

**AGREEMENT TO PAY A PERCENTAGE OF GROSS PROCEEDS  
FROM MINING OPERATIONS**

A CONTRACT BETWEEN

**DOUGLAS COUNTY**

AND

**KNOX EXCAVATING INC.**

This Agreement to Pay a Percentage of Gross Proceeds from Mining Operations (the “Agreement”) is entered into by and between Douglas County, a political subdivision of the State of Nevada (the “County”), and Knox Excavating Inc., Nevada corporation (Nevada Entity Number E0393492018-05) (“Operator”). The County and Operator are at times collectively referred to hereinafter as the “Parties” or individually as the “Party.”

**WHEREAS**, Operator has applied for a permit to operate a gravel mine on real property held in trust for the benefit of private owners by the U.S. Department of the Interior, Bureau of Indian Affairs (“BIA”), allotment property that is held in trust by BIA on behalf of private owners; and

**WHEREAS**, the location of the mine is located in Section 6, Township 13 North, Range 21 East, Mt. Diablo Baseline and Meridian and is also known by Douglas County Assessor’s Parcel Number 1321-00-001-001 and whose boundaries and dimensions may be altered or amended from time to time (the “Mine Site”); and

**WHEREAS**, County maintains and has the authority to control Johnson Lane for the benefit of the public; and

**WHEREAS**, Operator plans on utilizing Johnson Lane to haul materials from the Mine Site; and

**WHEREAS**, the Operator also plans to utilize Sunrise Pass Road and Freemont Road to access the Mine Site during emergencies such as a flood; and

**WHEREAS**, Operator anticipates removing, on average, 500,000 tons of material from the Mine Site per year during the life of the mining operations; and

**WHEREAS**, the Parties mutually desire to minimize the impact of the Operator’s activities in the residential areas near the Mine Site and to mitigate the impacts of Operator’s trucks and equipment on Johnson Lane and the other roads maintained by the County; and

**WHEREAS**, the Parties believe a fee based on the aggregate amount of materials sold from the Mine Site by Operator will provide a sufficient source of revenue used to maintain and reconstruct Johnson Lane.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants herein made, the County and Operator mutually agree as follows:

**1. TERM AND EFFECTIVE DATE OF CONTRACT.** The Agreement will become effective on the date it is approved and signed by representatives of both Parties and will remain in effect until one year from the date the Operator ceases to remove materials from the Mine Site.

**2. OPERATOR’S COVENANTS.** The Operator promises and agrees to comply with the following terms:

- a. Operator will exclusively use the road identified as “private” to access Johnson Lane from the Mine Site. Operator will only access and utilize Sunrise Pass Road to Freemont and then to Johnson Lane to access the Mine Site in the event of an emergency and will discontinue the use of this emergency route when the emergency has ceased or five business days have elapsed, whichever comes first. Operator agrees that it will not use East Valley Road to carry materials south from the Mine Site except for local deliveries. A map depicting these access routes is attached as **Exhibit “1.”**
- b. The Operator will pay to County the sum of 0.5% (0.005) as a Maintenance Fee of all gross sales of material generated from the Mine Site, and as the Mine Site may be expanded or altered by Operator, during the first five years of this Agreement.
- c. The Operator will pay to County the sum of 0.15% (0.0015) as a Maintenance Fee of all gross sales of material generated from the Mine Site, and as the Mine Site may be expanded or altered by Operator, during the next 15 years of this Agreement. No further payments will be due from Operator after the 20-year period.
- d. The Maintenance Fee will only be imposed and due to County on sales of material from the Mine Site to third parties not affiliated with the Operator.
- e. The Maintenance Fee will be payable to County each quarter and must be received by the County no later than the 15<sup>th</sup> day of the month following the preceding three-month period based on the materials removed from the Mine Site during that three-month period.
- f. The Parties agree that any Maintenance Fee not received by the County when due shall incur an interest charge at the legal rate set forth NRS 99.040.

