

STRUCTURE AGREEMENT

THIS AGREEMENT is made and entered into this 9th day of September, 2020, by and between the County of Weld, a body corporate and politic of the State of Colorado, by and through its Board of County Commissioners, ("County") and C&H Aggregates, LLC, hereinafter referred to as "Operator".

WHEREAS, Operator is has received Permit # M2010-047 from the Colorado Division of Reclamation and Mine Safety (DRMS) for a mining pit generally located on the following property:

SECTION 12, TOWNSHIP 8N, RANGE 66W

Also known as: Weld County Road 37 and Weld County Road 96, Latitude 40.67979, Longitude 104.71553
(the "Property"), and

WHEREAS, Operator's DRMS permit require it to enter into a structure agreement with all owners of structures within 200 feet of the DRMS permit boundary, and

WHEREAS, County owns certain structure(s) within 200 feet of the permit boundary, as follows:

Weld County Road (WCR) 37, from WCR 94 to WCR 96 including 60" CMP culvert under WCR 37 at Lone Tree Creek.
(the "Structure(s)").

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties hereto agree as follows:

1. **Exhibits.** The following exhibits are incorporated herein:

Exhibit A, General Vicinity Map
Exhibit B, Slope Study
Exhibit C, Access Permit (If Applicable)
Exhibit D, Right-of-Way (ROW) Permit (If Applicable)
Exhibit E, Special Transport Permit (If Applicable)
Exhibit F, Road Maintenance Agreement (If Applicable)

2. **No County Obligation.** Operator agrees that County shall have no obligation to comply with the DRMS Permit or otherwise assist, contribute to, or perform any work required by said permit. Nothing herein shall have any bearing on Weld County's issuance or non-issuance of any permit, license, or other authorization.

3. **Effective Date.** This Agreement shall be effective upon mutual execution by all undersigned Parties, and shall be enforceable for as long as the DRMS Permit is active, including through any require period of remediation.

4. **Independent Contractor.** Operator agrees that it is an independent contractor and that its officers, agents or employees will not become employees of County, nor entitled to any employee benefits from County as a result of the execution of this Agreement. Operator shall be solely responsible for its acts and those of its agents and employees for all acts performed pursuant to this Agreement. Operator, its

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employees and agents are not entitled to unemployment insurance or workers' compensation benefits through County. Operator shall not have authorization, express or implied, to bind County to any agreement, liability or understanding, except as expressly set forth in this Agreement.

5. Indemnification. Operator shall defend, indemnify and hold harmless County, its officers, agents, and employees, from and against injury, loss damage, liability, suits, actions, or claims of any type or character arising out of any work done in fulfillment of the terms of the DRMS Permit. This paragraph shall survive expiration or termination hereof. It is agreed that the Operator will be responsible for primary loss investigation, defense and judgment costs where this contract of indemnity applies. Operator agrees to waive all rights of subrogation against the County its associated and/or affiliated entities, successors, or assigns, its elected officials, trustees, employees, agents, and volunteers for losses arising from the work performed by the Operator under the DRMS Permit.

6. Notices. Any notice to be made under this Agreement shall be sent as follows:

- personal service by a reputable courier service requiring signature for receipt; or
- five (5) days following delivery to the United States Postal Service, postage prepaid addressed to a party at the address set forth in this contract; or
- electronic transmission via email at the address set forth below, where a receipt or acknowledgment is required by the sending party; or
- transmission via facsimile, at the number set forth below, where a receipt or acknowledgment is required by the sending party.

Either party may change its notice address(es) by written notice to the other.

Notification Information:

Operator:

Name:	Derek Daniels
Position:	Vice President
Address:	43646 Weld County Road 45
Address:	Ault, CO 80610
E-mail:	derek@chexcavation.com
Facsimile:	970-834-2209

County:

Name:	Clay Kimmi
Position:	Senior Engineer
Address:	1111 H Street
Address:	Greeley, CO 80631
E-mail:	ckimmi@weldgov.com
Facsimile:	(970) 304-6497

7. Compliance with Law and with this Agreement. Operator shall strictly comply with all applicable federal and state laws, rules and regulations in effect or hereafter established and pertaining to the work to be performed under the DRMS Permit, and shall further comply with this Agreement and its exhibits, including but not limited to, the Slope Study.

