

CONVERSE COUNTY ROADWAY USE AGREEMENT

This Roadway Use Agreement (“Agreement”) is made and entered into as of the effective date as defined in Section IV herein by and between Converse County, Wyoming, through its Road & Bridge Department, whose address is PO Box 770, Douglas, 44 Twin Bridges Road, Douglas, Wyoming 82633, (“the County”) and K&M Mining LLC (“the Company”) whose address is PO Box 97, Gillette, WY 82717.

WHEREAS, the Company wishes to use the following portions of an existing public county road located in Converse County, Wyoming, and owned all or in part by Converse County, the location and description of which is described below and further described in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the Company wishes to use all or portions of the following county road:

County Road Name: Reese Road County Road Number: #49

Total gravel miles used: 9.6 from milepost _____ to milepost _____

Total paved miles used: 0 from milepost _____ to milepost _____

The road shall be utilized to access, construct, operate, maintain, and/or service the following facility (briefly describe the facility, including general location and primary use):

Use of Reese Road from County Road #59 intersection. Haul gravel from pit on Joe Bright pit located on Pickenpaugh Road / County Road #50. Use of all of Reese Road.

WHEREAS the Company's employees, contractors, subcontractors, agents, affiliates, and related service companies may utilize the road for access to the facility and as a haul route to deliver materials and components necessary to erect, construct and operate the Facility; and

WHEREAS the Company's use of the road may cause impacts which require mitigation to ensure the public's continued ability to use the road; and

WHEREAS the County desires to grant to the Company a nonexclusive right to utilize the road for the purposes described herein in exchange for the Company's reasonable maintenance and mitigation of impacts caused by the Company's use of the road.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

- I. **GRANT:** The County hereby grants to the Company, its employees, contractors, subcontractors, agents, affiliates, and related service companies, all subject to the terms of this Agreement, a non-exclusive road right-of-way to enter upon and utilize the road, more particularly described on the map identified as Exhibit A, for the purposes of accessing, constructing, maintaining, servicing and operating the Company's facility. The Company acknowledges and agrees that the terms of this Agreement only apply to the road referenced herein and that a separate Agreement(s) with the County is required for use of any additional road(s) owned by the County in conjunction with construction, operation and/or maintenance of the facility. The County further acknowledges and agrees that this Agreement is not transferable, and any change in the operator of the facility requires a meeting with the County Commissioners and a newly executed Road Use Agreement.

II. CONSIDERATION FOR USE:

1. As consideration of use of the road and at its own cost and expense, the Company shall adhere to the following conditions as of the commencement date as defined in Section IV herein as well as during the period of Company's construction and operation of the facility:
 - i. Keep the road and the surface condition thereof in good repair and condition at all times.
 - ii. Fill all ruts, holes, and other depressions and/or damage caused by the Company's use of the road to substantially the same condition as the condition the road was in as of the commencement date.
 - iii. Use its best efforts to abate dust generated resulting from the Company's use of the road for use and/or construction of the facility, to include use by the Company's employees, agents, contractors, subcontractors, affiliates, and related service companies.
2. Upon conclusion of the Company's use of the road, the Company shall repair any damage to the road to ensure the road is in as good repair and condition as that upon the commencement date. For purposes of this Section, "good repair and condition" is defined as the road being in substantially the same condition as it was upon the commencement date and in compliance with current County Road Standards.
3. The Company, as well as all contractors hired by Company to make repairs to the road pursuant to this Section, shall carry liability insurance an amount of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate.
4. The County shall not allow the condition of the road to deteriorate in anticipation of the Company's period of use and shall maintain the road under its current maintenance schedule up to the commencement date.

III. DOCUMENTATION OF ROAD CONDITION:

1. In the event that either the County or the Company determines that a video of the road is required to establish the condition of the road prior to any use of the road pursuant to this Agreement by the Company, the Company shall notify the Road & Bridge Office Manager in writing via email, by mail, or by hand at the addresses provided in Section X herein. In addition, the Company shall pay a one-time and non-refundable fee of three hundred dollars (\$300.00) to the County for the video documentation of the road. This notice and payment shall be provided to the Office Manager, a minimum of ten (10) working days in advance of the beginning of any of the use of the road by the Company to ensure the condition of the road upon the commencement date is verified.
2. Should the County determine the road to be substantially in the same condition upon termination of this agreement as it was on the commencement date, the Company shall have no further responsibility for the road under this Agreement.
3. Should the County determine that further repair is required upon termination of this agreement, the County shall provide written notification to the Company pursuant to in Section X within ten (10) business days of the final inspection date of any required repairs. If the County fails to notify

the Company of any required repairs within the time period herein, the Company shall have no further responsibility for the road under this Agreement.

4. Should the Company dispute the County's request for repairs, the Company shall provide written notification to the County pursuant to Section X within ten (10) business days of receipt of such notification.

