

Staff Report 78

APPLICANT:

Hi-Grade Materials Co.

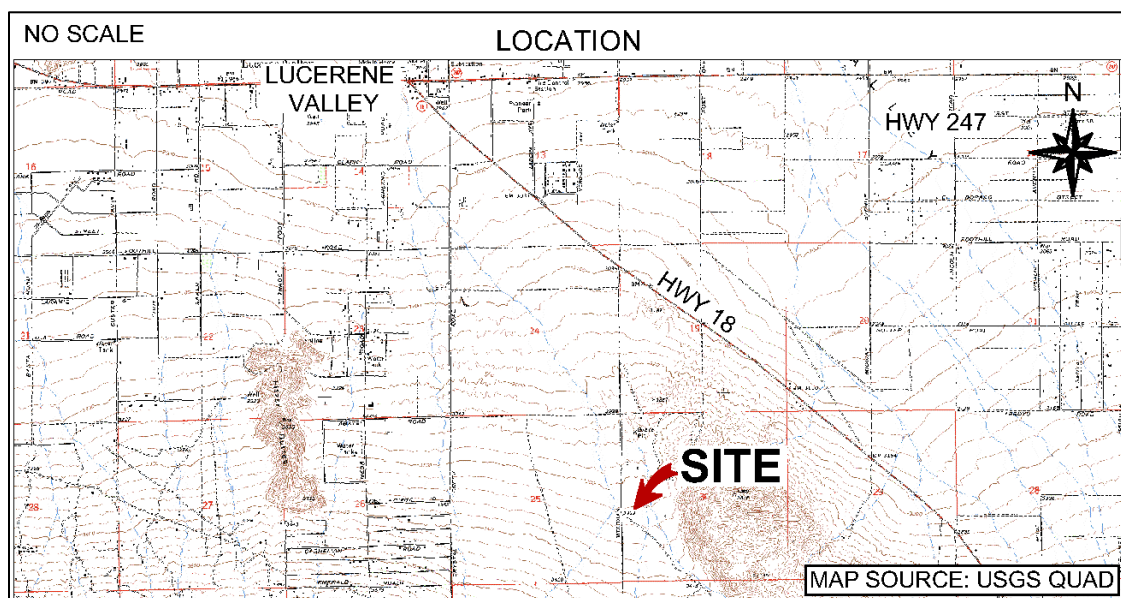
PROPOSED ACTION:

Issuance of a Mineral Extraction Lease (minerals, other than oil, gas, or geothermal resources)

AREA, LAND TYPE, AND LOCATION:

Approximately 116 acres of State fee-owned school lands (Assessor's Parcel Numbers 449-111-23 and 449-111-26) located on lots 10, 11, and 12, containing 38.14 acres, 37.64 acres, and 40.06 acres, respectively, all within section 30, Township 4 North, Range 1 East, San Bernardino Baseline & Meridian, San Bernardino County. This State parcel is situated east of Victorville in a remote area of Lucerne Valley in the Mojave Desert (as shown in Figure 1 below).

