



STATE OF
COLORADO

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

City of Colorado Springs Free Use Contract Authorized

1 message

Titterington, Amy - FS, CO <amy.j.titterington@usda.gov>

Tue, May 23, 2023 at 3:22 PM

To: "Deitemeyer, David (David.Deitemeyer@coloradosprings.gov)" <David.Deitemeyer@coloradosprings.gov>

Cc: "Henry, Harold" <Harold.Henry@stantec.com>, Jerald Schnabel <Jerald_Schnabel@castleaggregate.com>, "Cazier - DNR, Tim" <tim.cazier@state.co.us>, "Bauer, Carl - FS, CO" <carl.bauer@usda.gov>

Hi David,

The Rocky Mountain Deputy Regional Forester has authorized your free use permit for reclamation activities at the Pikeview Quarry.

The signed contract and cover letter are attached.

If you have any questions, please let me know.

Best,

Amy



Amy Titterington, PG, CMA I
Geologist/ AML Program Manager

Forest Service

PSICC, South Park Ranger District

p: 719-836-2031

c: 719-838-0699

f: 719-836-3875

amy.j.titterington@usda.gov

[320 US Highway 285](#)

PO Box 219

Fairplay, CO 80440

www.fs.fed.us



**Caring for the land and serving
people**

This electronic message contains information generated by the USDA solely for the intended recipients. Any unauthorized interception of this message or the use or disclosure of the information it contains may violate the law and subject the violator to civil or criminal penalties. If you believe you have received this message in error, please notify the sender and delete the email immediately.

2 attachments**20230523_FS_COS_ContractAuthorized.pdf**

205K

**USFS_Pikeview_Contract_Signed.pdf**

361K



File Code: 2850
Date: May 23, 2023

Mr. David Deitemeyer
Colorado Springs Parks, Senior Landscape Architect
1401 Recreation Way
Colorado Springs, CO 80905

Dear David,

I am writing in regard to your Free Use Operating Plan (OP) (#2850-021209-OP-2023-001) for reclamation work on the Pikes Peak Ranger District of the Pike – San Isabel National Forests & Cimarron and Comanche National Grasslands (PSICC).

In my May 12, 2023, letter to you, I informed you that PSICC Forest and Grassland Supervisor Diana Trujillo had signed the Decision Memo (DM) and I instructed you on the final three steps necessary for contract authorization.

1) Accepting the changes and additions listed in the Colorado Springs Free Use DM.

I received your response accepting the required changes on May 22, 2023. Thank you.

2) Sign and return the contract (FS-2800-9).

I received your signed contract (FS-2800-9) on May 22, 2023. Thank you.

3) Reclamation Financial Assurance.

In accordance with 36 CFR 228.51, you are required to post a Reclamation Bond. The Reclamation Bond is a guarantee of faithful performance with the terms and conditions listed in the OP and DM. The Reclamation Bond also extends to and can include any unauthorized activities conducted in connection with this operation. The bond amount may also be adjusted during the term of the reclamation plan in response to changes in the operations or to changes in the economy.

In the State of Colorado, there is a Memorandum of Understanding (MOU) between the Forest Service and the State of Colorado, Division of Reclamation, Mining, and Safety (DRMS), with the purpose to provide for the most efficient use of each agency's resources and reduce duplicative requirements where feasible while still meeting the legal requirement of each agency.

On March 5, 2020, DRMS calculated a reclamation bond that was posted on December 9, 2021, in the amount of \$13,389,784.00. This bond included the following tasks on National Forest System (NFS) lands:

- Revegetation of 32.18 acres of NFS lands (excluding trees and mulch).
- Application of erosion control blankets and mulch (where necessary).
- Planting of trees.
- Watering of trees.



- Placing topsoil from North Stockpile.

The Forest Service has calculated a Reclamation Bond estimate for the work conducted on NFS lands in accordance with our agency policy (Enclosure 4). The total cost of reclamation on NFS lands is \$3,002,085. The current DRMS performance bond (\$13,389,784) is sufficient to cover this project.

