

Bureau of Land Management STANDARD STIPULATIONS

**AZA-017001 City of Nogales**

**RIGHT-OF-WAY**

**1.0 Definitions**

- 1.1. The Tucson Field Manager or its designee is the Authorized Officer (AO), as defined by 43 CFR 2920.0-5(c).
- 1.2. “Grantee,” or “holder,” means the City of Nogales, and any and all assignees that may be of record, including all agents, contractors, sub-contractors, and employees.
- 1.3. “Grant,” means the Right-of-Way (ROW), license, lease, permit, or other permission granted by the United States to the grantee for the use of public lands and resources.

**2.0 General**

- 2.1. The Right-of-Way reserves to the Secretary of the Interior, or lawful delegates, the right to grant additional rights-of-way, leases, or easements for compatible uses over, under, within or adjacent to the lands involved in this grant.
- 2.2. The Right-of-Way grant herein granted shall be subject to the express covenant that it will be modified, adapted, or discontinued if found by the Secretary to be necessary, without liability or expense to the United States, so as not to conflict with the use and occupancy of the land for any authorized works which may be hereafter constructed thereon under the authority of the United States.
- 2.3. The holder shall comply with all State and Federal laws applicable to the authorized use and such additional state and Federal laws, along with the implementing regulations, that may be enacted and issued during the term of the grant.
- 2.4. All valid rights existing on the date of the original Right-of-Way grant will be recognized and complied with.
- 2.5. All mitigations and stipulations of the original grant will be adhered to.

**3.0 Maintenance**

- 3.1. The holder shall notify the AO prior to commencement of emergency maintenance outside of the Right-of-Way to discuss repair and construction activities.
- 3.2. Grant holder shall operate and maintain its facilities, improvements, and structures within the Right-of-Way limits in a safe, usable, clean and attractive condition. This Right-of-Way does not allow for any surface-disturbing activities outside the Right-of-Way area.
- 3.3. Grant holder shall conduct all maintenance activities in a manner that will minimize disturbance to vegetation, drainage channels and stream banks. Grant Holder shall take resource conservation and protection measures on the Right-of-Way as the AO deems reasonably necessary.

- 3.4. Maintenance and any associated costs will be the responsibility of the Grantee and any other existing or future Grantees associated with the issued ROW. The Grantee will maintain the ROW in a safe, usable condition, as directed by the Authorized Officer.
- 3.5. Any modification to the Right-of-Way initiated by the holder may require the submission of an environmental assessment, cultural resource survey and biological evaluation to the Bureau of Land Management's AO.

#### **4.0 Environmental**

- 4.1. All waste material resulting from construction or use of the site by holder shall be removed from the site and shall be disposed of promptly at an appropriate waste disposal site. "Waste" means all discarded matter including, but not limited to, human waste, trash, garbage, refuse, oil drums, petroleum products, ashes, and equipment.
- 4.2. The holder will maintain the pipeline in a good and safe condition and also do mitigation for erosion control and dust mitigation.
- 4.3. Use of pesticides or herbicides shall comply with the applicable Federal and State laws. Pesticides and herbicides shall be used only in accordance with their registered uses and within limitations imposed by the Secretary of the Interior. Prior to the use of pesticides or herbicides, the grantee shall obtain from the AO written approval of a plan showing the type and quantity of materials to be used, pest(s) to be controlled, method of application, location of storage and disposal of containers, and any other information deemed necessary by the AO. Emergency use of pesticides or herbicides shall be approved in writing by the AO prior to such use.
- 4.4. The operator shall be held responsible if noxious weeds become established within the areas of operations. Weed control shall be required on the disturbed land where noxious weeds exist, which includes any access roads and adjacent land affected by the establishment of weeds as a result of this action. The operator shall consult with the authorized officer for acceptable weed control methods, which include following U.S. Environmental Protection Agency (EPA) and BLM requirements and policies.
- 4.5. Any vehicles or equipment that are brought in from outside the area will be power-washed including the undercarriage to prevent the introduction and spread of noxious weeds and/or invasive species.

#### **5.0 Cultural**

- 5.1. Any archaeological or historical artifacts or remains, or vertebrate fossils discovered during operations shall be left intact and undisturbed; all work in the area shall stop immediately and the AO shall be notified immediately. Commencement of operations shall be allowed upon clearance by the AO.
- 5.2. If, in connection with operations under this authorization, any human remains, funerary objects, sacred objects or objects of cultural patrimony as defined in the Native American Graves Protection and Repatriation Act (:L. 101-601; Stat. 3048; 25 U.S.C. 3001) are discovered by the holder, or any person working on his behalf, on public or Federal lands, the holder shall stop operations in the immediate area of the discovery, protect the remains and objects and

immediately notify the AO of the discovery. The holder shall continue to protect the immediate area of the discovery until notified by the AO that operations may resume.

- 5.3. An evaluation of the discovery will be made by the AO to determine appropriate actions to prevent the loss of significant cultural or scientific values. The holder will be responsible for the cost of the evaluation and the AO will make any decision as to proper mitigation measure after consulting with the holder. An additional cultural and paleontological resource survey may be required in the event the project location is changed or additional surface disturbing operations are added to the project after the initial survey. Any such survey would have to be completed prior to commencement of operations.

## **6.0 Hazardous Materials**

- 6.1. The holder(s) shall comply with all applicable Federal laws and regulations existing or hereafter enacted or promulgated. In any event, the holder(s) shall comply with the Toxic Substances Control Act of 1976, as amended (15 U.S.C. 2601, et.seq.) with regard to any toxic substances that are used, generated by or stored on the Right-of-Way or on facilities authorized under this Right-of-Way grant. (See 40 CFR, Part 702-799 and especially, provisions on polychlorinated biphenyls, 40 CFR 761.1-761.193.) Additionally, any release of toxic substances (leaks, spills, etc.) in excess of the reportable quantity established by 40 CFR, Part 117 shall be reported as required by the Comprehensive Environmental Response, Compensation and Liability Act of 1980, Section 102b. A copy of any report required or requested by any Federal agency or State government as a result of a reportable release or spill of any toxic substances shall be furnished to the AO concurrent with the filing of the reports to the involved Federal agency or State government.
- 6.2. The holder agrees to indemnify the United States against any liability arising from the release of any hazardous substance or hazardous waste (as these terms are defined in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9601, et.seq., or the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901, et.seq.) on the Right-of-Way (unless the release or threatened release is wholly unrelated to the right-of-way holder's activity on the Right-of-Way). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third party.

## **7.0 Termination / Renewal**

- 7.1. Prior to termination of the Right-of-Way, the holder shall contact the AO 180 days prior to arrange a pre-termination conference. This conference will be held to review the termination provisions of the grant.
- 7.2. This Right-of-Way may be renewed. If renewed, the Right-of-Way will be subject to regulations existing at the time of renewal, and such other terms and conditions deemed necessary to protect the public interest.
- 7.3. If the grant is to be renewed, an application for renewal must be received 180 days prior to the expiration of the grant.