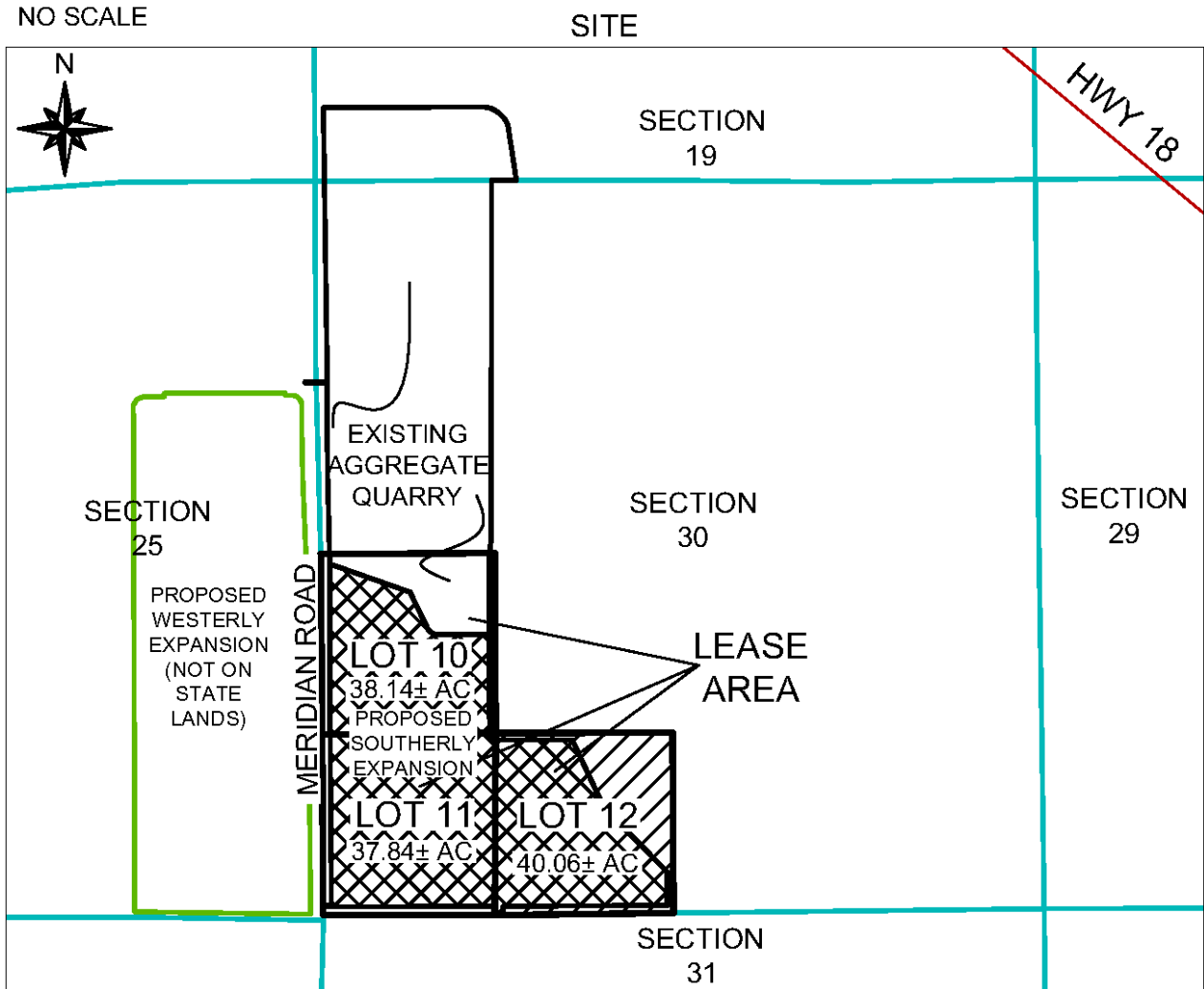
Figure 1. Location



AUTHORIZED USE:

Extraction of rock, sand, and gravel (as shown in Figure 2 below).

Figure 2. Site Map



NOTE: This depiction of the lease premises is based on unverified information provided by the Applicant or other parties and is not a waiver or limitation of any State interest in the subject or any other property.

TERM:

7 years, beginning July 1, 2023.

CONSIDERATION:

- **Royalty:** A 6 percent royalty on the gross sales of all rock, sand, and gravel extracted and sold from the leased land.

- **Minimum Annual Royalty:** \$10,000, due July 25th, after each lease year. In the event the surface mining discontinues due to an economic downturn, the Minimum Annual Royalty will be reduced to \$2,000 after an approved interim management plan is submitted to Commission staff. Pursuant to Public Resources Code section 2770(h), the plan should be approved by the San Bernardino County Planning Commission (County) before submission to the Commission.
- **Compensation for Unauthorized Occupation:** Royalties for this proposed lease shall be increased to 7.5 percent of gross sales, during any holdover period.
- **Bond:** Applicant will provide and maintain a financial security of \$50,000 to guarantee Applicant's performance of the lease terms and conditions.
- **Lease Management Fee:** The Applicant shall maintain a \$5,000 annual lease management fee with the Commission, with a 3 percent yearly increase to cover staff costs associated with lease administration, including but not limited to field inspections. A reimbursement agreement will be established, with invoices sent when staff charges against the reimbursement agreement account.

SPECIFIC LEASE PROVISIONS:

- Applicant will provide liability insurance in an amount no less than \$1,000,000 per occurrence.
- Applicant expressly acknowledges that compliance with the [Surface Mining and Reclamation Act of 1975](#) (SMARA) and fulfillment of all obligations arising under SMARA and enforced by the County is required and failure to maintain compliance with SMARA and County requirements will constitute a breach of the lease.
- Applicant expressly acknowledges that compliance with SMARA and County requirements includes maintaining a financial security device (bond) in favor of the County in an amount sufficient to cover the costs of reclamation of the mined lands. The amount of this bond is currently \$1,371,052.40 and is adjusted by the County on an annual basis. The applicant expressly acknowledges that failure to maintain this financial security device, including any annually adjusted amount, will constitute a breach of the lease.

BACKGROUND:

The Applicant is a sand and gravel company operating a mine on private lands, supplying aggregate materials and concrete to the local building industry since the

1960s. This operation is currently contiguous to, and north of, the State's parcel that the Applicant plans to mine southward in the future.

On June 1, 2009, the Commission approved issuance of State Mineral Extraction Lease No. 8831 to the Applicant beginning July 1, 2009, for a 7-year term with the right to renew for two successive terms, not to exceed 7 years each ([Item 62, June 1, 2009](#)). On March 4, 2014, San Bernardino County, the California Environmental Quality Act (CEQA) lead agency, approved the Mitigated Negative Declaration (MND) (SCH No. 2013121017), Conditional Use Permit and Reclamation Plan No. 2006M-01 for the Lucerne Valley Pit Project. On August 9, 2016, the Commission approved the first 7-year lease renewal and an amendment retroactive from July 1, 2016, through June 30, 2023 ([Item 51, August 9, 2016](#)). Before the expiration date, the Lessee applied for a lease to continue the extraction of rock, sand, and gravel from the previously leased land.

STAFF ANALYSIS AND RECOMMENDATION:

AUTHORITY:

Public Resources Codes sections 6005, 6216, 6501.1, 6895, 6898 and 6899; California Code of Regulations, title 2, section 2200 et seq.

STATE'S BEST INTERESTS:

Pursuant to SMARA, counties or cities are the lead agency for issuing a Conditional Use Permit/Reclamation Plan (CUP/RP) explaining how mining would occur and how and when the land would be returned to the physical state it was in before mining first occurred. The County is the lead agency for the mining activities on the land proposed to be leased.

Under the SMARA, annual inspections are required by the lead agency (County) to determine the progress of mining and reclamation and to ensure that the permittee complies with all terms and conditions of the CUP/RP. The inspection process includes a review of the adequacy of the financial assurance estimate for the mine reclamation. The last available SMARA inspection report dated November 20, 2020, did not find any significant problems or issues at the Lucerne Valley Pit Project, and reported that mining operations were running safely and properly. According to the November 2020 inspection report, the latest inspection report available, the County required security in the amount of \$1,371,052.40, for the mine reclamation. The County reassesses and adjusts the amount of required financial security annually, as part of the inspection process, and the amount may be updated as a result of future inspections.