- g. Operator agrees to provide to County any records it maintains and provides to the BIA or to the owner(s) of the Mine Site to verify the amount of material removed from the Mine Site. Operator agrees to provide these records to the County upon request but at least annually. Operator agrees that the County may audit the Operator's records at the County's expense at any time and will cooperate with any such audit by making records available upon request and to provide staff who can assist with the County's auditors. Any such record may not be subject to Nevada's Public Records Law as applicable.
- h. Operator promises and agrees to cooperate with County to develop drainage improvements to reduce the flooding impacts to East Valley Road drainage area, north of Elden Way, south of Sunrise Pass, and south and east of the Johnson Lane Drainage Area Plan as shown in the map attached as **Exhibit "2."** The proposed improvements are intended to reduce the frequency and impact of floodwaters coming from the Airport Wash over East Valley Road and all areas downstream of the future drainage improvements depicted in **Exhibit 2.**
- i. Operator agrees to cooperate with BLM and the County on an Environmental Assessment for a proposed bridge at Sun Rise Pass Road and Johnson Lane wash crossing, obtaining an all-weather crossing into the Pinenut range during a flooding event, and otherwise reducing the Operator's need for the use of Sun Rise Pass road as emergency access to the Mine Site.
- j. Operator promises to utilize sufficient dust control measures in the times, manner and places required by the Bureau of Land Management to avoid the creation of a public nuisance.
- k. Operator agrees to erect such earthen berms or other noise control measures and devices as required by the BIA and the Mine Safety and Health Administration at its sole cost.
- l. In order to mitigate noise in the area, Operator agrees that its hours of operation along Johnson Lane will be 7:00 a.m. to 5:30 p.m., Monday through Saturday.
- m. Subject to BLM approval, Operator will construct a sufficient road base at the entrance from the Mining Site to Johnson Lane in such a way as to help reduce dust and to reduce any mud, dirt and debris that may be deposited from the tires of the vehicles exiting the Mining Site.
- n. Consistent with BLM requirements, Operator promises and agrees that a water truck will be utilized to mitigate dust from truck traffic and to facilitate the proper compaction of the road surfaces used to access the Mine Site.

- o. Operator agrees to consider the future use of an alternate route from Johnson Lane, such as the contemplated future principal arterial Eastside Bypass.

**3. COUNTY'S COVENANTS.** The County promises and agrees to comply with the following terms:

- a. County promises and agrees to establish a project number to account for all Maintenance Fees it receives from Operator and will make payments from this project number solely for the purposes set forth in this Agreement.
- b. County agrees to spend the funds it receives from Operator on the maintenance of Johnson Lane and those portions of Sunrise Pass Road where the County has a right-of-way. There will be no obligation by County under this Agreement to improve any road beyond its condition at the time this Agreement is entered.
- c. For the purpose of this Agreement, the term "maintenance" includes, but is not limited to, all costs associated with routine road maintenance, road reconstruction as may be necessary, level-of-service or capacity improvements deemed desirable by the County, or improvements to intersections.
- d. County agrees to pay for all audits of the Operator's operating and financial records related to this Agreement and the mining of materials at the Mine Site.
- e. County will provide at its sole cost the design values for the flood storage volumes for the drainages within the unnamed wash known as "Airport Wash" depicted in **Exhibit 2**.
- f. County will provide Operator with annual reports on the status of the funds it has received from Operator and any expenditures upon receipt of Operator's written request.
- g. County will assist Operator to minimize Operator's impact on Johnson Lane and the residents in the adjoining areas.

**4. CONSTRUCTION OF CONTRACT.** The Agreement will be construed and interpreted according to the laws of the State of Nevada. There will be no presumption for or against the drafter in interpreting or enforcing the Agreement. In the event a dispute arises between the Parties, the Parties promise and agree to first meet and confer to resolve any dispute. If such meeting does not resolve the dispute, then the Parties agree to mediate any dispute arising from or relating to the Agreement before an independent mediator mutually agreed to by the Parties. The fee, rate or charge of the mediator will be shared equally by the Parties, who will otherwise be responsible for their own attorney's fees and costs. If mediation is unsuccessful, litigation may only proceed before a department of the Ninth Judicial Court of the State of Nevada in and

for the County of Douglas that was not involved in the mediation process and attorney's fees and costs will be awarded to the prevailing party.

