

**HAUL ROUTE AGREEMENT
ELLICOTT SAND & GRAVEL**

This Haul Route Agreement (“Agreement”) is entered into this 24 day of June, 2024 (“Effective Date”) by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado, a statutory county and political subdivision of the State of Colorado (“County”) and Ellicott Sand and Gravel, LLC, a Colorado limited liability company (“Developer”). County and Developer may be referred to herein individually as a “Party” and collectively as the “Parties.”

RECITALS

- A. On August 2, 2022 and pursuant to Resolution No. 22-269, the County approved a special use application submitted by Developer for the operation of a mineral and natural resources extraction operation, specifically a sand and gravel pit, on property legally described in Exhibit A and depicted on Exhibit B, both attached hereto and incorporated herein by reference (“Special Use Approval”).
- B. As a condition of approval of the mineral extraction operation, Developer must enter into a haul route agreement that identifies impacts of the operation on County roads and seeks to address such impacts. The purpose of this Agreement is to comply with that requirement.
- C. The provisions of this Agreement are intended to address the impacts of the first phase of the Operation, as that term is defined herein. Future phases of the Operation will be addressed through amendments to this Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Incorporation of Recitals. The Recitals set forth above shall be incorporated by reference into this Agreement as if fully stated herein.
2. General Operation Description. The Operation is an open pit sand and gravel extraction and processing operation on approximately 734 acres, to consist of six (6) phases over an estimated fifty-one to eighty (51-80) years, with reclamation occurring concurrently as each mining phase concludes.
3. Compliance with Applicable Laws. Developer must comply with all applicable federal, state, and local laws, ordinances, rules, and regulations and all applicable approvals, permits, and licenses in the construction, operation, and decommissioning of the Operation. Developer may not commence any construction or operational activity related to the Operation until obtaining all necessary approvals, permits, and licenses required to be obtained prior to such commencement of construction or operation.



4. Identification of Haul Route. The Parties agree that the Operation will impact County paved and unpaved roads based on the number of anticipated trips per day and the weight of the vehicles making such trips. Developer has identified a Haul Route for Phase 1 of the Operation (“Haul Route”) along public roads to and from the Operation site. The Haul Route is depicted in Exhibit C, attached hereto, and generally includes State Highway 94 west from Baggett Road and Baggett Road south from State Highway 94 to the Operation site.

5. Term of Agreement. This Agreement shall remain in effect thirty (30) days following the conclusion of all extraction and processing activities of the Operation. Because the specific provisions of this Agreement address only the anticipated impacts of Phase 1 of the Operation, it is anticipated that the Parties will enter into future amendments to or restatements of this Agreement.

6. Identification of Impacts to Haul Route. The County and Developer have relied upon the following information in identifying the Operation’s anticipated impacts to the Haul Route, the mitigation measures to be applied, and the costs thereof:

- a. Information contained in the Traffic Impact Studies prepared by LSC Transportation Consultants dated October 12, 2021 and September 14, 2023, including but not limited to the proposed mining schedule, the proposed haul route, and estimate truck/trip counts.
- b. Information contained in the Aggregate Surfacing Design Report for South Baggett Road prepared by Entech Engineering, dated November 13, 2023, including recommendations for new aggregate surfaced roadway, construction methods, and maintenance considerations.
- c. Estimated annual tonnage of 85,800 tons in years 0-3 of the Operation and 268,840 tons in years 4+ of the Operation.
- d. An impacted Haul Route distance of 1.7 miles.
- e. Initial Improvement costs as detailed in Exhibit D:
 - Subgrade Preparation, Aggregate Surface Material Placement, Reclamation and Chemical Treatment: **\$250,343.21**.
- f. Anticipated Annual maintenance schedule to be performed by El Paso County:
 - Year 1 – Initial Improvements per 5.e (performed prior to start of hauling)
 - Years 2 through 5 – Routine maintenance, including point repairs and replacement of materials as required.
 - Year 6 – Replacement of Initial Improvements installed per 5.e.
 - Years 7+ – Follows same 5-year cycle as Years 1 through 5.

7. Mitigation of Impacts to Haul Route. The County shall be responsible for completing all work identified in the maintenance schedule in paragraph 5.f. above. Developer shall reimburse the County for work identified in 5.e above. The amount shown is the cost of the completion of such work in Year 1, and payments for the amount specified shall be made annually over five years at \$50,068.64 per year. The initial payment shall be made within 60 days of execution of this Agreement, with subsequent payments due by June 1st of each year.



For Replacement of Initial Improvements in Year 6, the County shall provide written notice to Developer of the cost of such Replacement prior to December 31, 2028 along with supporting documentation. Developer shall reimburse the County for such cost through equal payments over five years, with each payment being due June 1st of each year and the first such payment due June 1, 2029.