This financial security requirement is separate from and in addition to the \$50,000 bond required by the Commission as part of the proposed lease. Up to 250,000 tons of aggregate are sold annually from the leased land, and the Applicant predicts that approximately 30 more years of mining are possible before mining operations become uneconomical. The Applicant will be required to submit a new application to the Commission prior to the expiration of the proposed new lease, or any future leases, if they seek additional authority to mine on the Leased land, and if approved by the County.

During the 2020-21 fiscal year, the lease generated \$88,976 in royalty for the [California State Teachers' Retirement System](#). The lease is the second highest royalty producing aggregate lease on school lands and provides various construction and building materials throughout the County. In June 2022, staff conducted an audit and found an unintentional deficiency in the Applicant's royalty accounting that equaled \$22,305, which was paid to the Commission on June 20, 2022.

The Applicant continues to meet all terms and conditions of Lease No. 8831. The proposed lease, attached hereto as Exhibit B, is a new lease to continue mining operations with no expansion of use.

CLIMATE CHANGE:

As stated in [Safeguarding California Plan: 2018 Update](#) (California Natural Resources Agency 2018), climate change is projected to increase the frequency and severity of natural disasters related to flooding, drought, and storms. This site can be vulnerable to these events and dust storms, flash flooding from thunderstorms, and possible wildland fires. Even though the subject lands and surrounding land may be vulnerable to these weather events, they are not expected to affect the uses of the leased lands for mining.

ENVIRONMENTAL JUSTICE:

Consistent with the Commission's [Environmental Justice Policy](#), staff reviewed environmental justice data that indicated high pollution burdens to the surrounding communities. These burdens may result in health impacts such as asthma, cardiovascular disease, and low birth rate. As part of an environmental justice outreach and engagement effort, staff sent letters to environmental justice organizations in San Bernardino County, providing notification of the proposed lease and requesting input. The letters included a brief description of the lease renewal and conveyed a desire to learn from the perspectives of the local community. Commission staff received one email comment in support of the project from the Lucerne Valley Economic Development Association, noting that

the net benefit to the local region as an aggregate provider and employer is valuable to the community.

CONCLUSION:

For all the reasons above, staff believes the approval of this 7-year lease for mineral extraction is in the best interests of the State and recommends that the Commission approve the lease.

OTHER PERTINENT INFORMATION:

1. This action is consistent with addressing the challenges and opportunities described in the Commission's 2021-25 Strategic Plan to "Embrace and safeguard multi-benefit School Lands and resource management stewardship that equitably balances responsible local and regional economic development, supports living wages, environmental protection, and revenue generation.
2. A Mitigated Negative Declaration, State Clearinghouse No. 2013121017, and a Mitigation Monitoring Program were prepared by the County and adopted on March 4, 2014, for this Project. Commission Staff has reviewed such documents.

The Mitigation Monitoring Program made in conformance with the State CEQA Guidelines (Cal. Code Regs., tit. 14, §§ 15097) was previously adopted by the Commission on August 9, 2016 ([Item 51, August 09, 2016](#)).
3. This activity involves land which have NOT been identified as possessing significant environmental values pursuant to Public Resources Code sections 6370 et seq.; however, the Commission has declared that all land is "significant" by nature of their public ownership (as opposed to "environmentally significant"). Since such declaration of significance is not based upon the requirements and criteria of Public Resources Code sections 6370 et seq., use classifications for such land has not been designated. Therefore, the finding of the project's consistency with the use classification as required by California Code of Regulations, title 2, section 2954 is not applicable.

EXHIBITS:

- A. Land Description
- B. Mineral Extraction Lease No. 8831

RECOMMENDED ACTION:

It is recommended that the Commission:

CEQA FINDING:

Find that a Mitigated Negative Declaration, State Clearinghouse No. 2013121017, and a Mitigation Monitoring Program were prepared by the County and adopted August 9, 2016, for this Project, and that the Commission has reviewed and considered the information contained therein.

The Commission previously adopted the Mitigation Monitoring Program on August 9, 2016 ([Item 51, August 09, 2016](#)) and the Program remains in effect.

STATE'S BEST INTERESTS:

Find that issuance of the proposed lease is in the best interests of the State.

AUTHORIZATION:

Authorize issuance of a Mineral Extraction Lease to Hi-Grade Materials Co., for the extraction of rock, sand, and gravel on the fee-owned school lands described in Exhibit A and shown on Figure 1 (for reference purposes only) attached and by this reference made a part hereof, for a term of 7 years, commencing on July 1, 2023, and ending on June 30, 2030, with lease terms as reflected in Exhibit B.

EXHIBIT A
LAND DESCRIPTION

A3849 - LEASE 8831

That certain parcel of State-owned Lieu Lands (School Lands) situate in San Bernardino Co., State of California, more particularly described as follows:

Lots 10, 11, and 12 of Section 30, T 4 N, R 1 E, SBM, as shown on the official U.S. Government Township Plat approved August 1, 1916 and acquired from the U.S. on 11/5/1963, clear list No. 339 and 340, Riverside Land District.

EXCEPTING THEREFROM the west 40 feet of Lots 10 & 11 as conveyed to the County of San Bernardino by deeds recorded January 25, 1962 in Book 5636 Page 527, Book 5636 Page 533 and Book 5636 Page 536 of Official Records of said county.