**5. COMPLIANCE WITH APPLICABLE LAWS.** Operator promises and agrees to fully and completely comply with all applicable local, state and federal laws, regulations, orders, or requirements of any sort in carrying out the obligations of the Agreement, including, but not limited to, all federal, state, and local accounting procedures and requirements, all hazardous materials regulations, and all immigration and naturalization laws. County will not waive and intends to assert all available NRS chapter 41 liability limitations.

**6. ASSIGNMENT.** Operator will neither assign, transfer nor delegate any rights, obligations or duties under the Agreement without the prior written consent of the County which approval shall not be unreasonably withheld. Operator may also assign or transfer its rights to an affiliated entity without the consent of the County.

**7. SEVERABILITY.** It is declared to be the intention of the Parties that the sections, paragraphs, sentences, clauses, and phrases of this Agreement are severable. If any phrase, clause, sentence, paragraph, or section of this Agreement, or of the County ordinance adopting same, is declared unconstitutional or invalid by a valid and final judgment of a court of competent jurisdiction, such unconstitutionality or invalidity shall not affect any of the remaining phrases, clauses, sentences, paragraphs, and sections of this Agreement, or of the County ordinance adopting same.

**8. COUNTY INSPECTION.** The books, records, documents and accounting procedures and practices of Operator related to the Agreement will be subject to inspection, examination and audit by the County.

**9. PUBLIC RECORDS LAW.** Operator expressly understands and agrees that all documents submitted, filed, or deposited with the County by Operator, unless designated as confidential by a specific statute of the State of Nevada, will be treated as public records pursuant to NRS chapter 239 and shall be available for inspection and copying by any person, as defined in NRS 0.039, or any governmental entity. Operator expressly and indefinitely waives all of its rights to bring, including but not limited to, by way complaint, interpleader, intervention, or any third party practice, any claims, demands, suits, actions, judgments, or executions, for damages or any other relief, in any administrative or judicial forum, against the County or any of its officers or employees, in either their official or individual capacity, for violations of or infringement of the copyright laws of the United States or of any other nation.

**10. INDEMNIFICATION OF COUNTY.** To the fullest extent permitted by law, Operator shall indemnify and hold harmless County, its agents, officers, and employees from and against any liabilities, damages, losses, claims, expenses, actions or proceedings caused by or arising from the negligence, errors, omissions, recklessness or intentional misconduct of the Operator or the employees of the Operator which are based upon or arising out of the Agreement.

**11. MODIFICATION OF AGREEMENT.** The Agreement and the attached exhibits constitute the entire agreement and understanding between the Parties and may only be modified by a written amendment signed by both of the Parties.

**12. AUTHORITY.** The Parties represent and warrant that they have the authority to enter into this Agreement.

**13. STANDARD OF CARE.** Operator will perform its activities along the County's rights-of-way in a manner consistent with that level of care and skill ordinarily exercised by other Operators within the industry.

**14. THIRD PARTY BENEFICIARY.** Nothing contained in this Agreement is intended to convey any rights or to create a contractual relationship with any third party or to otherwise allow a third party to assert a cause of action against either Operator or County.

**15. NOTICES.** All notices, requests, demands and other communications hereunder must be in writing and will be deemed delivered when sent via certified mail, return receipt requested or by commercial courier, provided the courier's regular business is delivery service and provided further that it guarantees delivery to the addressee by the end of the next business day following the courier's receipt from the sender, addressed as follows (or any other address that the Party to be notified may have designated to the sender by like notice):

**To County:** Douglas County  
Community Development Department  
Post Office Box 218  
Minden, Nevada 89423

**Copy To:** Douglas County District Attorney  
Post Office Box 218  
Minden, Nevada 89423

**To Operator:** Knox Excavating Inc.  
1165 Sawmill Road  
Gardnerville, Nevada 89410

- Signature Page Follows -

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to Pay a Percentage of Gross Proceeds from Mining Operations to be signed and intend to be legally bound thereby.

**Knox Excavating Inc.**

By: \_\_\_\_\_  
James T. Robinson, President (Date)

**Knox Excavating Inc.**

By: \_\_\_\_\_  
Kimberly A. Robinson, Director (Date)

**Douglas County**

By: \_\_\_\_\_  
William B. Penzel, Chairman (Date)  
Douglas County Board of Commissioners