

RESPONSIBLE DEPARTMENT: Road & Bridge

MORGAN COUNTY CONTRACT AND LEASE ROUTING FORM

Introduction: With a few exceptions, only the Board of County Commissioners can bind Morgan County to a contract or lease, written or verbal. If anyone else enters into a contract or lease on behalf of Morgan County it is, at best, unenforceable, and, at worst, could result in personal liability. Therefore, all contracts and leases (except purchase orders) must be routed through and be reviewed by the County Attorney's Office for legal form and the Finance Department to insure that there are adequate funds for the contract prior to approval or disapproval by the Board of County Commissioners. Also, all provisions of the Morgan County Purchasing Policy must be followed. Please route this form in the order indicated below.

Originating Department/Office Approval

Funding Source: 11-85-5452
Contractor/Lessor: MARLA J. DICKSON (Vanceil Pitt)
Purpose of Contract/Lease: Gravel & Dirt Purchase / Dirt Lease
Amount of Contract/Lease: \$ 50 @ per cubic yard Gravel - 30 @ cy dirt
Term of Contract/Lease: 4/1/19 thru 3/31/20 with (4) renewals

Approved as to Content

Bruce Barr 4/5/19
(Elected Official or Department Head)

Date approved:

Administrative Services Department

Karla Howell
(Administrative Services Manager)

Date Received: 4.10.19

County Attorney's Office:

Approved as to Legal Form

(County Attorney or Asst. County Attorney)

Date approved:

Finance Department

Approved as to Availability of Funds

Maheli Conelli
(Finance/Acct Dept Head)

Date approved: 4/9/19

Board of County Commissioners

Approved

James Butcher
Chairman
Date approved:



Distribution after approval:

BOARD OF COUNTY COMMISSIONERS: 1 ORIGINAL

County Attorney's Office (Admn Asst): 1 copy + routing form

Finance Department: 1 copy + routing form ✓

Originating Department/Official: 1 copy ✓

Contractor/Lessor: _____ copies

Distributed

Karla Howell
Administrative Services Manager

Date Distributed: _____

This routing form must accompany all Morgan County Contracts.

LEASE WITH OPTION TO BUY MATERIAL

THIS LEASE WITH OPTION TO BUY MATERIAL (the "Lease") is made and entered into this 1st day of April, 2019, by and between Marla J. Dickson, an individual with an address of P.O. Box 183, Eckley, Colorado 80727 ("Owner"), and Morgan County, Colorado, a political subdivision of the State of Colorado acting by and through its Board of County Commissioners with an address of 218 West Kiowa Avenue, Fort Morgan, Colorado 80701 (each individually a "Party" and collectively the "Parties").

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Lease. Owner hereby leases to the County the real property more particularly described as follows (the "Premises"):

68.7 acres, more or less, in the SW1/4 of Section 4, Township 5 North, Range 56 West of the 6th P.M. (the Vancil Pit)

2. Option. Owner grants the County a non-exclusive option to purchase, process, produce and remove sand and gravel from the Premises. Upon agreement of both Owner and the County, extraction may occur by others at Owner's purchase price; provided that such extraction does not interfere with the County's extraction or storage operations, and further provided that such others acquire insurance and pay a portion of permit and reclamation costs deemed necessary by the County.

3. Purchase of Materials. The County shall pay Owner for any materials removed from the site at the following rates:

sand and gravel: 50 cents/cubic yard

borrow material: 30 cents/cubic yard

At the end of each month of operations, the County shall account to Owner for all material removed from the site and shall pay Owner according to these rates. The County shall not be obligated to purchase any minimum amount of material during the term of this Lease.

4. Term. This Lease shall be effective April 1, 2019 and shall remain in full force and effect for a term of one year, with automatic renewals for four (4) additional one-year periods, subject to the County's right to extend the Lease for an additional year for the limited purpose of storage of mined sand and gravel as provided below. Either party may cancel this Lease by written notice given not less than thirty (30) days prior to the end of each annual Lease term.

5. Rights and Obligations of the County.

A. Access. The County shall have the right of ingress and egress to the Premises by the entrance adjoining County Road 26. The County agrees to close and lock any gates which it opens.

B. Additional Structures. The County shall have the right to erect any temporary structures, such as screening, crushing, and asphalt plants; to stockpile material in an area of sufficient size; and to employ any reasonable methods for the removal of said material. All such structures shall be removed from the Premises at the termination of the Lease, provided that structures necessary for loading material may remain on the Premises for so long as the County is entitled to store material on the Premises.

C. Limitations on Use. This Lease and any state, county, or municipal permits obtained by the County for the removal of material are for use on County construction and maintenance projects only. The County agrees not to interfere with Owner's agricultural or grazing pursuits on the remainder of Owner's property.

D. Area. The County shall confine its operations to Owner's Mined Land Reclamation Permit area for the mining site, which shall be marked by Owner by site posts as described below, upon which the County shall be entitled to rely.

E. Overburden. All topsoil or other overburden removed in the mining and extraction operations shall remain on the site for future reclamation use. All gravel extracted and awaiting removal from the Premises shall be stored against the topsoil or overburden, but shall not cover the same. The top six inches (6") of soil in the affected area, not disturbed by previous operations, shall be removed and stockpiled prior to any disturbance by the County's operations. Any additional excess overburden shall be declared borrow material and will also be removed and stockpiled in piles separate from the top six inches of overburden. The stored overburden, including topsoil, shall be piled no higher than eight feet (8') above the present ground contour.

F. Slopes, Contours. All back slopes created by this operation will be left no steeper than 3:1. All operations and final contours shall be in accord with the specifications described in the applicable Mined Land Reclamation Permit at the sole expense of the County.