8. Entire Agreement/Modifications. This Agreement including the Exhibits attached hereto and

incorporated herein, contains the entire agreement between the parties with respect to the subject matter contained in this Agreement. This instrument supersedes all prior negotiations, representations, and understandings or agreements with respect to the subject matter contained in this Agreement. This Agreement may be changed or supplemented only by a written instrument signed by both parties.

9. Severability. If any term or condition of this Agreement shall be held to be invalid, illegal, or unenforceable by a court of competent jurisdiction, this Agreement shall be construed and enforced without such provision, to the extent that this Agreement is then capable of execution within the original intent of the parties.

10. Governmental Immunity. No term or condition of this contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections or other provisions, of the Colorado Governmental Immunity Act §§24-10-101 et seq., as applicable now or hereafter amended.

11. No Third Party Beneficiary. It is expressly understood and agreed that the enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the undersigned parties and nothing in this Agreement shall give or allow any claim or right of action whatsoever by any other person not included in this Agreement. It is the express intention of the undersigned parties that any entity other than the undersigned parties receiving services or benefits under this Agreement shall be an incidental beneficiary only.

12. Board of County Commissioners of Weld County Approval. This Agreement shall not be valid until it has been approved by the Board of County Commissioners of Weld County, Colorado or its designee.

13. Choice of Law/Jurisdiction. Colorado law, and rules and regulations established pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules and/or regulations shall be null and void. In the event of a legal dispute between the parties, Operator agrees that the Weld County District Court shall have exclusive jurisdiction to resolve said dispute.

14. Attorneys Fees/Legal Costs. In the event of a dispute between County and Operator, concerning this Agreement, the parties agree that each party shall be responsible for the payment of attorney fees and/or legal costs incurred by or on its own behalf.

15. Binding Arbitration Prohibited: Weld County does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this Agreement or incorporated herein by reference shall be null and void.

Acknowledgment. County and Operator acknowledge that each has read this Agreement, understands it and agrees to be bound by its terms. Both parties further agree that this Agreement with the attached Exhibits is the complete and exclusive statement of agreement between the parties and supersedes all proposals or prior agreements, oral or written, and any other communications between the parties relating to the subject matter of this Agreement.

OPERATOR:

C&H Aggregates, LLC

By: 

Date: August 18, 2020

Name: Derek Daniels
Title: Vice President

WELD COUNTY:

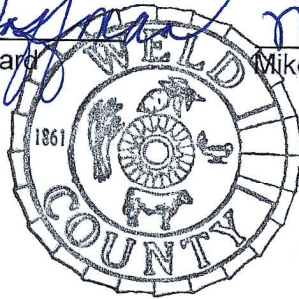
ATTEST: *Cather G. Meick*
Weld County Clerk to the Board

BOARD OF COUNTY COMMISSIONERS
WELD COUNTY, COLORADO

BY:

Cheryl Haggman
Deputy Clerk to the Board

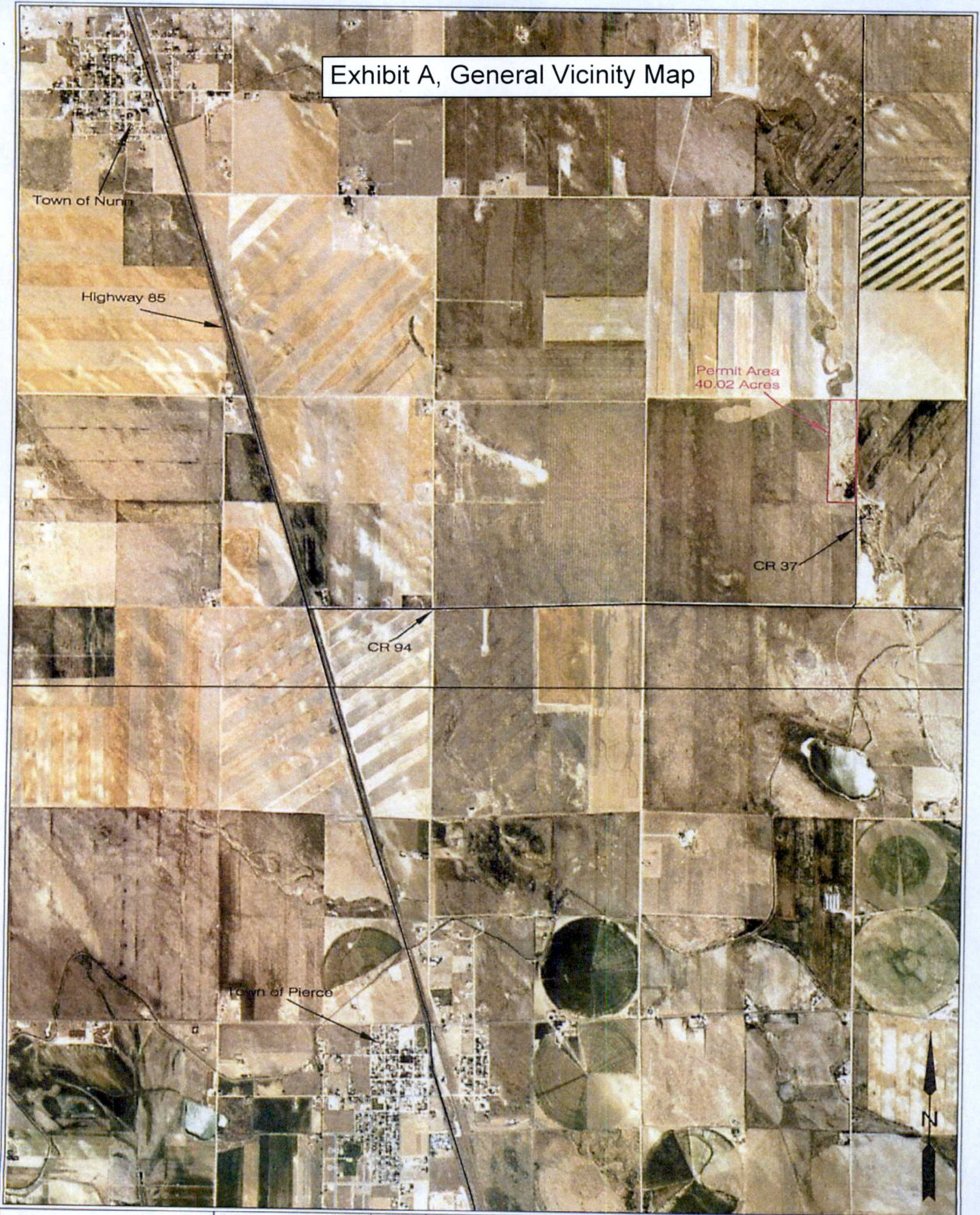
Mike Freeman
Mike Freeman, Chair



SEP 09 2020

2020-2749


Exhibit A, General Vicinity Map



Notes:

Revisions	BY	DATE	DES	RE	DATE
				DRN	5/10/10
				RE	
				CHK	
				APPD	

SCALE
1" = 3000'

 **Greg Lewicki And Associates**
11541 Worthington Court
P.O. Box 100, Lone Tree, CO 80124
Phone: (303) 346-5500
E-Mail: info@greglewi.com

Miller Family Investments, LLC
Map B-1
General Location Map
Lone Tree Pit

Slope Study

GEOTECHNICAL STABILITY EXHIBIT

EXHIBIT B

There are no buildings or any structures outside the permit area which could be affected by the excavation. A minimum 30 foot buffer will be maintained from the permit boundary line to all excavations. The permit boundary on the eastern and northern boundary is the ROW for CR 37 and CR 96. All reclaimed areas will be restored to relatively flat ($<3.5\%$) slopes except for the side slope, which be mined to a 3H:1V and reclaimed to a 3H:1V slope. The surface material of these slopes will be topsoil and the slope will be undisturbed sand and gravel.

