



STATE OF
COLORADO

Cazier - DNR, Tim <tim.cazier@state.co.us>

Final Structure Agreement and P.E. Evaluation Letter

1 message

Andre LA ROCHE <Andre.Laroche@transitmix.com>

Wed, Aug 14, 2019 at 10:27 AM

To: "Tim Cazier, P.E." <Tim.Cazier@state.co.us>

Cc: Russ Means <russ.means@state.co.us>, Joel Bolduc <joel.bolduc@aggregate-us.com>, Bruce Humphries <hlhumphries2@comcast.net>

Hello Tim:

Attached please find a signed structure agreement for Colorado Springs Utilities and the engineering evaluation letter for the Fountain Mutual Irrigation Ditch.

You should now have all the structure agreements and engineering evaluation letters for the SO-02 application.

Please do not hesitate to contact me should you need additional information or have any questions.

Best regards,

Andre Laroche | Environment and Land Manager
Aggregate Industries | Transit Mix Concrete Co.
Address: [1687 Cole Blvd., Suite 300 | Golden, CO 80401](#)
Office & Mobile: (719) 491-0288
Email: andre.laroche@aggregate-us.com

2 attachments



Signed Agreement 2019 0812 CSU.pdf
586K



P.E. Evaluation 2019 0808 FMIC.pdf
575K

**STRUCTURE AGREEMENT
BETWEEN
COLORADO SPRINGS UTILITIES
AND
AGGREGATE INDUSTRIES-WCR, Inc.**

THIS STRUCTURE AGREEMENT (“AGREEMENT”) is hereby made and entered into this 8 day of August, 2019, by and between Colorado Springs Utilities, an enterprise of the City of Colorado Springs, a Colorado home rule city and municipal corporation, whose address is 121 S. Tejon Street, Mail Code 950, Colorado Springs, CO 80903 (“Utilities”), and Aggregate Industries-WCR, Inc, a corporation, whose address is 1687 Cole Blvd., Suite 300, Golden, CO 80401 (“AI”) (each, individually, “Party” or collectively, the “Parties”).

WHEREAS, AI operates the Daniels Sand Pit #2, known as Mine Permit ID #M-1973-007-SG (the “Mine”) by the Colorado Division of Reclamation Mining and Safety (the “Division”) at 3710 Bradley Road, Colorado Springs, CO 80911; and

WHEREAS, 2 CCR 407-4:6.4.19 (the “Rule”) requires that where a mining operation will adversely affect the stability of any significant, valuable and permanent man-made structure located within two hundred (200) feet of the affected land, the applicant may provide a notarized agreement between the applicant and the person(s) having an interest in the structure, that the applicant will provide compensation for any damage to the structure; and

WHEREAS, Utilities owns and operates certain facilities more particularly described in Section 1, below (the “Structures”), within 200 feet of the Mine; and

WHEREAS, AI agrees that in the event operation of the Mine results in damage to the Structures, AI will compensate Utilities for the cost of repair or replacement of the damaged Structures.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES SET FORTH HEREIN, THE PARTIES AGREE AS FOLLOWS:

Section 1. Identification of the Structures. The Structures located within 200 feet of the Mine include the following: electric, natural gas, water, and wastewater utility facilities and appurtenances thereto, as more specifically described and identified in Exhibit A, attached hereto. The locations of the Structures identified in Exhibit A are only an approximation and should not be relied upon; AI shall obtain utility locates for all Structures prior to conducting any excavation activity on the Property.

Section 2. Operation of Mine. AI agrees that the operation of the Mine shall be in accordance with all applicable governmental requirements and all permit conditions. AI further agrees that the operation of the Mine shall be performed in a manner that will not damage the Structures.

Section 3. Responsibility for Damage to the Structures. In the event AI's operation of the Mine results in damage to the Structures, AI agrees to compensate Utilities for the cost of repair or replacement of the Structures located on or within 200 feet of any location where mining activity will be performed at the Mine.

