

**BOYER RANCH  
SAND AND GRAVEL LEASE AGREEMENT**

***PARTIES:***

The parties to this agreement (or "Lease") are the Navajo Nation, herein referred to as "Lessor", and Seifert Enterprises, LLC of Westcliffe, Colorado as "Lessee".

***PROPERTY:***

The property which is the subject of the Lease is generally located within the West One-half of Section 5 and the East One half of Section 6, Township 24 South, range 71 West of the 6th Principal Meridian, County of Custer, State of Colorado (herein referred to as "Property"). Lessor warrants that Lessor is the owner of the above-described property and has the right to convey and grant the rights and privileges provided in this Lease.

***PURPOSE:***

The Lessor is the owner of the Property described in Exhibit A which has deposits of sand, gravel, rock, topsoil and aggregate. The Lessor has agreed to lease to the Lessee for the purposes of removing, processing and selling the same in the general business of sand, gravel and aggregate production and sales the area of the Property addressed in Exhibit A (herein referred to as the "Leased Premises"), subject to the terms and conditions set forth in this Lease.

***TERM:***

In consideration of the payments herein provided, the Lessor hereby leases unto Lessee the following described premises beginning on the 1<sup>st</sup> day of November 2018 for a term of five (5) years until the 30th day of November 2022.

***EQUIPMENT USED:***

Lessor further grants to Lessee the right to use all or any portion of the Leased Premises for the purpose of erecting any and all equipment and temporary structures that may be used by Lessee in the production of Product as authorized herein and the right to grade roads or rights-of-way on the Property to any and all points on such Property necessary or useful in the production and removal of Product from the Leased Premises, provided that Lessee provide notice to the Navajo Nation Minerals Department or its successor prior to the grading of such roads or use of such rights-of-way.

**PRODUCT:**

Lessor grants unto Lessee the right to remove the following Product from the Leased Premises:

Sand, gravel, interbedded sandy clay and topsoil for production of sand, gravel, aggregate, decorative rock, base course, pit run and rock chips and topsoil to the extent not required for reclamation of the property.

Lessee acknowledges and agrees that lessee has no right to remove any other minerals or any material containing same from the Property.

**CONSIDERATION:**

As consideration for this Lease, the Lessee shall pay to the Lessor the sum of One Dollar (\$1.00) per ton or 2,000 pounds of Product. Lessee shall furnish Lessor with monthly records of material removed within ten (10) days of the close of each month and at the time of same shall tender payment to the Lessor for materials sold at the rate provided of One Dollar (\$1.00) per ton. Lessor shall, at all times, have the right to examine the Leased Premises, review and audit the records of the Lessee and to verify any information by contacting Lessee account holders. The payment of One Dollars (\$1.00) per ton or 2,000 pounds of Product shall be subject to annual adjustments on each June 31<sup>st</sup> anniversary date. The adjustments shall be based upon the increase in the Consumer Price Index (CPI), U.S. City Average for All Urban Consumers. The CPI for January 2018 shall be used as the base for all adjustments.

**RIGHTS OF LESSOR:**

It is agreed and understood that Lessor shall, at all times during the term of this agreement, have the use of any and all parts of the above-described Property for any and all purposes, including sand and gravel operations, except for those portions actually being occupied and used by Lessee for the production and removal of sand or gravel as provided in this agreement. Lessee, however, shall have the right of ingress and egress to and from the Leased Premises to be used by Lessee. Lessee shall coordinate its use of the Leased Premises with Lessor and will not open pit sites on the Lease Premises without discussing and coordinating the same with the Lessor.

**CONSTRUCTION OF FENCES:**

Lessee agrees to construct and maintain a good and sufficient fencing around the sand and gravel pits and to dispose of the overburden as may be directed by the Lessor and as required by permits with the State of Colorado.

**PERMITS:**

Lessee shall take all steps to arrange for permits for mining, crushing, washing, distributing and hauling its Product upon and from the Leased Premises and shall pay all costs for the same and fully comply with all of the provisions, terms and conditions of all laws, whether federal, state or local and orders issued thereunder which may be in effect during the Term of this Lease relating to the operations of the Lessee under this Lease and the marketing of any Product thereof. Lessee shall provide to Lessor a copy of the required permits prior to execution of this Lease.