Design factors

In the extremely remote case that a slope failure would occur, if the slope failed up to CR 37 (the closest man made structure to the operation), Figure U-1 shows the slope angle that would occur. The horizontal distance from the edge of the excavation to the ROW is 30 feet. The failure angle would be 9 degrees or 6H:1V. This angle is far milder than normal failure angles in material that gets strength from internal angle of friction. Figure U-2, from *Stability Analysis of Earth Slopes*, Huang, shows typical internal angles of friction for various materials. Assuming that the gravel is classified as SP, Poorly graded clean sands, gravelly sands, this material has an internal angle of friction of approximately 37 degrees.

The Factor of Safety (FOS) for gravel with a 9 degree slope in SP classified material with an assumed internal angle of friction of 37 degrees can be approximated by ignoring the cohesion component of the stability and simply evaluating the internal angle of friction as follows

$$FOS = \frac{\text{Tangent of Internal Angle of Friction}}{\text{Tangent of Actual Angle of Failure Surface}}$$

$$FOS = \frac{\tan 37^\circ}{\tan 9^\circ} = \frac{7535}{1584} = 4.8$$

This factor of safety far exceeds the normal long term safety factor of 1.3, therefore, the plan of extraction, as presented in Figure U-1, is acceptable. The material within the slope will consist of undisturbed sand and gravel.

I, Greg Lewicki, P.E. with over 29 years in mine slope safety analysis in Colorado, certify that the mining and reclamation plan presented in this application will lead to stable slopes during and after mining and that there is no realistic threat of failure or to the stability of any structures outside of the permit area.



Greg Lewicki

Greg Lewicki, P.E.

P.E. # 20335

Date

6/7/10

Lone Tree Pit, March 2009

U-4

Lone Tree Pit, June 2009

U-4

Figure U-1
Failure Analysis of Mined Slopes

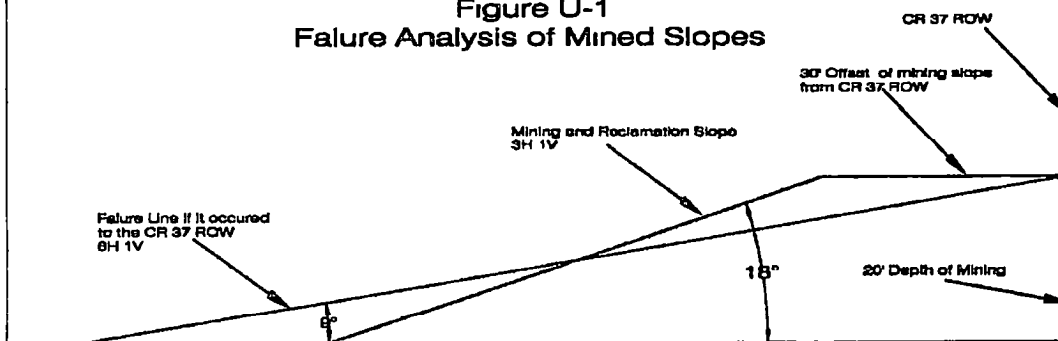


Figure U-2 (Stability Analysis of Earth Slopes, Huang)

Table 3.1 Average Effective Shear Strength of Compacted Soils.

