice of such a termination shall be given to the Grantee, and termination shall be effective as of the date of such notice. Upon termination, all right, title and interest to and in the land shall revert to the United States or its assignee, and the Grantee, if requested by the Grantor, shall deliver a Quitclaim Deed to the rights arising hereunder.

PROVIDED, HOWEVER, that the failure of the Grantor to insist in any one or more instances upon complete performance by the Grantee of any of the terms, covenants, or conditions of this grant shall not

be construed as a waiver or relinquishment by the Grantor of future performance of any such terms, covenants or conditions, but the Grantee's obligations with respect to such future performance shall continue in full force.

The Grantee further covenants and agrees, for itself, its successors and assigns, that by execution and acceptance of this easement, it will comply with the requirements of Title VI of the Civil Rights Act of 1964 (P.L. 88-352), Section 504 of the Rehabilitation Act of 1973 (P.L.93-112), Title IX of the Education Amendments of 1972 (P.L. 92-318), and the Age Discrimination Act of 1975 (P.L. 94-135), and all requirements imposed by or pursuant to the Grantor's regulations issued pursuant to said Acts.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed as of the day and year first above written.

UNITED STATES OF AMERICA  
Acting by and through the Secretary  
of the Department of Health and Human Services

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

ACKNOWLEDGEMENT

STATE OF )  
COUNTY OF ) §

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me the undersigned officer, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_,

\_\_\_\_\_,  
Department of Health and Human Services, and known to me to be the person who executed the forgoing instrument on behalf of the Secretary of Health and Human Services, for the United States of America, and acknowledged to me that he subscribed to the said instrument in the name of the Secretary of Health and Human Services and on behalf of the United States of America.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

ACCEPTANCE

The \_\_\_\_\_ hereby accepts the easement and thereby accepts and agrees to all the terms, covenants, conditions and restrictions contained therein.

By \_\_\_\_\_

ACKNOWLEDGEMENT

STATE OF )  
COUNTY OF ) §

On this \_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, before me, \_\_\_\_\_ a Notary Public in and for the City of \_\_\_\_\_, County of \_\_\_\_\_, State of \_\_\_\_\_, personally appeared \_\_\_\_\_, known to me to be the \_\_\_\_\_, and known to me to be the person who executed the forgoing instrument on behalf of \_\_\_\_\_ and acknowledged to me that he executed the same as the free act and deed of \_\_\_\_\_.

Witness my hand and official seal.

(SEAL)

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

<b>REVOCABLE LICENSE FOR NON-FEDERAL USE OF REAL PROPERTY</b>		1. LICENSE NO.
A revocable license affecting property described and for the purposes designated below here by granted to the licensee herein named, subject to all of the conditions, special and general, hereinafter enumerated.		
2. NAME OF LICENSEE	3. ADDRESS	
4. PROJECT DESIGNATION AND ADDRESS	5. MAXIMUM PERIOD COVERED	
	FROM	TO
6. CONSIDERATION (\$)		
7. DESCRIPTION OF PROPERTY AFFECTED  <i>(As shown on Exhibit _____, attached hereto and made a part hereof.)</i>		
8. PURPOSE OF LICENSE		
9. By the acceptance of this, license, the licensee agrees to abide and be bound by the General Conditions on the rear of this form and following conditions:		
<b>10. SPECIAL CONDITIONS</b>		
That condition(s) No.(s) _____ was (were) deleted before the execution of this license.		
<b>U.S. Department of Health and Human Services Licensor</b>		<b>Licensee</b>
DATED (Month, day, year)	ACCEPTED (Month, day, year)	
BY (Signature)	BY (Signature)	
NAME	NAME	
TITLE	TITLE	
<i>If Licensee is a Corporation, the following Certificate of Licensee must be executed.</i>		
<b>CERTIFICATE OF CORPORATIVE LICENSEE</b>		
I certify that I was a Secretary of a corporation named as licensee herein; that the person who signed said license on behalf of the licensee was with said corporation; and that said license was duly signed for and in behalf of said corporation by authority of its governing body, and is within the scope of its corporate powers.		
	NAME OF CERTIFIER	
	TITLE OF CERTIFIER	
	NAME OF LICENSE SIGNER	
	TITLE OF LICENSE SIGNER	
	SIGNATURE OF CERTIFIER	

## 11. GENERAL CONDITIONS

a. **COMPLIANCE.** Any use made of property affected by the license and any construction, maintenance, repair, or other work performed thereon by the licensee, including the installation and removal of any article or thing, shall be accomplished in a manner satisfactory to the U.S. Department of Health and Human Services, hereafter referred to as HHS.

b. **STRUCTURES.** The licensee shall not place or construct upon, over or under the property any installation or structure of any kind or character, except such as are specifically authorized herein.

c. **LAWS AND ORDINANCES.** In the exercise of any privilege granted by this license, licensee shall comply with all applicable Federal, State, municipal and local laws, and the rules, orders, regulations and requirements of Federal governmental departments and bureaus.

d. **SANITARY CONDITIONS.** If this license gives possession of United States Property, the licensee shall at all times keep the premises in a sanitary condition satisfactory to HHS.