**LIVESTOCK OPERAITONS:**

Lessee acknowledges that Lessor may lease out portions of its Property for livestock and growing crops to third parties. Lessee shall be liable and agrees to pay for all damages to the surface of the Property, livestock, growing crops, or improvements caused by Lessee's operations on the Leased Premises or adjacent Property.

**LIABILITY:**

Lessee shall indemnify Lessor against all liability and loss and against all claims and actions of any kind, including the defense of such claims or actions based upon or arising out of damage or injury including death, to persons or property caused by or sustained in connection with this Lease by conditions created thereby or by any operations of the Lessee, Lessee's agents, employees or subcontractors or based upon any violation of any applicable law. In that regard, the Lessee shall maintain throughout the term of this agreement, a public liability insurance policy naming Lessor, The Navajo Nation, as additional insured with minimum single limits of One Million and 00/100 Dollars (\$1,000,000.00). Such policy shall require notice to Lessor of cancellation at least thirty (30) days prior to any cancellation date. Failure to maintain such insurance shall be deemed a default of the terms of this Lease.

**WATER:**

It is agreed that Lessee shall supply its own water supply.

**INSPECTION:**

The Lessor shall, at all reasonable times, have the right of full access to the Leased Premises for the purpose of inspection of the same, including the right to inspect all records, permits, and reports utilized in the operation of the same. In that regard, the parties understand and agree that Lessor may make such inspections in-person or by its representative, Samuel Diswood, or by any other representative designated in writing by Lessor throughout the term of this Lease.

**REMOVAL OF IMPROVEMENTS:**

All fences and other improvements installed by the Lessee during the Term of the Lease shall be removed at its termination unless otherwise agreed between Lessee and Lessor in writing.

**DISPUTE RESOLUTION:**

Any claim, dispute, or other matter in question arising out of or relating to this Lease shall be resolved by negotiations, mediation and/or arbitration procedures set forth as follows:

- A. **Negotiation:** In the event a dispute shall arise between the parties to this Lease, the parties agree to attempt to negotiate a just and equitable settlement thereof. If either party fails or refuses to participate in such negotiations or such negotiations do not result in the parties resolving the dispute within twenty (20) working days after one party has requested that negotiation begin (and the period is not extended with the consent of the parties), then either party may cause the dispute to be referred to mediation.
- B. **Mediation:** The parties shall endeavor to resolve claims, disputes and other matters in questions between them by good faith negotiation and mediation which, unless the parties mutually agree otherwise, shall be in accordance with the Commercial Mediation Rules of the American Arbitration Association, as modified by the following:
1. Unless otherwise agreed to in writing by the parties, all mediation procedures shall be held in Window Rock, Arizona;
  2. A single mediator may be chosen by mutual agreement of the parties;
  3. The party desiring mediation shall submit to the other party a written notice of intent to mediate, and such notice shall indicate whether the hiring of a mediator is desired;
  4. The parties shall equally share the mediator's fee and any other costs related to the mediation; and
  5. The mediation shall not exceed ninety (90) calendar days, unless otherwise agreed to in writing by the parties.

7.

**C. Arbitration:** If the mediation provided for the subsection (B) above does not result in resolution of the parties' dispute within ninety (90) calendar days of commencement of the mediation, then, unless the parties agree in writing to extend the time for mediation, either party may invoke arbitration according to the procedures referenced in the Navajo Sovereign Immunity Act, as amended, at 1 N.N.C. §§ 554 J and § 554 K, and as set forth in the Navajo Nation Arbitration Act, as amended at 7 N.N.C. §§ 1101 et seq. Such arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except to the extent such rules are modified by the following:

