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El Paso County, CO  
  
217037314

## DEVELOPMENT AGREEMENT GATEWAY TRUCKING USE VARIANCE

This Development Agreement ("Agreement") is entered into this 28th day of March 2017 ("Effective Date") by and between El Paso County, by and through the Board of County Commissioners of El Paso County, Colorado ("Board") and Perry E. Hastings ("Developer"). The Board and Developer may be referred to herein individually as a "Party" and collectively as "Parties."

### RECITALS

A. Pursuant to §§ 29-20-104, 30-11-101(1)(d), 30-11-103, and 30-11-107(1)(e), the Board has the authority to regulate the use of land and to enter into agreements in connection therewith, when deemed by the Board to be in the best interests of the County.

B. Developer has applied for a use variance for property located on Franceville Coal Mine Road, which property is legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"). Developer wishes to operate a commercial truck and equipment storage facility on the Property in connection with his trucking company, which use is not allowed in the RR-5, Rural Residential zone district in which the Property lies.

C. The Parties wish to enter into this Agreement for the purpose of mitigating the negative impacts of the Developer's proposed use of the Property on Franceville Coal Mine Road.

### AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, which consideration the Parties agree is sufficient, as well as of the above Recitals, which are a material part hereof, the Board and Developer agree as follows:

1. No Assurance of County Approvals. Developer, for himself and his successors and assigns, understands and agrees that execution of this Agreement does not assure Developer that the Board will approve the use variance application for the Property, and no representations or promises are made or implied herein that the Board will approve such application. Developer also understands and agrees that the Board retains all rights to place any conditions on any use variance or other land use approval.

2. Identification of Road Deficiencies. Within sixty (60) days of the Effective Date of this Agreement, Developer shall submit to County staff the following documents prepared by a professional engineer: a) a report describing the condition of Franceville Coal Mine Road from State Highway 94 to the entrance of the Property (the "Road Segment"), b) an estimate of the cost to repair any deficiency in the existing Road Segment, and c) a determination of Developer's proportionate share of such cost based upon existing traffic conditions and Developer's proposed use of the Property. Within thirty (30) days of approval of the above documents by the County Engineer, Developer shall pay his share of the cost to repair existing deficiencies in the Road Segment to the County. The acceptance of such funds by the County does not impose a duty to repair the Road Segment within a specified period of time.

3. CDOT Access Permit. Within sixty (60) days of the Effective Date of this Agreement, Developer shall obtain an access permit from the Colorado Department of Transportation for the Franceville Coal Mine Road intersection with State Highway 94 and shall comply with all conditions of such permit, all at Developer's sole expense.

4. Maintenance of Road Segment. Within six (6) months of the Effective Date, the County Engineer shall prepare an estimate of the annual cost to maintain the Road Segment and a determination of Developer's proportionate share of such cost and provide them to Developer. Within one year of the Effective Date, and no later than the anniversary of the Effective Date each subsequent year, Developer shall pay to the County his share of the annual maintenance cost for the Road Segment, including an annual increase of 2% for inflation. Developer shall make such payments annually until the Road Segment is paved or upgraded or the County notifies the Developer that such payments are no longer required, whichever occurs sooner.

5. Escrow for Road Segment Improvements. Within one (1) year of the Effective Date, Developer shall provide to County staff a traffic report prepared by a professional engineer containing the following: a) an analysis of current Road Segment use and traffic patterns, b) an estimate of future Road Segment use and traffic patterns, c) an identification of future improvements to the Road Segment necessary to accommodate such future use and traffic patterns and the trigger event therefor, and d) an estimate of the cost of such future road improvements and Developer's proportionate share thereof. Within thirty (30) days of approval of such traffic report by the County Engineer, Developer shall tender to El Paso County, in the form of cash or a letter of credit, his proportionate share of the cost of future improvements to the Road Segment. Such funds shall be kept separate from all other County funds and used only at such time as the need for the identified improvements to the Road Segment has been triggered and the County intends to construct or require construction of such improvements. If the County does not formally initiate construction of improvements to the Road Segment within fifteen (15) years of the Effective Date, either by entering into a contract for such construction or requiring such construction as part of a land use approval, the escrowed funds shall be returned to Developer with any accrued interest.

