

STANDARD STIPULATIONS
NMNM 128496
October 2014

1. The lessee shall conduct all activities associated with the construction, operation, and termination of the lease within the authorized limits of the lease area.
2. All design, material, and construction operation, maintenance, and termination practices shall be in accordance with safe and proven engineering practices.
3. Construction sites shall be maintained in a sanitary condition at all times, waste materials at those sites 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, used petroleum products, ashes, and equipment.
4. The lessee shall limit excavation to the areas of construction. Material encountered on the project and needed for select borrow, surfacing, riprap, or other special needs shall be conserved.
5. All waste material resulting from construction or use of the site shall be disposed at a transfer facility approved by the authorized officer. All materials disposal sites on public land or mineral estate must be approved by BLM permit or sale in advance of use.
6. Land surface treatment for areas previously disturbed: Following excavation, trenches will be backfilled with the excavated soil. The soil will be distributed and re-contoured to previous grade evenly over the surface of the disturbed area. The soil surface will be left rough to help reduce potential wind erosion.
7. Land surface treatment for areas previously undisturbed: Strip the top three to six inches of soil material with associated plant material over all surfaces to be disturbed by construction. Stockpile this material along the course of construction (inside the lease area). At the conclusion, including trench backfilling and compaction, replace the stockpiled soil, along with plant debris, uniformly back on the surface of the disturbed area.
8. Construction permits, water permits, and septic permits shall be applied for from the servicing entities.
9. Any cultural and/or paleontological resource (historic or prehistoric site or object) discovered by the holder, or any person working on his behalf, on public or Federal land shall be immediately reported to the authorized officer. The lessee shall suspend all operations in the immediate area of such discovery until written authorization to proceed is issued by the authorized officer. An evaluation of the discovery shall be made by the authorized officer to determine appropriate actions to prevent the loss of significant cultural or scientific values. The lessee shall be responsible for the cost of evaluation and any decision as to proper mitigation measures shall be made by the authorized officer after consulting with the holder.
10. The lessee shall be responsible for noxious weed control on disturbed areas within the limits of the lease area. The lessee is responsible for consultation with the authorized officer and/or local authorities for acceptable weed control methods (see Special Stipulations).

11. Use of pesticides shall comply with the applicable Federal and state laws. Pesticides 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, the Lessee shall obtain from the authorized officer written approval of a plan showing the type and quantity of material 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 authorized officer. Emergency use of pesticides shall be approved in writing by the authorized officer prior to such use.

Pesticides shall not be permanently stored on public lands authorized for use under this lease.

12. Holder shall maintain a copy of the authorization along with the stipulations on the construction site at all times.

13. Vegetation to be cleared from the lease area shall be limited to that necessary for project construction. The lessee shall smooth all disturbed areas to conform as nearly as possible to the adjacent terrain. The lessee shall contact the Authorized Officer for written instructions as to seeding, if the subject land is abandoned or the lease terminated prior to purchase.

14. The holder shall permit free and unrestricted public access to and upon the project area for all lawful purposes except for those specific areas designated as restricted by the authorized officer to protect the public, wildlife, livestock, or facilities constructed within the lease.

15. The lessee shall protect all survey monuments found within the project area. Survey monuments include, but are not limited to, General Land Office and Bureau of Land Management Cadastral Survey Corners, reference corners, witness points, U.S. Coastal and Geodetic benchmarks and triangulation stations, military control monuments, and recognizable civil (both public and private) survey monuments. In the event of obliteration or disturbance of any of the above, the holder shall immediately report the incident, in writing, to the authorized officer and the respective installing authority if known. Where General Land Office or Bureau of Land Management right-of-way monuments or references are obliterated during operations, the holder shall secure the services of a registered land surveyor or a Bureau cadastral surveyor to restore the disturbed monuments and references using surveying procedures found in the Manual of Surveying Instructions for the Survey of the Public Lands in the United States, latest edition. The holder shall record such survey in the appropriate county and send a copy to the authorized officer. If the Bureau cadastral surveyors or other Federal surveyors are used to restore the disturbed survey monument, the holder shall be responsible for the survey cost.