1. Unless otherwise agreed to in writing by the parties, all arbitration procedures shall be held in Window Rock, Arizona;
2. The arbitration shall be conducted by a single arbitrator selected by the Navajo Nation, unless one of the parties' claims exceeds \$1,000,000.00, exclusive of interest, costs, and fees; in such case the arbitration shall be conducted by a panel consisting of three (3) arbitrators, one of which shall be chosen by each party, with the two arbitrators choosing the third; at least one arbitrator shall possess at least ten (10) years of experience in Indian Law;
3. Notice of intent to invoke arbitration shall be filed in strict compliance with the notice requirements of the Navajo Sovereign Immunity Act, at 1 N.N.C. § 555;
4. Whether as a result of an arbitration provided for herein or of any judicial action to enforce an arbitration award resulting from such arbitration, any award against the Nation shall be in strict conformance with the provisions of 1 N.N.C. § 554 K 1-6;
5. Pursuant to 1 N.N.C. § 554 K and 7 N.N.C. § 1102, the appropriate Navajo Nation district court shall have exclusive jurisdiction to compel the Nation's participation in an arbitration, and shall have exclusive jurisdiction to enforce, modify, or vacate an arbitration award resulting from such arbitration; neither party may recover from the other any attorney fees or costs.

- D. **Waiver of Suit:** The negotiation, mediation and arbitration provisions herein shall constitute the sole and exclusive procedural remedy to any dispute or controversy arising out of this Lease. Commencement of negotiations, mediation or arbitration shall be a complete defense to any suit, action or proceeding instituted in any federal, state, or tribal court or any administrative tribunal, with respect to any dispute or controversy arising out of this Lease that is negotiated, mediated or arbitrated as set forth herein.
- E. **Post-termination; Post-expiration:** The dispute resolution provisions of this Lease shall, with respect to such any dispute or controversy arising out of this Agreement, survive the termination or expiration of this Lease.

**WAIVER:**

The failure of either party to this agreement to insist upon the performance of any of the terms and conditions of this agreement or the waiver of any breach of any of the terms and conditions of this agreement shall not be construed as thereafter waiving any such terms and conditions in the event of a subsequent breach, and the same shall continue and remain in full force and effect as if no such forbearance or waiver had occurred.

**MODIFICATION OF AGREEMENT:**

A modification of this agreement or additional obligation assumed by either party in connection with this agreement shall be binding only if evidenced in writing, signed by each party or an authorized representative of each party.

**ASSIGNMENT:**

This agreement may not be assigned or transferred by Lessee nor may any interest in the Leased Premises be sublet, assigned, transferred, or hypothecated by Lessee without the prior written consent of Lessor.

**ENTIRE AGREEMENT:**

This agreement shall constitute the entire agreement between the parties and any prior understanding or representative of any kind preceding the date of this agreement shall not be binding upon either party except to the extent incorporated in this agreement.

**GOVERNING LAW:**

It is agreed that this agreement shall be governed by, construed and enforced in accordance with the laws of the State of Colorado, unless expressed stated otherwise herein.

**SOVEREIGN IMMUNITY:**

Nothing contained herein shall be interpreted as constituting a waiver, express or implied, of the sovereign immunity of the Navajo Nation.

**PARTIES BOUND:**

This agreement shall be binding upon the parties hereto, their heirs, successors, executors, administrators, employees, agents, or assigns.

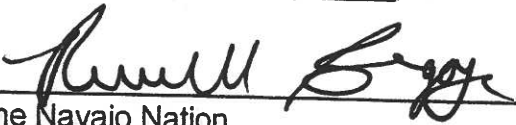
**DEPARTMENT OF JUSTICE APPROVAL:**

Pursuant to 1 N.N.C. § 554(J)(2) and (K)(2), Navajo Nation Department of Justice Approval is required for all agreements that include a limited waiver of sovereign immunity to compel or enforce arbitration under the Navajo Nation Arbitration Act, as amended, 7 N.N.C. § 1101 et seq.

  
\_\_\_\_\_  
Navajo Nation Department of Justice

LESSOR:

DATED this 8<sup>th</sup> day of December, 2018.

  
The Navajo Nation

LESSEE:

DATED this 18<sup>th</sup> day of June, 2018.

  
Seifert Enterprises, LLC