G. Trash and Debris. All asphalt, asphalt mix, and trash created by the County or its contractors shall be removed from the affected area at the termination of this Lease.

H. Extension to Remove Stockpiled Material. This Lease shall be extended beyond the Lease term for the limited purpose of allowing the County to remove stockpiled materials which were mined prior to the expiration date of the Lease, all of which shall be removed by one year after the Lease term expires.

I. Permits, Compliance. The County certifies that it has obtained all the necessary permits, including the Colorado Mined Land Reclamation Permit (Permit No. M-1978-162) to allow the mining of sand and gravel from the Premises. The County agrees to maintain these permits during the duration of this Lease and provide copies of permits and any modifications and renewals to Owner.

J. Access Roads. The County agrees to maintain, grade and gravel all roads used by the County for hauling as necessary to make such roads passable for the County's purposes, in the County's sole discretion, and to maintain any gates and cattle guards that are in use during mining, extraction and hauling operation to maintain the existing access road in a condition at least as good as the conditions existing prior to any mining operation.

K. Reclamation. Reclamation of the pit and any other disturbed area shall be the responsibility of the County at its sole expense and shall be completed pursuant to the Owner's Mined Land Reclamation Permit within one hundred twenty (120) days of the completion of mining and extraction, or within one hundred twenty (120) days after the expiration of this Lease, whichever is sooner. This time may be reasonably extended because of weather and soil conditions to allow for the establishment of any vegetative cover.

L. Storm Water. The County will reasonably defend the site from storm water/run off originating from property other than Owner's by reasonable means such as berms and dikes and maintenance of the same. Third party users or Owner, if they or it are extracting materials from the site, may be required to participate in these activities.

M. Marking of Area. The County shall place permanent stakes or other monuments to mark the boundaries of the area of the Mined Land Reclamation Permit in such a manner as not to be covered during operations by stored gravel, topsoil, or overburden. Should such stakes or monuments be covered or moved by County operations the County agrees to replace such stakes or monuments.

6. Rights and Obligations of Owner.

A. Water. Owner shall not run water into the existing excavation or future excavations located in the Leased Premises unless the County has previously agreed in writing that the water would not affect its operation. Any necessary water augmentation shall be the sole responsibility of Owner and at Owner's sole expense, and shall be completed in a timely fashion.

B. Property Taxes. Owner shall pay all taxes assessed or that may be assessed against the Premises promptly and before they become delinquent, including but not limited to real property taxes and severance taxes.

C. Oil and Gas Exploration and Production. Owner has the right to enter onto the Premises to explore for or to extract oil and gas, provided that such activities do not interfere with the County's operations.

7. Insurance.

A. The County shall carry comprehensive public liability insurance covering the County's operations on the Premises, with liability limits of at least one million dollars (\$1,000,000).

B. Owner shall carry comprehensive general liability insurance covering its own activities and landowner's liability with respect to the Premises, with liability limits of at least one million dollars (\$1,000,000).

8. Indemnification. Owner hereby indemnifies the County against, and agrees to hold it harmless from, any liability, claim, obligation, or demand, whether for personal injury or property damage, brought by any third party relative to any occurrence, fact, or circumstances arising out of Owner's acts or omissions pursuant to this Lease, or to the condition of the premise to which this Lease related, where such condition is attributable to the act or omission of Owner.

9. Warranty of Title. Owner warrants that Owner has good title to the Premises and the lawful right to grant this Lease, and Owner shall hold the County harmless from any and all claims from others asserting any interest in the Premises, except that Owner shall be entitled to lease mining rights in the mine site to third parties on terms which do not interfere with the County's rights.

10. Default and Cure. In the event of a default under this Lease, the defaulting Party shall have thirty (30) days following written notice from the non-defaulting Party in which to cure the default, and if the defaulting Party fails to cure the default in such time, then the non-defaulting Party may take legal action to cure the default.

11. Miscellaneous.

A. Governing Law and Venue. This Lease shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Morgan County, Colorado. Colorado Mined Land Reclamation Rules and Regulations shall apply to this Lease.

B. No Waiver. Delays in enforcement or the waiver of any one or more defaults or breaches of this Lease by the County shall not constitute a waiver of any of the other terms or obligation of this Lease.

C. Integration. This Lease constitutes the entire agreement between the Parties, superseding all prior oral or written communications.

D. Third Parties. There are no intended third-party beneficiaries to this Lease.

E. Severability. If any provision of this Lease is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Modification. This Lease may only be modified upon written agreement of the Parties.

G. Assignment. Neither this Lease nor any of the rights or obligations of the Parties hereto, shall be assigned by either Party without the written consent of the other.

H. Governmental Immunity. The County and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Lease, the monetary limitations or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as amended, or otherwise available to the County and its officers, attorneys or employees.

I. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the County under this Lease which is not performed during the current fiscal year is subject to annual appropriation, shall extend only to monies currently appropriated, and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.


J. Recording. This Lease is given in Colorado concerning Colorado property, and may be recorded for purposes of public notice thereof.

IN WITNESS WHEREOF, the undersigned have executed this Lease as of the date first set forth above.

**BOARD OF COUNTY COMMISSIONERS
MORGAN COUNTY, COLORADO**

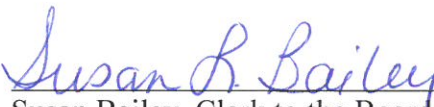



James P. Zwetzig, Chair

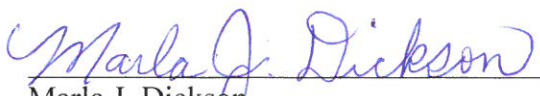

Mark A. Arndt, Commissioner


Jon J. Becker, Commissioner

ATTEST:


Susan Bailey, Clerk to the Board

OWNER


Marla J. Dickson