16. The holder(s) shall comply with all applicable Federal, State and local laws and regulations, existing or hereafter enacted or promulgated, with regard to any hazardous material, as defined in this paragraph, that shall be used, produced, transported or stored on or within the lease or any of the lease facilities, or used in the construction, operation, maintenance or termination of the lease or any of its facilities. "Hazardous material" means any substance, pollutant or contaminant that is listed as hazardous under CERCLA of 1980, as amended, 42 U.S.C. 9601 et seq., and its regulations. The definition of hazardous substances under CERCLA includes any "hazardous waste" as defined in the RCRA of 1976, as amended, 42 U.S.C. 2011 et seq. The term does not include crude oil or any fraction thereof that is not otherwise specifically listed or designated as a hazardous substance under CERCLA section 101(14), U.S.C. 9601 (14), nor does the term include natural gas.

17. 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 authorized officer concurrent with the filing of the reports to the involved Federal agency or State government.

18. The Holder of lease No. NMNM 128496 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, U.S.C. 9601. *et seq.* of the Resource Conservation and Recovery Act of 1976, 42 U.S.C. 6901 *et seq.*) on the lease (unless the release or threatened release is wholly unrelated to the lease holder's activity on the lease area). This agreement applies without regard to whether a release is caused by the holder, its agent, or unrelated third parties.
19. The lessee shall indemnify the United States against any liability for damage to life or property arising from the occupancy or use of public lands under this lease.
20. During the period of this lease, the United States, acting through the Bureau of Land Management, shall have the right to inspect the land covered by the lease at any time, without advance notice. During such inspections, officials of the Bureau of Land Management may be accompanied by other appropriate federal, state or local officials.
21. Prior to abandonment of the lease, the lessee shall contact the authorized officer to arrange a joint inspection of the lease area. The inspection will be held to agree on an acceptable abandonment and rehabilitation plan. The authorized office must approve the plan in writing prior to the lessee commencing any abandonment and rehabilitation activities.
22. This lease is issued in lieu of immediate conveyance. The lessee may request patent after development in accordance with the approved Plan of Development has been completed, or substantial development has occurred indicating that the project shall be completed in its entirety. A minimum of ninety (90) days shall be required from the date a patent request is submitted to the Authorized Officer to allow notification of holders of lands authorizations.
23. The Lease is issued subject to all valid existing rights. Patent to the Federal Lands within the lease area, if issued, shall be subject to all valid existing rights at the time of patent, including authorizations granted by the United States, under the terms and conditions in existence at the time of patent. Subject to limitations prescribed by law and regulation, prior to patent issuance, a Holder of any right-of-way within the Federal Lands may be given the opportunity to amend the right-of-way for conversion to a new term, including perpetuity, if applicable.
24. After patent is requested, sufficient time shall be allowed to complete or update the appraisal. The appraisal request for the public land parcel shall include information on affected ROWs and whether or not conversion has been requested by the holders. If appropriate, the appraisal request shall include valuation of the ROWs/easements to determine rental.
25. This lease contains a termination clause which may result in cancellation of the lease if the tract is used for purposes not provided for in the lease and not allowable under the act, or for nonuse. The

lease may also be cancelled if the terms of the development and management plans are not fulfilled, unless modifications of the plans are approved by the BLM.

26. This lease may be transferred to another party or the use may be changed only with the consent of the authorized officer. Transferees shall have all the qualifications of applicants under the act.
27. The authorized use and character of the land must conform with the approved plan of development and management plan. Reasonable charges may be made to the public for use of facilities provided that fees are no more than those charged at comparable publicly owned installations. The schedule of charges is subject to review and approval by the Secretary of the Interior.
28. The renewal of the lease is discretionary and is subject to adjustment of terms and conditions that the authorized officer deems appropriate at the time of renewal. Requests to exercise a privilege of renewal must be received at least 180 days prior to expiration of the lease.
29. Adjustment of rental charges and/or purchase price during the term of the lease, at time of renewal, or at exercise of the purchase option may be deemed appropriate by the authorized officer based on a periodic review of the appraisal.

