

STATE OF MONTANA
AGGREGATE AND ROCK MINING LEASE

NO. _

This lease agreement, herein referred to as lease, made and entered into by and between the State of Montana, acting through its Department of Natural Resources and Conservation, hereinafter referred to as Department, and the person, persons, company or corporation herein named and hereinafter referred to as Lessee, under and pursuant to the terms and provisions of 77-3-201, et seq, MCA, as amended.

The Department, in consideration of the rental and royalties to be paid and covenants to be kept and performed by the lessee, in conjunction with an active opencut mining permit from the Montana Department of Environmental Quality, hereby grants a lease to the lessee for the purpose of mining and extracting _____ located in or under the lands hereinafter described and as specified in the attached plat, and for the purpose of building such structures, excavations, openings, ditches, drains, buildings and other improvements upon the premises as may be necessary or proper in order to prospect and explore for and to extract, save, care for, dispose of, and remove the above mentioned minerals from the premises, and for the purpose of providing places on the premises for such improvements, and for the purpose of free egress and ingress from the workings on the premises, all of the lands or reserved mineral rights herein described as follows:

Name & address of Lessee: _____

Lease legal description: Section XX: XX¼

County:

Total number of acres: _____

Royalty: _____

Annual Advance Royalty: _____

Rental: _____

Bond: _____

1. EFFECTIVE DATE and TERM

This lease shall take effect upon the signature of the Director of the Department or designee and remain in full force and effect for a primary term of five years and shall be extended so long thereafter as the annual advanced royalty is paid and an active DEQ opencut permit is in-force upon the leased lands. Non-payment of the annual advance royalty shall result in cancellation of this lease, unless otherwise stated by the Department in writing.

2. PURPOSE

This lease, in conjunction with an active opencut mining permit from the Montana Department of Environmental Quality, allows the lessee to conduct gravel mining crushing, screening and associated activities upon the leased premises. Additional activities that may be allowed under this lease include, but are not limited to: the creation of asphalt via a mobile plant, concrete batch plant, and storage of offsite material – such as recycled asphalt or decorative rock. In consideration of these activities, the lessee shall pay the lessor the amount defined as "Rental" above. The allowance or denial of additional activities is within the Department's sole discretion. The Department

may at any time revoke the ability to conduct any of the above listed activities. The Lessee must notify the Department of these activities prior to the commencement of such activities. The Department maintains the ability to modify the rental on January 1st of each year to obtain fair market value for additional activities.

3. ROYALTY AND QUARTERLY REPORTS

The Lessee agrees to pay the Department a royalty for all materials as they are taken and removed from the lease area unless waived by the Department. On or before the last day of each quarter (March, June, September, December) the lessee shall submit a report and royalty payment to the Department on a form prescribed by the Department showing the weight or cubic measurements of material produced, sold and removed from the site during the quarter. Royalty is not paid on produced and stockpiled material until it is sold or removed from the lease area. The applicable royalty rate is that which is in effect at the time the stockpiled material is removed from the lease area. Records of the materials mined in the lease area shall be kept and preserved separate from records of materials mined from non-State of Montana lands. The Department has the right to review and change the royalty rate on January 1st of each year of this license but must justify reason for the change.

4. ANNUAL ADVANCE ROYALTY

The lessee shall be required to pay an annual advance minimum royalty unless waived by the Department. The amount of such royalty is set forth above. The annual advanced royalty is not refundable in the event that actual production royalty is less. In the event such actual production royalty is greater, lessee is obligated to pay the greater amount. Failure to pay any royalty when due will result in this lease entering into default status. The lessee will be notified by the Department of lease default and will be given 30 days to remedy the violation. If no remedy is received within 30 days, this lease shall cancel for violation of lease terms. The Department has the right to review and change the annual advanced royalty on January 1st of each year but must justify the reason for the change.

5. RENTAL

The lessee shall be required to pay an annual rental unless waived by the Department. The amount of such rental is set forth above. Activities authorized by the payment of a rental are stated specifically below. Failure to pay any rental when due will result in this lease entering into default status. The lessee will be notified by the Department of lease default and will be given 30 days to remedy the violation. If no remedy is received within 30 days, this lease shall cancel for violation of lease terms. The Department has the right to review and change the annual rental on January 1st of each year but must justify the reason for the change.