Section 4. Indemnification. AI hereby releases Utilities and shall fully indemnify and hold harmless Utilities, the Colorado Springs Utilities Board of Directors, the City of Colorado Springs and its City Council, and their respective officers, employees, agents, and representatives from and against any and all claims, costs, and fees (including, but not limited to, all fees and charges of engineers, architects, attorneys, and other professionals and all court or other dispute resolution costs), losses, damages, causes of action, or liability of any nature (including, but not limited to those relating to environmental matters) arising from or in connection with the Mine. Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to Utilities or the City of Colorado Springs under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*

Section 5. Waiver. The failure of either Party to insist upon a strict performance of any of the obligations contained in this Agreement, shall in no way be construed to constitute a waiver of such obligations.

Section 6. Governing Law and Jurisdiction. This Agreement shall be construed in accordance with the laws of the State of Colorado, the Colorado Springs City Charter, the Colorado Springs City Code, and all ordinances, rules, and regulations adopted by the City of Colorado Springs or Utilities. In the event of any dispute over this Agreement or its subject matter, the exclusive venue and jurisdiction for any litigation arising hereunder shall be in the District Court of El Paso County, Colorado, and if necessary for exclusive federal questions, the United States District Court for the District of Colorado.

Section 7. No Third Party Beneficiaries. Except as expressly provided otherwise, this Agreement is intended to be solely for the benefit of the Parties and shall not otherwise be deemed to confer upon or give to any other person or third party any remedy, claim, cause of action, or other right.

Section 8. Incorporation of Recitals and Exhibits. All recitals set forth above and all Exhibits attached hereto are herein incorporated by reference.

Section 9. Notice. Any notice provided as a result of this Agreement shall be in writing and sent by delivery service or mailed by certified mail, postage prepaid, and return receipt requested to the address provided below. Such notice shall be effective upon the date received and acknowledged by signature of the Party that receives the notice. Either Party may change its notice address by giving notice as provided herein.

If to Utilities:

Colorado Springs Utilities
Attn: Field Engineering Supervisor

1521 S. Hancock Expressway, Mail Code 1812
Colorado Springs, Colorado 80903
719-448-4800

With a copy to:

Colorado Springs Utilities
Attn: Land Resource Management
121 S. Tejon Street, Mail Code 950
Colorado Springs, CO 80903
719-668-7581

If to AI:

Aggregate Industries-WCR, Inc.
Attn: John Conlin
1687 Cole Blvd., Suite 300,
Golden, CO 80401
303-985-1070

Section 10. Confidentiality. AI acknowledges that Utilities is a public entity subject to the provisions of the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* Any confidential and/or proprietary information that either Party discloses to the other with respect to this Agreement shall be designated as confidential and proprietary by the disclosing Party at the time of disclosure, and shall herein be referenced as "Confidential Information".

Section 11. Dispute Resolution. If a dispute arises between the Parties relating to this Agreement, the following procedure shall be followed. The Parties shall hold a meeting promptly, but in no event later than thirty (30) calendar days from the initial written notice of the dispute, attended by persons with decision-making authority regarding the dispute, to attempt in good faith to negotiate a resolution of the dispute; provided, however, that no such meeting shall be deemed to vitiate or reduce the obligations and liabilities of the Parties or be deemed a waiver by a Party of any remedies to which such Party would otherwise be entitled unless otherwise agreed to by the Parties in writing. If, within thirty (30) calendar days after such meeting, the Parties have not succeeded in negotiating a resolution of the dispute, they agree to submit the dispute to non-binding mediation and to bear equally the costs of the mediation. The Parties will jointly appoint a mutually acceptable mediator. If they fail to do so within twenty (20) calendar days from the conclusion of the negotiation period, they shall each select a mediator. The two mediators will then appoint a third mediator who shall, as the sole mediator, conduct mediation for the Parties. The Parties agree to participate in good faith in the mediation and negotiations for a period of thirty (30) calendar days. The substantive and procedural law of the State of Colorado shall apply to the proceedings. If the Parties are not successful in resolving the dispute through mediation, then the Parties shall be free to litigate the matter.