END OF DESCRIPTION

PREPARED 5/10/2023 BY THE CALIFORNIA STATE LANDS COMMISSION BOUNDARY UNIT



EXHIBIT B

RECORDED AT THE REQUEST OF
AND WHEN RECORDED MAIL TO:

STATE OF CALIFORNIA
California State Lands Commission
301 East Ocean Blvd. Suite 550
Long Beach, CA 90802-8833

**STATE OF CALIFORNIA
OFFICIAL BUSINESS**

Document entitled to free recordation
pursuant to Government Code Section 27383

SPACE ABOVE THIS LINE FOR RECORDER'S USE

A.P.N. 449-111-23 & 449-111-26

County: San Bernardino

Lease No. 8831
A3849

MINERAL EXTRACTION LEASE

This Lease consists of this summary and the following attached and incorporated parts:

- Section 1 Basic Provisions
- Section 2 Special Provisions Amending or Supplementing Section 1 or 3
- Section 3 General Provisions
- Exhibit A Land Description
- Exhibit B Site and Location Map

SECTION 1 BASIC PROVISIONS

THE STATE OF CALIFORNIA, acting by and through the **CALIFORNIA STATE LANDS COMMISSION** (301 East Ocean Blvd. Suite 550, Long Beach, California 90802-8833), hereinafter referred to as the Commission, pursuant to Division 6 of the Public Resources Code and Title 2, Division 3 of the California Code of Regulations, and for consideration specified in this Lease, does hereby lease, demise, and let to **HI-GRADE MATERIALS CO.**, hereinafter referred to as Lessee, those certain lands described in Exhibit A, hereinafter referred to as Leased Land, subject to the reservations, terms, covenants, and conditions of this Lease.

MAILING ADDRESS: **Hi-Grade Materials Co.**
17671 Bear Valley Road
Hesperia, CA 92345
Attn: Lori Clifton

LEASE TYPE: Mineral Extraction Lease

LAND TYPE: Fee-owned School Land

LOCATION: Approximately 116 acres of State fee owned School lands located in Lot 10, 11, 12, all within Section 30, T4N, R1E, SAN BERNARDINO MERIDIAN, San Bernardino County.

SECTION 2 SPECIAL PROVISIONS

1. LAND USE OR PURPOSE

The Commission grants to Lessee the exclusive right to mine and remove Rock, Sand, and Gravel, as defined below (collectively "Products"), and any other mineral deposits except oil, gas, other hydrocarbons and geothermal resources, under terms and conditions specified in this Lease for that certain parcel of land situated in San Bernardino County, California, described in Exhibit "A," attached and made a part of this Lease, and referred to as the "Leased Lands".

2. TERM

This Lease shall be effective on July 1, 2023, and shall continue for 7 years unless sooner terminated as provided in this Lease.

3. CONSIDERATION

Royalty, Lease Management Fee, and Bond shall be provided as set forth below in sections 7 through 11.

4. DEFINITIONS

- a. Rock: Stone, whether crushed or uncrushed.
- b. Sand: Small grains or particles of Rock, smaller than a pebble.
- c. Gravel: Small stones and pebbles or a mixture of Sand and small stones.
- d. Products: A collective reference to Rock, Sand, and Gravel, each of which is separately defined above.

- e. Fair Market Value: For Outside Sales (defined below) the price for Products sold at the Valuation Point, as defined below, when there is a willing seller and a willing buyer acting in their own best interests, neither being under any compulsion to buy or sell and both being prudent and reasonably knowledgeable; and, for Inside Sales (defined below), the average Gross Sales Price (defined below) of a particular Product over the preceding 12 months.
- f. Inside Sales: Transfer or sale of Products without adjustment of any kind to companies or business entities owned by, affiliated with, or controlled by Lessee, or the use of Products by Lessee for the production of other products prior to their sale to third parties. All such transfers, sales or uses shall be measured at Fair Market Value.
- g. Outside Sales: Sale of Products to third parties.
- h. Minimum Annual Royalty: The minimum royalty due to the Commission at the end of each lease year regardless of whether there is mining or sale of Products from the Leased Lands. Upon cessation of mining and during the period in which reclamation activities are being conducted, Lessee shall be relieved of the obligation to pay the Minimum Annual Royalty. During this period, the rent under paragraph 5 shall increase to \$10 per acre and that rate shall be maintained until such time as either the Commission accepts Lessee's quitclaim deed, or this Lease is otherwise lawfully terminated.
- i. Quarterly Royalty: The royalty due to the Commission for each lease quarter for Products mined or otherwise removed from the Leased Lands.
- j. Gross Sales Price: For Outside Sales, the Gross Sales Price shall be the actual sales price to third parties. Charges for transportation beyond the Valuation Point shall not reduce the Gross Sales Price nor shall they be included in calculating the Gross Sales Price. For Inside Sales, the Gross Sales Price shall be calculated as the average Gross Sales Price (defined above) of a particular Product over the preceding 12 months Outside Sales by Lessee.
- k. Gross Mined Tonnage: The total gross tonnage of rock, sand and gravel and other material excavated on or near the state-owned leased lands, whether sold or unsold, used as waste product, used for grading, or sloping of the mine pit, or used for any other purpose.

- I. Valuation Point: Lessee's scales on land owned or controlled by Lessee adjacent to the Leased Lands.

5. AUTHORIZED IMPROVEMENTS

Lessee shall have the right to install equipment necessary for mining pursuant to applicable authorizations.