8. Additional Mitigation Provisions.

- a. Developer shall install traffic counters at points of access.
- b. The County and Developer shall jointly inspect the Haul Route every six months beginning in Year 1 of hauling. The purpose of the inspection is to determine whether the Haul Route is in an acceptable condition. Acceptable condition will refer to a Gravel-PASER score of 4 or above, which is an industry-accepted gravel condition index for public agencies. A score of 4 on said scale indicates the roadway has a good crown, drainage throughout, and only slight wash-boarding or surface dust under dry conditions. Further, this score indicates there is adequate gravel material to support routine passenger car and truck traffic.
- c. Following each inspection, the County shall review its observations, maintenance work to date, and any changes to average daily traffic to determine whether the Haul Route is in an acceptable condition as described above. If not, the County may determine that a one-time or ongoing contribution by Developer to the annual maintenance cost is warranted. The County shall provide written notice of its determination to Developer, and the maintenance cost shall be applied to the payment for Initial Improvements due the following June 1 and, in the case of an ongoing maintenance cost, every June 1 thereafter.
- d. The County shall provide to Developer by February 15 of each year an accounting of funds used to maintain the Haul Route the previous calendar year. Any funds previously paid by Developer in excess of actual maintenance costs shall be credited to future maintenance costs.
- e. The speed limit for truck traffic traveling to and from the Operations site shall be 30 mph.
- f. Developer shall obtain an access permit from the Colorado Department of Transportation for access to State Highway 94 from Baggett Road prior to the first truck use of the Haul Route.

9. Future Phases of Operation. One (1) year prior to the anticipated conclusion of Phase 1 of the Operation and of each subsequent Phase, the Parties shall meet and in good faith discuss anticipated changes to the Haul Route and anticipated impacts to the existing or amended Haul Route, mitigation measures needed to address such impacts, and the mutual obligations to complete and pay for such mitigation measures. The Parties shall then execute an amendment to or a restatement of this Agreement addressing these issues, and execution of such amendment or restatement shall be a condition of Developer proceeding with each subsequent Phase of the Operation.

10. El Paso County Road Impact Fee. Developer understands and agrees that the Operation is subject to the provisions of the El Paso County Road Impact Fee and that the imposition of such



Road Impact Fee is separate and does not arise from this Agreement. The Road Impact Fee shall be assessed at the time of Site Development Plan approval.

11. General Provisions.

- a. Indemnity. Developer and its successors and assigns shall indemnify and hold harmless the County and its elected officials and employees, agents, and contractors from and against any and all losses, injuries, damages, claims, demands, suits, liabilities, causes of action, settlements, costs, or expenses that are caused by or result from the acts and omissions of Developer or its employees, officer, or agents arising from the construction, operation, and reclamation of the Operation. Nothing in this paragraph shall be interpreted to limit or waive any of the immunities, rights, limitations of liability and defenses afforded the County under the Colorado Governmental Immunity Act, C.R.S. 24-10-101, *et seq.*
- b. Amendment. This Agreement may be amended by mutual agreement of the Parties only by a writing signed by all Parties.
- c. Assignment. No Party may assign its rights and obligations under this Agreement without the prior written consent of all other Parties, which consent shall not be unreasonably withheld.
- d. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective personal representatives, heirs, successors, and assigns.
- e. Waiver. No delay in exercising any right or remedy under this Agreement shall constitute a waiver thereof by any Party hereto, and no waiver of a breach of any of the provisions of this Agreement shall constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.
- f. Colorado Law and Venue. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Colorado. In the event of any litigation that may arise hereunder, the Parties agree that jurisdiction and venue shall lie in the District Court of El Paso County, Colorado.
- g. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages shall be attached to a single instrument.
- h. Severability/Integrated Terms and Conditions. Because compliance with the terms and conditions of this Agreement is a condition of the Special Use Approval, its terms and conditions are integrated into the Special Use Approval. Therefore, if any provisions of this Agreement are determined by a court of competent jurisdiction to be unenforceable or invalid, the Special Use Approval and this Agreement shall be



rescinded or suspended unless the Board of County Commissioners, in its sole subjective discretion, approves an amendment to the Special Use Approval and/or this Agreement.

- i. No Third-Party Beneficiary. This Agreement is made and entered into for the sole protection and benefit of the Parties hereto and their respective successors and assigns. Nothing in this Agreement is intended to create or grant to any third party or person any right or claim for damages or the right to bring or maintain any action at law or equity.
- j. Entire Agreement. This Agreement, together with all exhibits attached hereto, constitutes the entire agreement between the Parties. This Agreement is specifically intended by the Parties to supersede all prior agreements, whether written or oral.
- k. Recording. This Agreement shall be recorded in the public records of the El Paso County Clerk and Recorder.

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In witness of the foregoing provisions, the Parties have executed this Agreement as of the Effective Date above.

ATTEST:

BOARD OF COUNTY COMMISSIONERS
OF EL PASO COUNTY, COLORADO

Steve Schleiker
County Clerk & Recorder

By: _____
Cami Bremer, Chair

Approved as to form:
Lori L Seago

County Attorney's Office

Ellicott Sand and Gravel, LLC,
a Colorado limited liability company

By: Perry Hastings
Name: Perry Hastings
Title: Manager

STATE OF COLORADO :
: SS.:
COUNTY OF EL PASO :



The foregoing instrument was acknowledged before me this 24 day of June, 2024, by Perry Hastings, the owner of Ellicott Sand and Gravel, LLC.

Christine R Wilson
Notary Public Signature

My Commission Expires: 11/10/2025