Section 12. Severability. Any provision or part of this Agreement held to be void or unenforceable under any laws or regulations shall be deemed stricken, and all remaining

provisions shall continue to be valid and binding upon the Parties, who agree that the Agreement shall be reformed to replace such stricken provision with a new provision that comes as close as possible to expressing the intention of the stricken provision.

Section 13. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes all previous written or oral communications, understandings, and agreements between the Parties unless specifically stated herein. The terms and conditions of this Agreement shall prevail notwithstanding any variance with the terms and conditions of any acknowledgement or other document submitted by AI. This Agreement may only be amended by a written agreement signed by both Parties. Email and all other electronic (including voice) communications from Utilities in connection with this Agreement are for informational purposes only. No such communication is intended by Utilities to constitute either an electronic record or an electronic signature or to constitute any agreement by Utilities to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

Section 14. Counterpart; Copies of Signatures. This Agreement may be executed in one or more counterparts, each of which shall be deemed original and all of which together shall constitute one and the same instrument. Copies of signatures shall be permitted for purposes of the binding nature of this Agreement.

[SIGNATURES TO BE PROVIDED ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the representatives of each Party hereto certify that, by their execution of this Agreement, they are duly authorized to commit their organization to this Agreement in its entirety as of the day and year first written above.

**COLORADO SPRINGS UTILITIES,
An enterprise of the City of Colorado Springs, Colorado**

By: [Signature]

Name: Jessica Davis

Title: Principal Land Resource Specialist

Date: 8/12/19

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing was acknowledged before me this 12th day of August, 2019, by Jessica Davis as Principal Land Resource Specialist of Colorado Springs Utilities.

[Signature]
Notary Public

My Commission Expires: 9/7/2022

KELLY JO GUISENGER
NOTARY PUBLIC
STATE OF COLORADO
NOTARY ID 20144034210
MY COMMISSION EXPIRES SEPTEMBER 7, 2022

[Signature]
APPROVED AS TO FORM:
CITY ATTORNEYS OFFICE
UTILITIES DIVISION

TIM SCHEIDENEX
8/12/19

AGGREGATE INDUSTRIES-WCR, INC.

By: [Signature]