6. LIABILITY INSURANCE

- a. Lessee shall procure and maintain personal liability and property damage insurance (combined single limit) for the benefit of the Commission in an amount not less than \$1,000,000.
 - i. Insurance policy (ies) shall insure the Commission and Lessee against any and all claims or liabilities arising out of the ownership, use, occupancy, condition or maintenance of the leased lands and the improvements on the leased lands.
 - ii. The insurance policy (ies) shall name the Commission, its officers, employees and volunteers as insureds as to the leased lands and shall identify the lease by its assigned number. Lessee shall provide the Commission with a certificate of insurance and shall keep the certificate current. The policy (ies) or endorsement must provide that the insurer will not cancel the insureds' coverage without 30 days prior written notice to the Commission. The Commission will not be responsible for any premiums or other assessments on the policy (ies). The coverage provided to Lessee shall be primary and non-contributing.
 - iii. The insurance coverage specified in this lease shall be in effect at all times during the term of this lease and until all of the leased lands have been restored by Lessee as required in this lease.
 - iv. The Commission may require an increase in the amount of the insurance to cover any additionally authorized improvements, alterations, changes to authorized use, modifications of considerations or inflationary impacts on costs during the ten-year lease renewals.
 - v. In the event the Lessee is self-insured, a certificate of self-insurance in the amounts required, under this section, shall meet the requirements of this section.

- b. Workers' Compensation Insurance: At all times in all operations under this lease and in all work in and upon the leased lands, Lessee shall carry full workers' compensation insurance covering all employees.

7. SURETY BOND OR OTHER SECURITY

Lessee shall furnish within 30 days of the date this Lease is approved by the Commission, and shall maintain throughout the term of this Lease, a bond or other security device in favor of the Commission in the amount of \$50,000 to guarantee the faithful performance by Lessee of the requirements, terms, covenants and conditions of this Lease, the provisions of the Public Resources Code and the rules and regulations of the State. The bond shall be maintained throughout the life of this Lease.

8. SURFACE MINING AND RECLAMATION ACT OF 1975

- a. Lessee expressly acknowledges that compliance with the Surface Mining and Reclamation Act of 1975 (SMARA) and fulfillment of all obligations arising under SMARA and enforced by the County of San Diego, as lead agency under SMARA, is required and failure to maintain compliance with SMARA and County of San Diego requirements will constitute a breach of this lease.
- b. Lessee expressly acknowledges that compliance with SMARA and County of San Diego requirements includes maintenance of a financial security device in favor of the County in an amount sufficient to cover the costs of reclamation of the mined lands. The amount of this financial security device is currently \$1,371,052.40 and is adjusted by the County of San Bernardino on an annual basis as part of the annual inspection requirement under SMARA, as required to accurately cover estimated reclamation costs. Failure to maintain this financial security device will constitute a breach of this lease.

9. PLAN OF DEVELOPMENT

- a. Lessee shall develop the Leased Lands in accordance with all mining conditional use permits and reclamation plans submitted to and approved by the San Bernardino County Planning Commission. Any modifications to the Mining Conditional Use Permit/Reclamation Plan (CUP/RP) after issuance of this Lease, which are not subject to environmental documentation prepared and circulated by San Bernardino County through the State Clearinghouse, shall be submitted to Commission staff for review prior to implementation. Failure to develop the Leased Lands according to the Mining CUP/RP, or any approved modifications of the Mining CUP/RP, shall be considered a default of this Lease.
- b. The reclamation plan currently applicable to the Leased Lands is Conditional Use Permit (CUP) and Reclamation Plan (RP) No. 006M-001 issued by the County of San Bernardino and approved on March 1, 2006, and updated March 4, 2014 (the "Mining & Reclamation Plan"). Lessee acknowledges and agrees that its reclamation of the Leased Lands shall be in compliance with the Mining & Reclamation Plan (as that plan may be amended or subsequently issued) and SMARA.
- c. Lessee shall conduct all operations authorized under this Lease in a safe, miner-like manner, according to accepted industry methods and practices, and in conformance with such equipment modifications and operating procedures as may be established by the State to ensure the protection of life and property, the protection and preservation of the environment, and the conservation of its natural resources including, but not limited to, wildlife and mineral resources.

10. STATE LEASE MANAGEMENT FEE

Lessee shall execute a Standard Reimbursement Agreement (State of California Standard Form 213) with the Commission for the administration of this Lease, subject to a \$5,000 per annum cap to start on July 1, 2023, with automatic annual renewals increasing the cap 3 percent per year thereafter. The Lessee shall be billed for reimbursement of Commission staff time incurred for the reasonable and necessary costs of field inspections; the administration and implementation of the terms of the Lease, including, but not limited to, engineering review, royalty verification, audit, reservoir and geologic review, annual lease reviews; and any other staff time or expenditures to ensure lease operations conform to all the terms of the Lease and to the rules and regulations of the Commission.

11. ROYALTY

Lessee shall pay to the Commission royalties on Products mined or otherwise extracted and sold from the Leased Land and as discussed above in Section 2, paragraph 9. Royalties shall be due quarterly and payable not later than the 25th day of the calendar month following the last calendar month of the quarter. This Lease requires the payment of a Minimum Annual Royalty and Quarterly Royalty as described below.