IV. TERM AND TERMINATION:

1. This Agreement shall commence upon the date last signed and executed by the duly authorized representatives of the parties to this Agreement and shall remain in full force and effect for a period of three (3) years.
2. The Company shall have the right at any time during the term to terminate this Agreement for any reason effective upon ten (10) days' written notice to County as provided in Section X.
3. The County shall have the right to terminate this Agreement if a material default in the performance of the Company's obligations under this Agreement occurs and remains uncured. If such material default occurs, the County shall provide written notification to the Company pursuant to Section X herein. The notification shall set forth in reasonable detail the facts pertaining to the default. If the Company fails to remedy the default within thirty (30) days after the Company receives notice thereof, or if the default will take longer than thirty (30) days for the Company to remedy, or the Company is not working diligently to remedy such default, the County shall move forward to remedy the material error and may seek to collect associated costs from the Company and/or act upon any bond provided pursuant to Section V.4. herein.
4. Upon termination of this Agreement and documentation of the road condition as set forth in Section III and Section V of this Agreement, any costs associated with road maintenance, repairs or any other costs paid by the Company for use of the road shall no longer be the responsibility of the Company.

V. CONDITIONS OF ROAD USE:

1. The Company shall not allow or permit erosion of the road and shall promptly repair and reclaim all erosion sites.
2. The Company shall not construct any structures or obstructions over or across the road.
3. The posted speed limit and any weight restrictions shall be observed by all of the Company's employees, contractors, subcontractors, agents, and affiliates at all times. Violators shall be cited by law enforcement and may be reported by the County to the Company, and the Company shall use its best efforts to control such violations. Grantee's personnel, contractors, sub-contractors shall adhere to all Converse County permitting at all times.
4. As determined by the County prior to the commencement of use of the Road, the Company may be required to post a bond in the amount of \$500,000 per paved mile of road used by the Company, and/or in a form acceptable to the County, to ensure the road is repaired and/or replaced back to the condition it was in as of the Commencement Date.

5. Any necessary county road maintenance performed by the Company during the period of this Agreement (i.e., plowing or grading), must be approved in writing by the Converse County Road and Bridge Superintendent or designee prior to the commencement of such work. If time is of the essence, verbal approval may be given, but the Company shall immediately follow up with a written acknowledgment of the verbal approval as provided in Section X herein. All maintenance and upkeep shall be in accordance with County Road Standards as set out in the County Road Manual.
6. In the event that traffic patterns change, additional or different roads become necessary to be used in the construction of the facility, and/or should any other event arise which requires the County or the Company to seek the use of another road(s) under the jurisdiction of Converse County, the County and the Company specifically warrant, covenant, and agree that they shall each expeditiously execute a new Roadway Use Agreement substantially similar in form and content to this Agreement in order to facilitate the use of the new road or roads, to protect the condition of any other roads, and not interfere with the Company's performance or construction of their facility.
7. The Company shall replace, at its sole cost and expense, any signs, markers, fencing, or other such improvements that were removed to facilitate its use of the road and/or damaged by the activities of the Company during the use of the road.

VI. COUNTY'S USE OF ROAD: The County herein retains the right to fully use and enjoy the road for both public and County use. The County reserves the right to grant successive non-exclusive road rights of way or licenses on the road or access to the road on such terms and conditions as the County deems necessary or advisable, provided that use of the road for any other development or access to that development shall be subject to payment of a proportionate cost of maintenance of the road by the County. The County shall notify the Company in writing as provided in Section X herein if additional rights of way or licenses are granted to others for use of the road for any other development or access to another development during the term of this Agreement.

VII. INDEMNITY: The Company shall release, indemnify and hold harmless the County and its officers, agents, employees, successors and assignees from any cause of action or claims or demands arising out of the Company's performance under this Agreement except to the extent such claims or damages arise from the actions or inactions of the County and its officers, agents, employees, contractors, subcontractors, successors and assignees.

VIII. DAMAGES LIMITATION: Any damages awarded to either party under this Agreement shall be limited to only the actual damages incurred by such party and neither party shall be liable. For consequential, incidental, punitive, exemplary or indirect damages in tort or in contract, or under any legal theory and all such damages are hereby excluded and waived by the parties hereto with respect to this Agreement and/or the exercise of rights hereunder.

IX. COVENANT RUNNING WITH THE LAND/ASSIGNMENT: The rights granted in this Agreement are appurtenant to and covenants running with the land and shall extend to and be binding upon and inure to the benefit of the County and the Company and each of their respective heirs, executors, administrators, personal representatives, successors and permitted assigns for the term of

this Agreement. Any sale, transfer, conveyance or other disposition of the road or any interest therein by the County shall be subject to the rights granted herein. The Company may assign to any other party the rights herein granted, either in whole or in part, without the County's consent, as long as such assignee agrees to be bound by the terms of this Agreement.