Name: John Conlin

Title: Regional General Manager

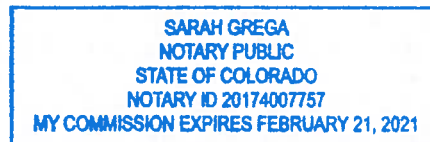
Date: 8/8/19

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

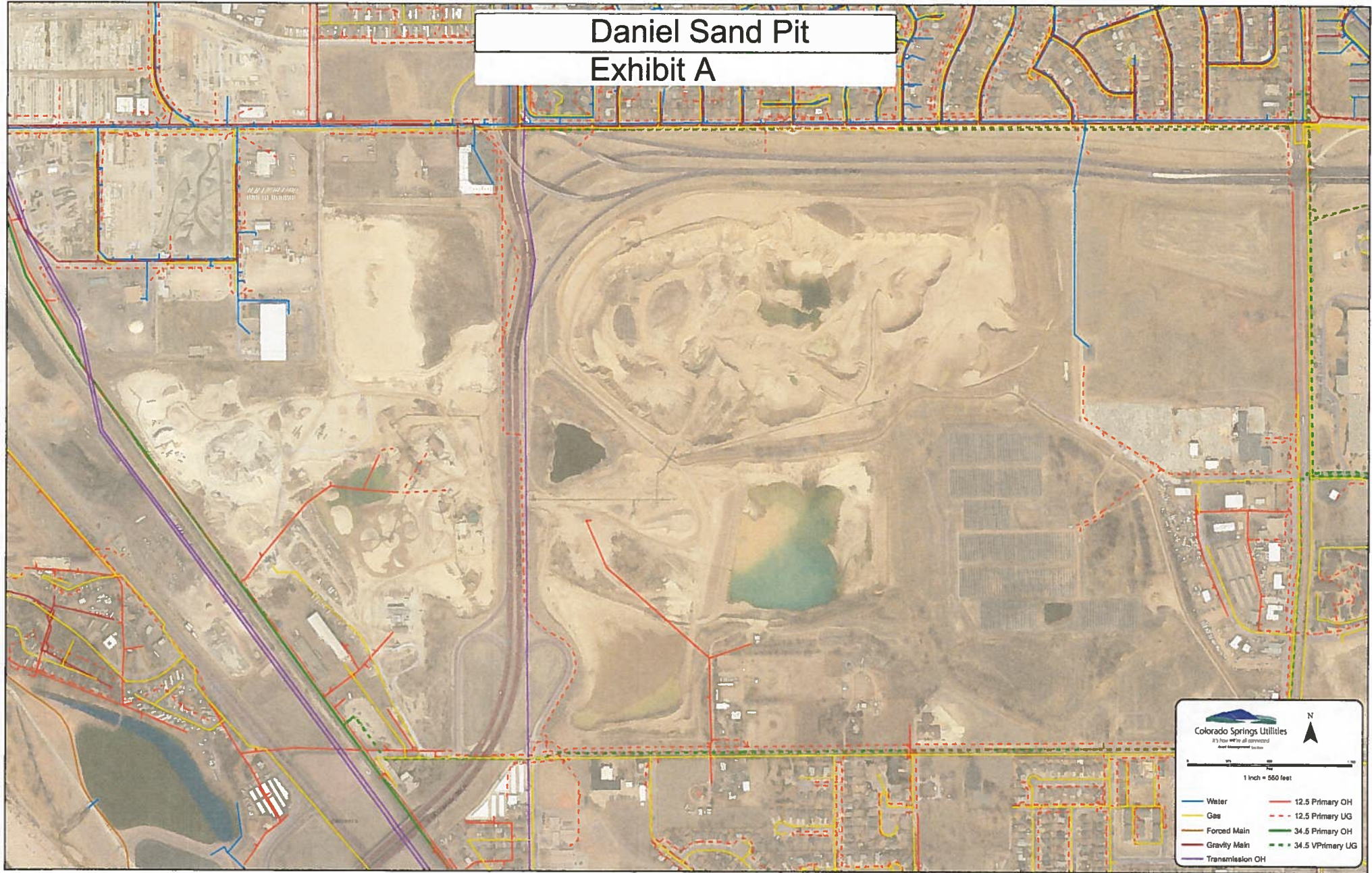
The foregoing was acknowledged before me this 8th day of August, 2019,
by John Conlin

[Signature]
Notary Public

My Commission Expires: 2/21/21



Daniel Sand Pit Exhibit A



August 8, 2019

Aggregate Industries US
West Central Region
1687 Cole Blvd., Suite 300
Golden, CO 80401

Attention: Joel Bolduc
Regional Land and Environment Manager

Subject: Engineering Evaluation for Fountain Mutual Irrigation Company
Daniels Sand Pit 2 (Permit M-1973-007-SG)

Mr. Bolduc,

Brierley Associates has been retained by Transit Mix Concrete Co. to provide an engineering assessment regarding structures within 200 feet of the mining operations affected land. This letter addresses the irrigation ditch (lined and unlined) and related structures on the west and east side of S Academy Blvd., Colorado Springs, CO.

The subsurface conditions in the area consists mainly of loose to dense eolian deposits of sand and silt. The crest of the mining slope is as close as 50 ft to the ditch. The mine slope has a steepness of 2.75H:1V and the floor of the mine is above groundwater. The attached Google Earth plan and profile presents the proximity to the mine workings.

In my professional opinion in terms of slope stability impacts, provided the excavation remains in the permitted area, the structures listed above will not be affected by the on-going mining operations.

Please contact us if we can be of further assistance, or if you have any questions regarding this evaluation.

Sincerely,



Steven C Kuehr, PE

Attachment – Cross Section



BRIERLEY ASSOCIATES <i>Creating Space Underground</i> 990 SOUTH BROADWAY, SUITE 222, DENVER, CO 80209 303.703.1405	CLIENT	TRANSIT MIX CONCRETE	FIGURE TITLE	FOUNTAIN MUTUAL IRRIGATION COMPANY DITCH	FIGURE
	PROJECT NUMBER	519057-000			