- a. Minimum Annual Royalty: Lessee shall pay to the Commission a Minimum Annual Royalty of \$10,000, due 25 days after the end of the Lease year, July 25. This Minimum Annual Royalty is due to the Commission if there is no sale of Products during a Lease year. The Minimum Annual Royalty will be reduced by the cumulative amount of Quarterly Royalties, as defined below, paid during the prior Lease year. If the cumulative amount of Quarterly Royalties paid during the prior Lease year exceeds \$10,000, there is no Minimum Annual Royalty owed. The Minimum Annual Royalty credit shall not be carried over from one Lease year to another. This Minimum Annual Royalty is non-refundable and non-proratable.
- b. Quarterly Royalty:

- i. For all Outside Sales and Inside Sales, Lessee shall pay to the Commission, without deduction, delay, offset or credit of any kind, on or before the dates called for in this Lease, a royalty equal to 6 percent of the Gross Sales Price. There shall be no deductions of any kind including, but not limited to, processing and transportation costs, in the calculation of the Gross Sales Price.
- ii. For all other minerals produced, extracted, shipped, used or sold from the Leased Lands, Lessee shall pay a royalty of 10 percent of the gross value of the same. There shall be no deductions of any kind including, but not limited to, processing and transportation in the calculation of the gross value.
- iii. No royalty shall be due for waste or fill material unless it is incorporated in a product that is subsequently sold.
- iv. The first Quarterly Royalty period shall be the first 3 months following the effective date of this Lease, and each 3-month period thereafter shall be a quarterly period. A Lease year shall be the first 12 months following the effective date of this Lease, and every 12-month period thereafter shall be a Lease year.
- v. All Quarterly Royalties shall be reported on the "Lessee's Quarterly Report of Operations" form.

12. STATEMENT OF RECONCILIATION – PRODUCTION AND ROYALTY ADJUSTMENT

The Leased Lands are contiguous to lands owned or controlled by the Lessee. The Lessee does not presently plan to mine Lessee's lands and the leased lands concurrently. Should Lessee decide to mine the Lessee's lands and the leased lands concurrently, such mining shall not occur prior to the following:

- a. Lessee shall notify Lessor in writing of its intentions for concurrent mining within 60 days of such action.

- b. Lessee shall make an accurate survey of the leased lands before concurrent mining. This survey shall be based upon aerial photographic data, GPS data or other acceptable survey techniques. From this survey, Lessee shall make and submit to Commission staff a map at suitable scale together with a volumetric calculation of the amount of material available for mining on leased lands. The survey, map and calculations shall be made to the reasonable satisfaction of Commission staff.
- c. The Lessee and Lessor agree that the resolution for reconciliation shall be performed to a resolution of 10 percent for tonnage calculated versus that reported by the Lessee for the reporting period.
- d. Within 60 days of the end of each lease year in which Lessee conducted concurrent mining and as often as Commission staff might request thereafter, Lessee shall resurvey the leased lands and gather information sufficient to prepare a new map and calculate the volume and tonnage of material removed from the leased lands since the prior survey. The results shall be used to verify reported production and to make any necessary royalty adjustments. Unreported production and operating costs shall be allocated back to each reporting period until the time of the last survey. Unreported royalties exceeding a 10 percent discrepancy shall bear interest at the rate of 1.5 percent per month from their original due date.
- e. Lessee grants the Commission staff the right to enter at reasonable times upon any land owned, leased or controlled by Lessee for the production or storage of rock, sand and gravel to inspect and measure the quantities of rock, sand and gravel mined and/or stored on it. If Commission staff discovers in the course of the inspection a 10 percent or greater discrepancy between the amount measured and that reported on the Quarterly Reports, Lessee shall account for such discrepancy by providing credible evidence of the discrepancy resulting from the delivery of rock, sand and gravel from sources other than the Leased Lands. If Lessee cannot provide such evidence, then Lessee shall be in breach of this Lease and shall have an opportunity to cure the breach pursuant to Section 3, paragraph 8. Failure to cure such a breach may result in termination of this Lease.

13. PRESERVATION OF PROPERTY AND ENVIRONMENTAL IMPACT

The environmental document that allows continued mineral extraction activity after the issuance of this Lease is the Mitigated Negative Declaration (SCH#2013121017) approved and adopted by the San Bernardino County Department of Land Use Services on March 4, 2014 (the "Final MND"). Lessee shall abide by the restrictions and all other terms of this environmental document and shall comply with the terms of the mitigation measures and such other measures as the Commission may reasonably require to restrict, limit, modify or minimize the environmental impact of Lessee's operations under the Lease in accordance with the Final MND. Lessee shall promptly furnish the State with copies of any mitigation monitoring reports prepared for, by or on behalf of the County.

- a. Lessee shall comply with all modifications of equipment and plans deemed necessary by the Commission, and with all conditions and restrictions established by other agencies having jurisdiction over Lessee's operations.
- b. Lessee shall perform all work under this Lease with due regard for the preservation of the Leased Lands and the environmental impact of its operations in accordance with the following terms and conditions:
 - i. Pollution of rivers, lakes and other bodies of water and impairment of and interference with navigation in such waters are prohibited. No refuse of any kind, except for normal oversize rock, sand and gravel screenings, from any mining or production activities shall be permitted to be deposited on or pass into waters of any rivers, lakes and other bodies of water without specific written authorization by the Commission.
 - ii. Access to the Leased Lands by the public during mining operations shall be controlled by Lessee to prevent accidents and injury to persons and/or property.
- c. The above are in addition to, and are not to be construed as limitations upon, all rules, regulations, restrictions, mitigating measures and all other measures designed to restrict, limit, modify or minimize the environmental impact of operations carried out under this Lease.

14. WASTE OF RESOURCES, DAMAGE, LOSS AND LIABILITY

Lessee shall use all reasonable precautions to prevent waste of damage to or loss of mineral resources, fisheries and wildlife on or in the Leased Lands. Lessee shall be liable to the Commission for any waste, damage, or loss to the extent that the waste, damage or loss is caused by Lessee's, or its employees', servants', agents' or contractors', negligence, breach of any provision of this Lease, or noncompliance with applicable statutes or regulations. Nothing in this Lease shall diminish any other rights or remedies that the Commission may have in connection with any such negligence, breach, or noncompliance.