Activities Authorized by Rental

6. PERMIT BOUNDARIES

The lessee agrees the lease area shall not exceed the acreage permitted for the site by the Opencut Section of the Mining Division of the Montana Department of Environmental Quality. The leased acreage may contain both bonded and non-bonded areas, but no disturbance is authorized in non-bonded areas. The leased acreage may be smaller than the acreage permitted by the Opencut Permit.

7. ADDITIONAL INFORMATION REQUIRED

If the lessee obtains a standard opencut mining permit from the Montana Department of Environmental Quality, additional information is not required. If the lessee obtains a dryland opencut mining permit from the Department of Environmental Quality, then they must submit maps to the Forestry and Trust Lands Division of the Montana DNRC that are consistent with the requirements of the site map and reclamation map of the Montana Department of Environmental Quality's Opencut Mining Division. Other information may be requested by the Department, which shall be promptly provided by the Lessee.

8. AMENDMENTS

Upon application to the Department by the lessee, on such form as the Department shall require and accompanied

by a revised plat, the lessee may request additional material, time, or acreage subject to all existing terms and conditions and such modified terms as the Department may require, including but not limited to adjustments in royalty, bonding, and reclamation requirements. Whether such application is approved is solely within the discretion of the Department. An environmental analysis in accordance with the Montana Environmental Policy Act may be required for certain amendments. Amendments to Montana Department of Environmental Quality Openpit Mining Documents may be sufficient for Departmental use.

9. ASSIGNMENTS

The lessee shall not assign or sublease without the consent of the Department. The approval of any assignment filed and supported may not be withheld where the rights or interests of the state in the premises assigned will not, in the judgment of the Department, be prejudiced thereby. All covenants and agreements herein set forth between the parties hereto shall extend to and bind their heirs, successors, assigns, and legal representatives. Failure to obtain the necessary approval from the Department shall be grounds for cancellation of the permit without renewal.

10. FINANCIAL AGREEMENTS

All contracts made in relation to the mineral interest granted herein, such as but not limited to assignments, subleases, joint ventures, overriding royalties operating agreements, project financing, back-in rights, or other similar agreements, whether verbal or written between the lessee herein and any other person or corporation must be approved by the Director of the Department. The Department reserves the right to deny any agreement that results in excessive profit taking by the lessee which does not bear a commensurate financial risk, and which deprives the school trust of fair compensation for trust assets. It will be the Department's sole discretion whether the proposed agreement is approved. The Department may consider payment of a reasonable compensatory bonus based on a negotiated percentage of the excess profit as adequate mitigation for the proposed agreement.

11. BOND

Permittee agrees prior to execution of this permit, to furnish a bond, a performance bond or an irrevocable letter of credit to the Department in the penal sum as specified above unless waived by the Department. Such bond shall be conditioned upon compliance with all permit terms and implied covenants including but not limited to the payment of royalties, advance royalties, and surface restoration. The Department may require additional bonds at any time during the term of the permit when necessary for a reasonable cause.

12. ACTIVITIES MAY BE DENIED

Surface activities may be denied on all or portions of the lease area if the Director determines in writing after an opportunity for an informal hearing with the lessee that the proposed surface activity will be detrimental to Trust resources and is therefore not in the best interest of the School Trust Beneficiary.

13. SOLE RIGHTS NOT GRANTED

Further the Department expressly reserves the right to lease, sell, grant easements or otherwise dispose of the premises hereby leased insofar as the surface is not necessary for the use of the lessee in connection with operations under this lease. (77-3-207, MCA) The lessee agrees that they will not make any claims to interest or estate of any kind or extent whatsoever in the premises by virtue of this lease or their occupancy or use hereunder. The Department reserves the right to grant other mineral permits and leases and to grant other mineral related activities within the leased area provided that such grants do not prevent the lessee from operating as permitted under this lease.

14. NOTICE

The lessee agrees to notify the Department prior to commencement of initial surface disturbance unless otherwise agreed to by the Department in writing and further agrees to notify the surface lessee before mining activity takes place. Lessee shall compensate surface lessee for actual damages to their leasehold interest or improvements caused by this activity and maintain a record of such compensation.