SPECIAL STIPULATIONS
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1. Vegetation

The subject area shall be revegetated with a native seed mixture prescribed by BLM so that conditions may return to their original state at a faster rate. The CLC shall contact the appropriate BLM Range Specialist for the prescribed seed mixture to be used for revegetation.

2. Wildlife

Prior to construction, CLC shall avoid impact to migratory birds observed in the subject area by conducting a migratory bird survey if work is conducted between the months of March and September. Active nests shall be avoided until birds have fledged.

CLC shall follow the New Mexico Department of Game and Fish (NMDGF) trenching guidelines (2003) during construction.

3. Noxious Weeds

Power or high-pressure clean all equipment of all mud, dirt, and plants immediately prior to moving into the project area. Any gravel or fill to be used must come from weed-free sources. Inspect gravel pits and fill sources to identify weed-free sources. No soil spoil that could potentially contain noxious weed seeds shall be transported out of the area where it is created.

The project applicants shall be responsible for conducting a survey for and control of noxious weeds along the route proposed for construction. If during construction noxious weeds are identified that were not originally encountered during the survey, the project applicant shall avoid driving vehicles and equipment through or over the infested area. If avoidance measures cannot be taken within the area originally cleared, construction shall cease and the project inspector (PI) or the authorized officer (AO) contacted.

Any use of herbicides/pesticides shall comply with the applicable Federal and State laws. Herbicides/pesticides 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, holder 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 shall be approved in writing by the AO prior to use.

4. Special Status Species

If the Texas horned lizard is observed during construction, hand relocation of the species shall be conducted to avoid potential impacts.

Arroyos and disturbed areas shall be surveyed within 30 days prior to construction to ensure that burrowing owls have not begun to occupy the areas. If owls are observed, the following approaches taken from the NMDGF burrowing owl guidelines (2007) shall be conducted:

1. Design and implement project activities to spatially avoid negative impacts and disturbance to burrowing owls and their habitat.
2. Design and implement project activities to seasonally avoid negative impacts and disturbances to burrowing owls.
3. Relocate burrowing owls that shall be negatively impacted by project activities to protected areas of potential burrowing owl habitat.

CLC shall follow the NMDGF trenching guidelines during construction.

5. Cultural Resources

Mitigation measures for the one eligible site shall include the development of a data recovery plan. Radiocarbon samples from the site shall be taken in an attempt to determine the age the site was occupied. Macro-botanical and micro-botanical samples may provide information regarding diet and seasonal use at the site. A data recovery plan shall be written and approved by the applicable agencies, then carried out by personnel meeting the cultural resources standards of the Secretary of Interior.

For the entire subject area, if cultural resources are uncovered during construction activities, work shall halt and the SHPO and BLM archaeologist shall be contacted. Construction shall not resume until clearance is received from SHPO and BLM.

6. Paleontology

The BLM shall be notified immediately if paleontological resources are uncovered during construction. The lessee shall immediately notify the BLM Authorized Officer of any paleontological resources discovered as a result of operations under this authorization. The lessee shall suspend all activities in the vicinity of such discovery until notified to proceed by the Authorized Officer and shall protect the discovery from damage or looting. The lessee may not be required to suspend all operations if activities can be adjusted to avoid further impacts to a discovered locality or be continued elsewhere. The Authorized Officer shall evaluate, or shall have evaluated, such discoveries as soon as possible, but not later than 10 working days after being notified. Appropriate measures to mitigate adverse effects to significant paleontological resources shall be determined by the Authorized Officer after consulting with the operator. Within 10 days, the operator shall be allowed to continue construction through the site, or shall be given the choice of either (1) following the Authorized Officer's instructions for stabilizing the fossil resource in place and avoiding further disturbance to the fossil resource, or (2) following the Authorized Officer's instructions for mitigating impacts to the fossil resource prior to continuing construction through the project area.