15. ENTRY BY STATE

The Commission, or persons authorized by the Commission, shall have the right to go upon the Leased Lands at all reasonable times for the purpose of inspecting and protecting the property and all equipment on it and inspecting all operations of Lessee, including but not limited to for the purposes set forth in the Statement of Reconciliation, Paragraph 12(e) above. No entry by the Commission, or by persons authorized by the Commission, shall give Lessee any right to charge the Commission or subject the Commission to liability for any loss of occupation or quiet enjoyment of the Leased Lands.

16. INDEMNIFICATION

a. Lessee shall indemnify, save harmless and, at the option of the Commission, defend, except in matters involving title, the Commission, its officers, agents and employees, against any and all claims, losses, demands, causes of action or liabilities of any kind which may be asserted against or imposed upon the Commission, or any of its officers, agents or employees, by any third person or entity to the extent arising out of or connected with operations under this lease, or the use by Lessee, or its agents, employees or contractors, of the leased lands. This provision shall not be construed to require Lessee to defend or indemnify the Commission for any alleged acts of negligence or other wrongful act of the Commission, or its officers, agencies or employees, except to the extent that such negligence or other wrongful act is alleged to consist of the issuance of this lease, the adoption and enforcement of the provisions set forth in this lease, or any alleged failure of the Commission to enforce adequately any such provisions.

- b. The foregoing indemnity is not intended, nor shall it be construed to require Lessee to defend the Commission's title to mineral resources. In the case of litigation involving the titles of Lessee and the Commission, Lessee and the Commission will join in defending their respective interests, each bearing the cost of its own defense.
- c. For the purpose of satisfying any judgments, settlements, claims or liabilities for damages or trespasses to land or mineral resources resulting from a judicial determination that the Commission has no title to the land or mineral resources in the leased lands and that the owner thereof is entitled to payment for rock, sand and gravel mined under this lease, this indemnification will be limited to the Commission's liability in excess of the monies received by the Commission, as owner of the mineral resources, in the form of royalties or other payments, including any interest actually earned thereon.

SECTION 3 GENERAL PROVISIONS

17. INTEREST AND PENALTIES

- a. Royalties and other monetary considerations that are not paid when due shall bear interest at the rate of 1.5 percent per month from the due date until they are paid.
- b. Royalties and other monetary considerations that are not paid when due may be assessed a penalty of 5 percent of the amount overdue.

18. PRODUCTION RECORDS AND REPORTS

- a. Lessee shall keep for a period of at least 5 years, accurate records of the operations under this Lease, including all minerals produced or extracted from the Leased Lands, together with the cost of their milling and shipping, and shall allow Commission staff to inspect and review all contracts for the disposition of amounts in excess of 10,000 tons of all minerals produced or extracted from the Leased Lands. The Commission staff may inspect, at all reasonable times, all Lessee's books, records and accounts relating to operations under this Lease.
- b. On or before the 25th day of the month following each quarterly period, Lessee shall deliver to the Commission staff royalty statements in the form prescribed by the Commission staff showing the work performed upon the Leased Lands, and the amount, quality and value of all mineral resources produced, extracted, shipped, used or sold therefrom during the prior 3-month period. These statements shall be provided to the Commission staff regardless of whether any mineral resources were produced, extracted, shipped, used or sold, or whether any work was performed on the Leased Lands during the prior quarterly period. At the request of the Commission staff, Lessee shall provide more detailed statements and explanatory materials in order to aid the Commission staff in interpreting and evaluating Lessee's royalty accounting statement. All statements are subject to audit by the Commission staff.

- c. On or before the 25th day of the month following each quarterly period, Lessee shall deliver to the Commission staff copies of all physical and factual exploration results, logs, surveys and any other data in any form resulting from any surveys, tests or experiments conducted on the Leased Lands by Lessee or any person or entity acting with the consent of Lessee or with information or data provided by Lessee.
- d. The Commission staff shall have the right to inspect and review all books, records and logs of Lessee's production activities on lands adjoining or in proximity to the Leased Lands.
- e. The Commission staff may examine at reasonable times the books and records of any individual, association or corporation which has produced or extracted any minerals from the Leased Lands, and books and records of any such individual, association or corporation with respect to such individual's, association's or corporation's operations, improvements, machinery and fixtures used on or in connection with the Leased Lands. This paragraph 2 shall not apply to individuals, associations, corporations or other entities that merely purchase or transport mined Products from the Leased Lands.

19. SUSPENSION OF OPERATIONS

- a. Lessee shall temporarily suspend production or any other operation under this Lease whenever the Commission staff finds that the operation or operations, unless suspended, may pose an immediate and serious threat to life, health, property, or natural resources. The suspension shall be effective immediately upon either oral or written notice by the Commission to Lessee. Any oral notice shall be followed by written confirmation. The Commission shall lift the suspension when The Commission finds, on the basis of credible evidence submitted by Lessee or otherwise available, that resumption of the suspended operation or operations does not pose an immediate and serious threat to life, health, property or natural resources. If the Commission orders suspension of operations because their continuation may cause or aggravate erosion of the Leased Lands or other properties, the operations shall be resumed only in compliance with the Commission-approved program for erosion prevention.
- b. No suspension ordered or approved under this paragraph shall relieve Lessee from any obligation under this Lease unless specifically provided in the terms of the suspension.