15. INSPECTIONS

The Department's officers, agents, geologists, engineers or others so authorized on its behalf shall have the right but not the obligation at all reasonable times to enter said land in order to inspect, examine, select samples or materials, survey or measure same, or for any other lawful purpose provided that the exercise of said right shall be conducted in such a way as not to unnecessarily interfere or conflict with the operations of the lessee and the Department shall also have the right at all reasonable hours, through its agents or employees, to inspect and examine any books or records of the lessee relating to the quantity, quality and price of the materials removed from the subject land or any agreements related thereto. The lessee shall cooperate with the Department in all reasonable ways, in order to facilitate the exercise of said rights.

16. UAV AUDITS

The Department may at any time utilize an unmanned aerial vehicle (UAV) or drone to inspect and audit the leased area. Data obtained by the Department during the flight or survey may be shared with the lessee. If a dispute arises as to the volume of material taken, and royalty owed to the Department, an audit shall be performed utilizing aerial (drone) survey. If the lessee disagrees with the findings of the audit, they may at their own expense provide an additional survey to the Department. The results of any survey not conducted by the Department will be analyzed by the Department to determine whether the results will be accepted. If the lessee disputes the results of the flight by the Department, it must show where the Department was in error in the original audit.

17. WASTE PROHIBITED

All prospecting and mining operations shall be done in good and workmanlike manner in accordance with approved methods and practices using such methods to insure the extraction of the greatest amount of material, having due regard for the prevention of waste of the materials developed on the land, the protection of the environment and all natural resources, the preservation and conservation of the property for future uses, and for the health and safety of workmen and employees. If the Department has reasonable belief that the operations are not so being conducted, the lessee shall be so notified in writing, and if compliance is not promptly obtained and the delinquency fully satisfied, the Department may at its option, after thirty (30) days' notice by certified mail to the lessee, cancel the permit.

18. TOPSOIL

All topsoil must be stripped and saved from both mine areas and stockpile areas prior to beginning operations. No topsoil may be used or sold for any purpose except reclamation of this lease area without specific written permission from the Department.

19. STEWARDSHIP

The lessee will take all reasonable precautions to prevent or minimize damage to natural (i.e., vegetation, soil, water, wildlife) and cultural resources within the areas of the lease. The lessee shall maintain the lease area in a neat and orderly manner and will allow no waste, litter, or debris to accumulate thereon.

20. COMPLIANCE WITH ALL LAWS

This lease is subject to further permitting under the provisions of Title 75 or 82, Montana Code Annotated. The lessee shall fully comply with all applicable state and federal laws, rules, and regulations, particularly those set forth by the Montana Department of Environmental Quality through the opencut mining act.

21. RECLAMATION

The lessee shall reclaim any land disturbed pursuant to this lease, regardless of whether the mining is subject to state reclamation laws pursuant to Title 82, Chapter 4, MCA. The lessee shall conduct and reclaim the operation in accordance with the performance and reclamation standards of applicable mine reclamation laws. The exemption of lessee's operations from applicable reclamation laws does not relieve the lessee from the obligation to conduct and reclaim the operations in accordance with the performance and reclamation standards of those laws. All disturbances must be reclaimed to the satisfaction of the Department prior to release of any bond held by the Department or by the Department of Environmental Quality and within 30 days of termination for any reason. Prior to commencement of reclamation work permittee shall contact the appropriate area land office for approval of

seeding mixture and weed control.

22. RESOURCE DATA

Lessee agrees to submit all geological data including, reports, core samples, material testing, maps, logs, and other pertinent data regarding trust resources to the Department upon request or upon termination of this lease.

23. ACCESS

It is the responsibility of the lessee to obtain all necessary grants of access from adjacent landowners to gain access to the above-described lease area prior to commencement of any prospecting or mining activities upon the above-described lands.

24. WATER RIGHTS

It is further agreed that the lessee shall not in any manner interfere with any right or rights which have been acquired, held or exercised legally by any person, corporation, co-partnership, association or group whatsoever, prior to the granting of this lease, in any water, on or beneath the leased land, and that the lessee shall be solely responsible for the invasion of any such right. The lessee shall not, during the life of this lease, sell or otherwise dispose of any water rights existing or acquired for use upon the permitted premises. It is the sole responsibility of the lessee to obtain any necessary water right to utilize water in leased operations.