7. Air Quality

Construction vehicle emissions shall be controlled with standard engineering practices including exhaust emissions controls. Dust control measures such as watering shall be implemented to reduce the amount of fugitive dust released into the air during construction activities. Dust control measures that are utilized during construction activities shall not impact the surrounding environment nor inhibit the regrowth of vegetation.

8. Hazardous or Solid Wastes

Areas of illegal dumping shall be removed and disposed of in accordance with local, state and federal regulations. Improved maintenance activities, signage and/ or fencing shall be implemented to minimize the potential for future dumping activities.

Appropriate erosion control methods shall be developed to minimize erosion and sedimentation issues.

A hazardous materials safety protocol shall be developed. Storage facilities for petroleum products, other fuels and chemicals at the safety complex shall be appropriately located and protected to prevent accidental spill from entering waterways.

A Spill Prevention Control and Countermeasures (SPCC) plan shall be developed and implemented to minimize the potential for hazardous material spills and provide means to handle them in a manner protective of employees and the environment. In the event that a spill does occur during construction, the appropriate state agency shall be notified.

9. Visual Impacts

All safety complex structures shall be single story. Lights for parking lots and ball fields shall make use of low intensity, energy efficient LED lights. Lights, except for safety lights, shall only be lit during special occasions at the ball fields and/or parks.

10. Noise

Noise barriers such as trees shall be used around ball fields and parks to help reduce the noise to nearby neighborhoods.

11. Topography, Geology and Soils

A Storm Water Pollution Prevention Plan (SWPPP) shall be developed and approved by EPA.

In regard to the North and South Fork Arroyos of the Las Cruces Arroyo, construction of the proposed facilities shall comply with the policies of the Arroyo Management Plan which is currently in draft form. Additionally, the structures shall contain a buffer beyond the 100-year flood zone where no development would occur.

Standard Terms and Conditions
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- (1) The lessee or its successor in interest shall comply with and shall not violate any of the terms or provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 241), and requirements of the regulations, as modified or amended of the Secretary of the Interior issued pursuant thereto (43 CFR 17) for the period that the lands leased herein are used for the purpose for which the lease was issued pursuant to the act cited above, or for another purpose involving the provision of similar services or benefits.
- (2) If the lessee or its successor in interest does not comply with the terms or provisions of Title VI of the Civil Rights Act of 1964 and the requirements imposed by the Secretary of the Interior issued pursuant to that title during the period which the land described herein is used for the purpose for which the lease was issued pursuant to the act cited or for another purpose involving the provision of similar services or benefits, said Secretary or his delegate may declare the terms of this lease terminated in whole or in part.
- (3) The lessee, by acceptance of this lease, agrees for itself and its successors in interest that a declaration of termination in whole or in part of this lease shall, at the option of the Secretary of the Interior or his delegate, operate to revest in the United States full title to the land involved in the declaration.
- (4) The United States shall have the right to seek judicial enforcement of the requirements of Title VI of the Civil Rights Act of 1964, and the terms and conditions of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant to said Title VI, in the event of their violation by the lessee or its successor in interest.
- (5) The lessee or its successor in interest will, upon request of the Secretary of the Interior or his delegate, post and maintain on the property leased by this document signs and posters bearing a legend concerning the applicability of Title VI of the Civil Rights Act of 1964 to the area or facility leased.
- (6) The reservations, conditions and limitations contained in paragraphs (1) through (5) shall constitute a covenant running with the land, binding on the lessee and its successors in interest for the period for which the land leased herein is used for the purpose for which this lease was issued or for another purpose involving the provision of similar services or benefits.
- (7) The assurances and covenant required by sections (1) through (6) above shall not apply to ultimate beneficiaries under the program for which this lease is made. "Ultimate beneficiaries" are identified in 43 CFR 17.12(h).