e. **DAMAGE.** Except as may be otherwise provided by the special conditions above, no United States property shall be destroyed, displaced or damaged by the licensee in the exercise of the privilege granted by this license without the prior written consent of HHS and the express agreement of the licensee promptly to replace, return, repair and restore any such property to a condition satisfactory to HHS upon demand.

f. **INDEMNIFICATION.** The licensee shall indemnify and hold harmless the United States, its agents and employee against any and all loss, damage, claim, or liability whatsoever, due to personal injury or death, or damage to property or others directly or indirectly due to the exercise by the licensee of the privilege granted by this license or any other act or omission of licensee, including failure to comply with the obligations of said license.

g. **STORAGE.** Any United States Property which must be removed to permit exercise of the privilege granted by this license shall be stored, relocated or removed from the site, and returned to its original location upon termination of this license, at the sole cost and expense of the licensee, as directed by HHS.

h. **OPERATION.** The licensee shall confine activities on the property strictly to those necessary for the enjoyment of the privilege hereby licensed, and shall refrain from marring or impairing the appearance of said property, obstructing access thereto, interfering with the transaction of Government business and the convenience of the public, or jeopardizing the safety of persons or property, or causing justifiable public criticism.

i. **NOTICE.** Any property of the licensee installed or located on the property affected by the license shall be removed upon 30 days' written notice from HHS.

J. **GUARANTEE DEPOSIT.** Any deposit which may be required to guarantee compliance with terms and conditions of this license shall be in the form of a certified check, cashiers check or postal money order in the amount above, payable to HHS.

k. **Bond.** Any bond required by this license shall be in the amount designated above, executed in manner and form and with sureties satisfactory to HHS.

l. **EXPENSE.** Any cost, expense or liability connected with or in any manner incident to the granting, exercise, enjoyment or relinquishment of this license shall be solely assumed and discharged by the licenses.

m. **FUTURE REQUIREMENTS.** The licensee shall promptly comply with such further conditions and requirement as HHS may hereafter prescribe.

n. **ATTEMPTED VARIATIONS.** There shall be no variation or departure from the terms of this license without prior written consent of HHS.

o. **NONDISCRIMINATION.** The licensee agrees that no person will be discriminated against in connection with the use made by the licensee of the property on the ground of race, color or national origin, nor will any person be denied the benefits of or be subjected to discrimination under any program or activity held, conducted sponsored by the licensee in that any activity, program or use made of the property by the licensee will be in compliance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 238; 42 USC 2000d) and the applicable regulations of HHS and GSA (41 CFR Subpart 101-6.2).

The licensee will obtain from each person or firm, who through contractual or other arrangements with the licensee, provides services, benefits or performs work on the property, a written agreement whereby the person or firm agrees to assume the same obligations with respect to nondiscrimination as those imposed upon the licensee by law and will furnish a copy of such agreement to the licensor.

The breach by the licensee of conditions relating to nondiscrimination shall constitute sufficient cause for cancellation and revocation of the license.

<b>PERMIT FOR USE OF REAL PROPERTY BY FEDERAL AGENCY</b>		1. PERMIT NO.
Permission, revocable at the will of the United States Department of Health and Human Services, is hereby granted the Permittee hereinafter named to use the property described below for the purpose designated, subject to the conditions, special and general, herein prescribed.		
2. NAME OF PERMITTEE AGENCY		3. LOCAL REPRESENTATIVE <i>(Name and Address)</i>
4. PROJECT DESIGNATION AND ADDRESS		5. MAXIMUM PERIOD COVERED
		A. FROM
		B. TO
6. DESCRIPTION OF PROPERTY AFFECTED <i>(As shown on Exhibit _____, attached hereto and made a part hereof.)</i>		
7. PURPOSE OF PERMIT		
8. By the acceptance of this, permit, the Permittee agrees to abide and be bound by <b>the General Conditions on the rear of this form and the following conditions:</b>		
<b>I. SPECIAL CONDITIONS</b>		

**11. GENERAL CONDITIONS**

- a. The use and occupancy of the property shall be without cost or expense to the United States Department of Health and Human Services (HHS), and under general supervision of HHS or its authorized representatives, and subject to such rules and regulations as he/she may prescribe from time to time.
- b. The permittee shall at its own expense and without cost or expense to HHS, maintain and keep the property in good repair and condition
- c. The use to be made of the property shall be limited to that specified in the permit.
- d. The permittee shall pay the cost, as determined by HHS or its authorized representative of producing and/or supplying any utilities and other services furnished by the Government for use of the permittee.
- e. No additions to or alterations of the property shall be made without the prior consent of HHS or its authorized representative.
- f. On or before the date of expiration or termination of this permit, the permittee shall vacate the premises, remove its property therefrom and restore the premises to a condition satisfactory to HHS. If however, this permit is revoked, the permittee shall vacate the premises, remove its property therefrom and restore the premises as aforesaid within such time as the HHS may designate.

DATED ( <i>Day, Month, Year</i> )	DATED ( <i>Day, Month, Year</i> )
BY ( <i>Signature</i> )	BY ( <i>signature</i> )
NAME OF SIGNER	NAME OF SIGNER
TITLE	TITLE