The Rocky Mountain Deputy Regional Forester has authorized the contract for your Free Use Operating Plan with his signature on page 4 (attached). Operations are authorized to begin on May 23, 2023, and are authorized for 2 years, with completion of all activities including reclamation by December 31, 2025.

Please be aware, this approval does not constitute permission to conduct activities that require other agency permits. You are responsible for obtaining all other necessary permits prior to operation. Furthermore, approval of this operating plan in no way authorizes, or in any way permits, a release or threat of a release of hazardous substances or pollutants into the environment that will require a response action or result in the incurrence of response costs.

All designs, monitoring plans, and analyses required by the OP are subject to the requirement of 36 CFR 228, Subpart C that mining operations be conducted so as, where feasible, to minimize adverse environmental impacts on National Forest surface resources. The operator's compliance with this requirement in no way insulates or releases them from any liability or obligations that may arise with respect to its operations under any applicable environmental law, including but not limited to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601 et seq. The United States reserves its rights and claims under CERCLA to seek performance of response actions and/or reimbursement of response costs that may be incurred as a result of any release or threat of a release of a hazardous substance from the project, or any ancillary operation for the mining activity.

If you have any questions and/or need clarification regarding the above information, please contact Geologist Amy Titterington at the South Park Ranger District office, by phone at 719-838-0699, and/or by email at amy.j.titterington@usda.gov.

Sincerely,

CARL
BAUER

Digitally signed by CARL
BAUER
Date: 2023.05.23
15:13:46 -06'00'

CARL R. BAUER
District Ranger

Enclosures:

- 1) Approved Colorado Springs Free Use Operating Plan (signed)
- 2) Mitigation Measures for Colorado Springs Operating Plan (signed)
- 3) FS-2800-9 Pikeview Contract (signed)
- 4) Reclamation Cost Estimate

cc: DRMS - Tim Cazier; City of Colorado Springs, Riverbend Industries

USDA Forest Service

For Forest Service Use Only

CONTRACT FOR THE SALE OF
MINERAL MATERIALS

Forest Service Unit Name **0212**

(Ref. FSM 2850)

Contract Number **MM-COS-PIKEVIEWFUP**

NOTE: This information is being collected to process your application and effect a binding contract agreement. This information will also be used to identify and communicate with applicants. Response to this request is required to obtain a benefit.

Public reporting burden for this collection of information is estimated to average 2 hours 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0596-0081), Washington, D.C. 20503.

THIS AGREEMENT, made this , under authority of the Acts of July 31, 1947 (61 Stat. 681), as amended (30 U.S.C. 601 et seq.), March 4, 1917 (16 U.S.C. 520), and June 11, 1960 (74 Stat. 205), and the regulations set forth in 36 CFR 228, Subpart C, between the UNITED STATES OF AMERICA (hereinafter called the "Government"), acting through the Authorized Officer of the Forest Service (hereinafter called the "Authorized Officer"), and **CITY OF COLORADO SPRINGS PARKS, RECREATION & CULTURAL SERVICES** (hereinafter called the "Purchaser.")

WITNESSETH, That the parties hereto mutually agree as follows:

Sec. 1. Contract area. The Government hereby sells to Purchaser and Purchaser hereby buys from Government, under the terms and conditions of this contract, all of the mineral materials described in Sec. 2 below, for severance, extraction, or removal, on the following described lands situated in the **PIKE AND SAN ISABEL NATIONAL FORESTS**, County of **EL PASO**, State of **COLORADO** as shown on the operating plan marked "Exhibit B", attached hereto, **PIKEVIEW(LAYBACK)** and made a part hereof, viz:**Sec. 9, T. 13 S., R. 67 W., 6TH PRINCIPAL MERIDIAN**, containing **24** acres, more or less.