6. Time of Essence. Time is of the essence hereof, and all terms, conditions, obligations and covenants shall be tendered or performed as specified herein. If any obligation hereunder is not performed or waived as herein provided, the Parties shall have such remedies as are available under applicable law.

7. Indemnification. Developer hereby agrees to indemnify El Paso County, its elected officials and employees from any and all damages, claims, losses, injuries and expenses, including attorney's fees, related to or arising out of Developer's work within County right-of-way pursuant to this Agreement.

8. Entire Agreement. This Agreement is an integration and expresses the entire agreement between the Parties, and the Parties hereto agree that none of them has made or authorized any agreement with respect to the subject matter of this instrument other than expressly set forth herein, and no additional or different oral representation, promise, agreement or consideration shall be binding on any of the Parties hereto, or their agents, employees, successors and assigns.

9. Successors and Assigns; Runs With Land. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns and shall run with the Property.

10. Changes or Modifications. No modification, amendment, novation, change or other alteration of this Agreement shall be valid unless mutually agreed to by the Parties in writing and executed as an addendum to this Agreement.

11. Severability. If any provision of this Agreement is, for any reason, held to be invalid by a court of competent jurisdiction, such holding shall not affect the validity of the remaining portion of this Agreement.

12. Waiver. The waiver of a breach of any of the provisions of this Agreement by any Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or other provision of this Agreement.

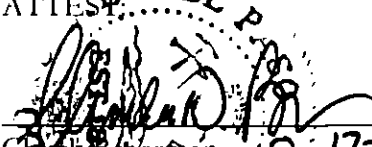
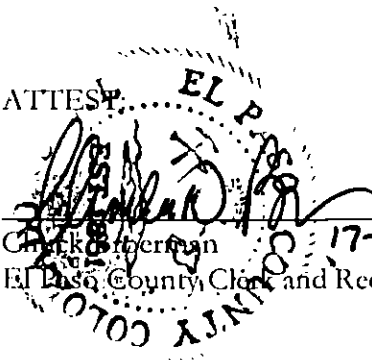
13. Assignment. No Party shall assign its interest in this Agreement without the prior written consent of the other Party.

14. No Third Party Beneficiaries. This Agreement does not and shall not be deemed to confer on any third party the right to the performance of or proceeds under this Agreement, to claim any damages or to bring any legal action or other proceeding against any Party hereto for any breach or other failure to perform this Agreement.

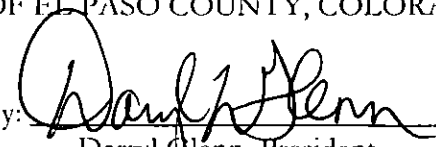
15. Applicable Law; Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Colorado, and venue shall be maintained exclusively in the El Paso County District Court.

16. Remedies. The Parties hereby agree that if any dispute cannot be resolved by mutual agreement of the Parties, such dispute may be resolved at law or in equity. The Parties further agree and acknowledge that this Agreement may be enforced at law or in equity, and in addition to any other available remedies, in the event of a breach of this Agreement, any Party may request from a court of competent jurisdiction to enter a writ of mandamus to compel the breaching Party to perform under this Agreement, and any Party may seek from a court of competent jurisdiction temporary and/or permanent restraining orders, or orders for specific performance, to compel the other to perform in accordance with the obligations set forth in this Agreement.

17. Recording. A fully executed original of this Agreement shall be recorded by the County in the records of the El Paso County Clerk and Recorder's Office.

ATTEST.....  
  
Cheryl Oberman  
El Paso County Clerk and Recorder  
17-110  


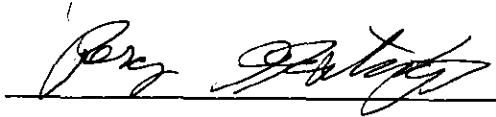
BOARD OF COUNTY COMMISSIONERS  
OF EL PASO COUNTY, COLORADO

By:   
Darryl Glenn, President

Approved as to form:

  
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County Attorney's Office

PERRY E. HASTINGS

  
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