X. **NOTICES:** Except as provided elsewhere; all notices required or permitted hereunder shall be in writing via email, delivery via postal service or other mail delivery company, or by hand delivery as follows:

1. CONVERSE COUNTY:

Converse County Road & Bridge, Attn: Office Manager
 PO Box 770, 44 Twin Bridges Road
 Douglas, WY 82633.

PHONE: 307-358-3602 – Office

EMAIL: crimson.miller@conversecountywy.gov, roadandbridge@conversecountywy.gov

2. COMPANY:

NAME: K&M Mining, LLC	ATTN: Brian Mensing/Managing Member
MAILING ADDRESS: PO Box 97, Gillette, WY 82717	
PHYSICAL ADDRESS (if different than mailing):	
PHONE: 307-680-2529	
EMAIL(S): brianmensing01@gmail.com	

3. The following individuals are specifically authorized by the Company to request permission to work on the road. The County shall not grant permission to any person not specifically authorized in writing by the Company. Any change to authorized individuals shall be made in writing pursuant to this Section.

Name & Title:	Phone:	Email:
Name & Title:	Phone:	Email:
Name & Title:	Phone:	Email:

XI. **ATTORNEYS FEES:** If any action or proceeding is instituted by either party for enforcement or interpretation of any term of this Agreement, the prevailing party shall be entitled to recover from the other party all reasonable costs and expenses incurred by the prevailing party in said action and any appeal therefrom, including court costs, reasonable attorneys' fees and costs of suit as determined by the court.

- XII. SEVERABILITY:** If any provision of this Agreement shall be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable shall not be affected thereby but shall continue to be fully valid and enforceable as permitted by law. The parties stipulate and agree that they and their respective counsel have jointly participated in the drafting of this Agreement and therefore this Agreement shall not be construed against either party in the event of an ambiguity or other form of dispute as to its interpretation.
- XIII. COUNTERPARTS:** This Agreement may be executed in identical counterparts, including by electronic means, each of which shall together constitute one and the same document and shall be deemed a fully executed and binding original.
- XIV. CHOICE OF LAWS:** This Agreement shall be interpreted in accordance with the laws of the State of Wyoming without regard to choice of law principles. Venue for all actions brought pursuant to this Agreement, whether in law or in equity, shall be in the appropriate jurisdictional court within Converse County, Wyoming.
- XV. ENTIRE AGREEMENT:** This Agreement constitutes the entire Agreement between the County and the Company relating to the subject matter hereof, and supersedes all prior and contemporaneous Agreements, understandings, negotiations, representations, statements and discussions between the Parties, whether oral or written. This Agreement may be modified or amended only by a writing signed by each of the parties hereto.
- XVI. AUTHORITY:** By executing this Agreement, the representatives of the County and the Company each respectively warrant and acknowledge that they have the power and authority to execute and deliver this Agreement and to authorize and guarantee their respective obligations under this Agreement; that this Agreement has been duly authorized by all required actions of each such party; and the person or persons signing for each party has been duly authorized by such party to do so. The County further warrants, acknowledges and agrees has the legal right to grant to the Company the rights pursuant to the terms of this Agreement.
- XVII. COUNTY'S REPRESENTATION:** The County represents and warrants that there are no undisclosed encumbrances, leases, easements or other rights granted to third parties relating to the road, or any interest therein, that could materially interfere with the Company's use and enjoyment of the rights granted herein, except those that have been already disclosed to the Company.
- XVIII. GOVERNMENTAL IMMUNITY:** The County does not waive its Governmental Immunity as provided by any applicable law, including W.S. § 139-101 *et seq.*, by entering into this Agreement, and the County fully retains all immunities and defenses provided by law. However, the parties acknowledge and agree that the Company retains the right to enforce its contract rights arising under this Agreement, to bring an action for interpretation of any provision of this Agreement, and the County hereby waives any sovereign immunity defense it may otherwise enjoy in any judicial proceeding between the parties, the subject matter of which is this Agreement.
- XIX. REQUIRED SUPPORTING DOCUMENTS:** A map detailing the portions of the road specified in this agreement shall be attached and made a part of this agreement as "Exhibit A". Any other

supporting documents as determined by the County shall also be attached and made part of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the effective date below.

FOR THE BOARD OF COMMISSIONERS CONVERSE COUNTY, WYOMING, dated this ____ day of _____, 20____.

ATTEST:

James H. Willox, Chairman

Karen Rimmer, County Clerk

FOR _____, dated this ____ day of _____, 20____.
(Company Name)

By: *[Signature]* as Owner
(Signature) (Title)

WITNESS:

By: *[Signature]* as Witness
(Signature) (Title)