Sec. 2. Amount and price of materials. The total purchase price will be determined by multiplying the total quantity of each kind of mineral material designated by the respective unit price as set forth below, or as changed through reappraisal hereunder.

KIND OF MATERIALS	QUANTITY (Units Specified)	PRICE PER UNIT	TOTAL PRICE
SPECIALTY FILL	434920 SHORT TONS	2.20	\$ 956,824.00
Total			\$ 956,824.00
Grand Total:			\$.00

The following associated charges and adjustments are obligations under this contract.

Associated Charges

CHARGE TYPE	QUANTITY (Units Specified)	COST PER UOM	TOTAL PRICE
-------------	-------------------------------	--------------	-------------

Adjustments

ADJUSTMENT TYPE	AUTHORITY	AMOUNT
FREE-USE		\$ -956,824.00

Determination by the Authorized Officer of the quantity of materials taken is binding on Purchaser subject to appeal only as provided in Sec. 14. All materials in the contract area in excess of the estimated quantity listed above are reserved by Government.

Sec. 3. Payments, passage of title, and risk of loss. Title to materials sold hereunder passes to Purchaser immediately before excavation and upon proper payment for such materials. No part of the material sold hereunder may be severed, extracted, or removed by Purchaser until payment for such materials has been made in accordance with the following:

a. Unless materials sold under this contract are paid for in full in advance, payment for materials must be made in installments of not less than \$N/A each. The first installment must be paid upon approval of this contract.

b. Each additional installment is due and payable as billed by the Authorized Officer in advance of removal of the remaining material. The first installment will be retained as additional security for the full and faithful performance of this contract by Purchaser, and will be applied in whole or in part to the payment of the last installment required hereunder to make the total payment equal the total price set forth in Sec. 2, above.

The total purchase price must equal the sum of the total quantities severed, extracted, or designated therefor, multiplied by their respective unit prices. The balance due where less than a full installment remains to be paid upon the total price will be the value of material remaining to be severed or extracted. Each installment will be held in suspense until the quantity of material covered thereby has been determined. The total purchase price must be paid at least 60 days before the expiration date of the contract.

Upon termination, if the total payments made under the contract exceed the total value of the actual materials removed, the excess will be returned to Purchaser, except as noted in 36 CFR 228.66.

c. Risk of loss shall be borne by the party holding title to the mineral material at the time of loss except that nothing herein shall be construed to relieve either party from liability for breach of contract or any wrongful or negligent act.

Sec. 4. Stipulation and reserved items. The rights of Purchaser are subject to the regulations in 36 CFR 228, Subpart C, which are made a part of this contract, and to the stipulation, if any, which are attached hereto and made a part hereof as Exhibit A.

Sec. 5. Bonds.

(a) Purchaser must file with the Authorized Officer and must maintain at all times the bond required under the regulations to be furnished as a condition to the award of this contract in the amounts established by the Authorized Officer and to furnish additional bonds or security as the Authorized Officer may require.

(b) If all terms of this contract are not faithfully and fully performed by Purchaser, the bond in the sum of \$N/A filed at the time of the signing of this contract will be forfeited to the amount of damages determined by the Authorized Officer. If damages exceed the amount of the bond, Purchaser hereby acknowledges liability for such excess. Upon satisfactory performance of this contract, the bonds will be canceled, or if cash or United States securities were furnished in lieu of a security bond, such cash or securities will be returned to Purchaser.

(c) Whenever any bond furnished under this contract is found unsatisfactory by the Authorized Officer, the Authorized Officer may require a new bond which is satisfactory.

Sec. 6. Expiration of contract and extensions of time. This contract will expire on unless an extension of time is granted in accordance with the provisions of 36 CFR 228.53(b). Written application for an extension of time may be made by Purchaser between 30 and 90 days before the expiration date of the contract.

Sec. 7. Duties of Purchaser. Purchaser must take fire precaution and conservation measures and must dispose of slash and other debris resulting from operations hereunder in accordance with written instructions from the Authorized Officer.