25. LIABILITIES

The lessee agrees that lessee will assume responsibility for fires that may result from mining, processing, and hauling operations and further agrees that they shall save the Department harmless from all claims or lawsuits that may result from any and all damages or death to persons and/or property that occur upon or about said land caused by or arising out of lessee's operations hereunder. The lessee shall pay all expenses and charges for which it becomes liable in connection with its operation on the lands described above and shall save the State of Montana and its agents harmless from all claims and liens arising out of such operations. The lessee shall, at its own expense, procure and maintain Worker's Compensation Insurance required by law. The State of Montana does not warrant title to the lands described above as the lease area.

26. CANCELLATION OR TERMINATION

The Department shall have the right to cancel all or portions of this lease at any time when lessee violates the terms of this lease, including but not limited to mining materials beyond lease boundaries stated herein, mining materials beyond cubic yardage stated herein, mining materials not specifically allowed herein, not abiding by State Reclamation laws, lessee not taking responsibility for liabilities stated herein (fire, weeds, notification of lessee, and compensation to lessee for actual damages), lessee using said land for purposes other than stated herein, and lessee not reporting and paying royalties.

The Lessee shall be notified in writing by the Department for any violation that has caused the lease to enter default status, and the Lessee shall be given 30 days to correct those violations prior to final cancellation.

Such termination shall become effective 10 days after written notice by the Department. The lessee has the right to terminate this lease at any time by giving the Department 10 days written notice. Lessee is not relieved of any obligation under this lease by such notice or termination.

If the lessee chooses to terminate this lease at any time, the Department may request that any existing opencut mining permit is assigned to the Department. This lease is not valid without the proper permit obtained from the Montana Department of Environmental Quality.

27. PROPERTY REMOVAL

At the expiration of this lease or upon earlier termination of this agreement pursuant to terms in this lease, the lessee shall immediately surrender the premises and shall have sixty (60) days, or such additional time as may be approved in writing by the Department, in which to remove all tools, machinery, structures, and other property owned by it. Any property remaining on the premises after 60 days shall become the property of the State, unless

otherwise specified in writing by the Department. The expiration of the lease and removal of equipment does not absolve the lessee of the obligations to reclaim the site, set forth in this lease and the opencut mining permit by the Montana Department of Environmental Quality.

28. OCCUPANCY

In the event the possession or occupancy of the leased premises is denied or contested, the Department does not undertake to place the lessee in possession by process of law or otherwise, or to defend them in such occupancy. The rights of the lessee hereunder are subject further to the prior rights of any other mineral, oil and gas, coal, and/or gem lease or leases now in force, or renewals thereof, to enjoy the free use of so much of the leased premises as is necessary and incidental to their operations thereunder.

29. WEATHER CONDITIONS

The Department reserves the right to restrict or preclude any surface activity during periods of adverse weather and other conditions which may attribute to accelerated erosion, fire hazard, disruption of seasonal wildlife, or any other condition which in the opinion of the Department may have an adverse effect on trust land.

30. ARCHAEOLOGY

These tracts may contain significant archaeological, historic, or palaeontologic resources. If any resources are located, the lessee shall cease operations and contact the appropriate Area Land Office and the Department Archaeologist in Helena immediately. The Department reserves the right to require a cultural resource survey of the area intended for disturbance and to restrict surface activity for the purpose of protecting significant cultural resources.

31. STREAMBED PRESERVATION

Prior to the commencement of any activities within the ordinary high-water mark of perennial streams on the leased premises, the lessee shall obtain a 310 Permit from the appropriate Conservation District. A copy of such permit shall be submitted to the Department.

32. NOXIOUS WEED CONTROL

The lessee shall be responsible for controlling any noxious weeds introduced by lessee's activity on State-owned land and shall prevent or eradicate the spread of those noxious weeds onto land adjoining the leased premises. The lessee's methods of control shall be reviewed by the Department's Area Field Office that has jurisdiction for that locale. A weed management plan may be required by the Department.

33. SPECIAL PROVISIONS

a)

34. NON-WARRANTY OF TITLE

Regardless of any of the above provisions of the said lease, actual or implied, the State of Montana does not warrant title to its lands.

Dated this ____ day of _____, 20____.

LESSEE

BY:
AUTHORIZED SIGNOR OF LESSEE

APPROVAL OF LEASE
Department Use Only

Approved this ____ day of _____, 20__.

STATE OF MONTANA, DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
AMANDA KASTER, DIRECTOR

BY:
TREVOR TAYLOR, MINERALS MANAGEMENT BUREAU CHIEF
TRUST LAND MANAGEMENT DIVISION

DRAFT