UNIFIED CLASSIFICATION	SOIL TYPE	PROCTOR	COMPACTION	AS COMPACTED COHESION c_u tsf	SATURATED COHESION c_{sat} tsf	FRICTION ANGLE ϕ deg
		MAXIMUM DRY DENSITY pcf	OPTIMUM MOISTURE CONTENT %			
GW	well graded clean gravels, gravel-sand mixture	>119	<13.3	•	•	>38
GP	poorly graded clean gravels, gravel sand mixture	>110	<12.4	•	•	>37
GM	silty gravels, poorly graded gravel-sand-silt	>114	<14.5	•	•	>34
GC	clayey gravels, poorly graded gravel-sand-clay	>115	<14.7	•	•	>31
SW	well graded clean sands, gravelly sands	119±5	13.3±2.5	0.41±0.04	•	38±1
SP	poorly graded clean sands, sand-gravel mixture	110±2	12.4±1.0	0.24±0.06	•	37±1
SM	silty sands, poorly graded sand-silt mixture	114±1	14.5±0.4	0.53±0.06	0.21±0.07	34±1
SM-SC	sand-silt-clay with slightly plastic fines	119±1	12.8±0.5	0.21±0.07	0.15±0.06	33±3
SC	clayey sands, poorly graded sand-clay mixture	115±1	14.7±0.4	0.78±0.16	0.12±0.06	31±3
ML	inorganic silts and clayed silts	103±1	19.2±0.7	0.70±0.10	0.09±•	32±2
ML-CL	mixtures of inorganic silts and clays	109±2	16.8±0.7	0.65±0.18	0.23±•	32±2
CL	inorganic clays of low to medium plasticity	108±1	17.3±3	0.91±0.11	0.14±0.02	28±2
OL	organic silts and silty clays of low plasticity	•	•	•	•	•
MH	inorganic clayey silts, elastic silts	82±4	36.3±3.2	0.76±0.31	0.21±0.09	25±3
CH	inorganic clays of high plasticity	94±2	25.5±1.2	1.07±0.35	0.12±0.06	19±5
OH	organic clays and silty clays	•	•	•	•	•

• denotes insufficient data, > is greater than, < is less than
 (After Bureau of Reclamation, 1973, 1 pcf=157.1 N/m³ 1 tsf=95.8 kPa)

WELD COUNTY ACCESS PERMIT

Weld County Public Works Department
1111 H Street
P.O. Box 758
Greeley, CO 80632



Phone: (970) 304-6496

Permit Number: AP20-00359

Issuance of this permit binds applicant and its contractors to all requirements, provisions, and ordinances of Weld County, Colorado.

Project Name:	Access is on WCR:	37
Permit Expiration Date:	Nearest Intersection WCR:	37 - 96
Planning/Building Process: USR11-0020 Yes	Distance From Intersection:	1430
Parcel(s): 055312000009	Number of Existing Accesses:	1
	Access Width:	
	Access Turning Radii:	
Proposed Use: Large Commercial	Latitude:	40.67865
	Longitude:	-104.71563

Applicant Information:

Name:
Company: C&H Excavation LLC
Phone: 970-834-2247
Email: cliff@chexcavation.com

Owner Information:

Name:
Company: Same as Applicant
Phone:
Email:

Road Surface Type and Construction Information:

Road Surface: Gravel
Culvert Size and Type: 15" CMP/RCP minimum if required
Material to Construct Access: Existing
Start Date: Finish Date:

A Copy of this permit must be on site at all times during construction hours

Daily work hours are Monday through Friday DAYLIGHT to 1/2 HOUR BEFORE DARK (applies to weekends if approved)

Approved MUTCD traffic control / Warning devices are required before work begins and must remain until completion of work

**** Crushed or recycled concrete SHALL NOT be used for tracking material in the County ROW**

All access points shall comply with Weld County Engineering and Construction Criteria found at:

https://library.municode.com/co/weld_county/codes/charter_and_county_code?nodeId=CH8PUWO_APX8-QWECOENCOCR

Unless otherwise authorized.

Special Requirements or Comments

Utilize existing access point on CR. 37 (1-LC) located approx. 1430ft south of CR. 96 in accordance with USR11-0020.

Approved By: Tiffnee
Lamb
2020.08.27
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