Sec. 8. Notice of operations. Purchaser must notify the Authorized Officer immediately of the commencement and termination of operations hereunder. A report of production will be furnished at least annually by Purchaser to the Authorized Officer.

Sec. 9. Responsibility for damages. Purchaser is liable in damages for the loss or destruction of all Government property for which Purchaser is directly or indirectly responsible under this contract, or resulting from Purchaser's failure to perform under this contract in accordance with the instruction of the Authorized Officer, as well as for costs incurred by Government resulting from Purchaser's breach of any of the terms hereof, or Purchaser's failure to engage in proper conservation practice. For damages resulting from willful action or gross negligence of Purchaser, Purchaser's contractors or subcontractors, or any of their employees, Purchaser is liable for triple the appraised value of damaged or destroyed materials as determined by the Authorized Officer. If the Authorized Officer determines that the damage or destruction did not result from Purchaser's willful action or gross negligence, lesser damages may be charged, but not less than the actual appraised value of the materials. Purchaser must pay the Government for such damages within 30 days after a written demand therefor by the Authorized Officer.

Sec. 10. Violations, suspension, and cancellation.

(a) If Purchaser violates any provision of this contract, the Authorized Officer may, after giving written notice, suspend any further operations for the Purchaser under this contract, except such operations as may be necessary to remedy any violations. The Authorized Officer may grant Purchaser an additional 30 days, after service of written notice, to correct any violations. If Purchaser fails to remedy all violations, the Authorized Officer may, by written notice, cancel this contract and take appropriate action to recover all damages suffered by the Government by reason of such violations, including application toward payment of such damages of any advance payments and bonds.

(b) If Purchaser extracts or removes any mineral materials sold under this contract during any period of suspension, or if Purchaser extracts any of such material after expiration of the time for extraction or the cancellation of this contract, such extraction or removal is in trespass and renders Purchaser liable for triple damages.

Sec. 11. Time for removal of personal property. Purchaser has the right within 3 months after expiration of the time for extraction and removal of mineral materials, if not in default, to remove equipment, improvements, or other personal property from Government lands or rights-of-way. Any improvements such as road surfacing, culverts, and bridges which have become a permanent part of a Government road may not be removed. Any equipment, improvements, or other personal property remaining on Government lands and rights-of-way at the end of the period for removal as set forth herein becomes the property of the Government.

Sec. 12. Assignments. This contract or any portion of it may not be assigned without written approval of the Authorized Officer.

Sec. 13. Tenure. Unless otherwise provided by this contract, Purchaser has the right to extract and remove the materials until the termination of the contract, notwithstanding any subsequent appropriation or disposition under the general land laws, including the mining and mineral leasing laws.

Sec. 14. Appeal. Unless specifically excluded by 36 CFR 251.80, Purchaser may appeal any decision by the Authorized Officer regarding this sale of mineral materials.

PURCHASER

(Individual or Firm Name)

**CITY OF COLORADO SPRINGS
PARKS, RECREATION &
CULTURAL SERVICES
1401 RECREATION WAY
C/O BRITT HALEY**

COLORADO SPRINGS, CO 80905

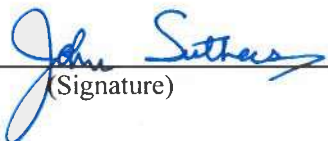
**THE UNITED STATES OF
AMERICA**

(Authorized Officer)

Frank Beum

(Title)

**Regional Forester
USFS Rocky Mountain Region
1617 Cole Blvd
Lakewood, CO 80401**

By: 
(Signature)

By: STEVEN LOHR Digitally signed by STEVEN LOHR
Date: 2023.05.23 13:20:04 -06'00'
(Signature)

Date: 5/18/2023

Date: _____

If this contract is executed by a corporation, it must affix its corporate seal.

**APPROVED AS TO FORM
CITY OF COLORADO SPRINGS
CITY ATTORNEY'S OFFICE**


Name: _____