20. ASSIGNMENT, SUBLETTING, AND OTHER TRANSFERS

- a. Lessee shall not either voluntarily or by operation of law, assign, transfer, mortgage, pledge, hypothecate or encumber this Lease and shall not sublet the Leased Lands, in whole or in part, or allow any person other than the Lessee's employees, agents, servants and invitees to occupy or use all or any portion of the Leased Lands without the prior written consent of the Commission, which consent shall not be unreasonably withheld and as otherwise set forth in Public Resources Code Section 6804. The change in the ultimate indirect corporate parent is not an assignment for purposes of this lease.
- b. If Lessee desires to assign, sublet, encumber or otherwise transfer all or any portion of the Lease, Lessee shall do all of the following:
 - i. Give prior written notice to the Commission staff.
 - ii. Provide the name and complete business organization and operational structure of the proposed assignee, sublessee, secured third party or other transferee; and the nature of the use of and interest in the Lease proposed to be assigned, subleased, encumbered or transferred. If the proposed assignee, sublessee, secured third party or other transferee is a general or limited partnership or a joint venture, provide a copy of the partnership agreement or joint venture agreement, as applicable.
 - iii. Provide the terms and conditions of the proposed assignment, sublease, encumbrancing or other transfer.
 - iv. Provide audited financial statements for the two most recently completed fiscal years of the proposed assignee, sublessee, secured third party or other transferee; and provide pro forma financial statements showing the projected income, expense and financial condition resulting from use of the Leased Lands.
 - v. Provide such additional or supplemental information as the Commission may reasonably request concerning the proposed assignee, sublessee, secured third party or other transferee.

- c. The Commission will evaluate proposed assignees, sublessees, secured third parties and other transferees and grant approval or disapproval according to standards of commercial reasonableness considering the following factors within the context of the proposed use: the proposed party's financial strength and reliability, its business experience and expertise, its personal and business reputation, its managerial and operational skills, the proposed use of the Leased Lands, the projected rental and royalties due under the Lease and other relevant factors.
- d. The Commission shall have a reasonable time from the receipt of all documents and other information required under this provision to grant or deny its approval.
- e. The Commission may condition its consent to an assignment, transfer or sublease to require the assignee, transferee or sublessee to provide financial assurances demonstrating the assignee's, transferee's or sublessee's ability to perform the lease covenants. This may include, but shall not be limited to, an increase in the bond and/or insurance requirements. The consent to any transfer of any interest in this Lease shall not be deemed consent to any subsequent assignment, subletting or occupancy or use by another person. Any assignment, transfer or subletting without the Commission's consent, whether voluntary or by operation of law, shall be void and transfer no rights to the purported transferee, and any such attempted transfer shall be a breach of this Lease entitling the Commission, at its option, to terminate this Lease. Upon approval of any assignment, transfer or sublease, the assignee, transferee or sublessee shall be bound by the terms of this Lease to the same extent as if such assignee, transferee or sublessee were the original Lessee, any conditions in the assignment, transfer or sublease to the contrary notwithstanding. Lessee shall not be released from any liability under this Lease arising after the effective date of the assignment and not associated with Lessee's use, possession or occupation of or activities on the Leased Lands without the express written release of the Commission.
- f. Lessee's mortgage or hypothecation of this Lease, if approved by the Commission, shall be subject to terms and conditions found in a separately drafted standard form (Agreement and Consent to Encumbrancing of Lease) available from the Commission upon request.

- g. Upon the express written assumption of all obligations and duties under this Lease by an assignee or other transferee approved by the Commission, the Lessee may be released from all liability under this Lease arising after the effective date of assignment or other transfer and not associated with Lessee's use, possession or occupation of or activities on the Leased Lands; provided, however, Lessee shall not be released of liability for any hazardous wastes, substances or materials defined under federal, state or local law, regulation or ordinance, manufactured, generated, used, placed, disposed, stored on or transported on or off the Leased Lands.
- h. Subject to the provisions of any assignment or other transfer, the covenants and conditions of this Lease shall apply to and bind all heirs, successors, executors, administrators and assigns of all of the parties.
- i. Notwithstanding subsections (a) through (h) above, Lessee's employment of contractors and/or subcontractors shall not be considered a sublease or assignment of this Lease. In the event of any contracting and/or subcontracting, Lessee shall remain liable for such third party's activities including the payment of royalties. This paragraph is to provide relief to Lessee for those times when Lessee experiences an unpredicted short term and minor shortage of rock, sand and gravel and is not intended to be applicable to regular and/or long-term contracting and/or subcontracting of rock, sand and gravel mining.

21. RESERVATIONS TO THE COMMISSION

- a. The Commission staff shall have the right to go upon the Leased Lands for the purposes of conducting surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the Leased Lands of any mineral resources, including but not limited to oil, gas, other hydrocarbons and geothermal resources, as well as other mineral deposits listed in Public Resources Code Section 6407, provided that such surveys, tests, or experiments do not unreasonably interfere with or endanger Lessee's operations under this Lease.

- b. The Commission reserves the right to issue additional nonexclusive exploratory rights to conduct surveys, tests or experiments using any geological, geochemical, geophysical or other method, including core drilling, for determining the presence on or in the Leased Lands of any mineral resource except rock, sand and gravel; provided that operations conducted pursuant to such rights do not unreasonably interfere with or endanger Lessee's operations under this Lease. Lessee shall allow all persons authorized by The Commission to enter upon the Leased Lands in order to conduct such surveys, tests or experiments.
- c. This Lease is entered into with the understanding that its purposes are, and its administration shall be consistent with the principle of multiple uses of public lands and resources. This Lease shall allow coexistence of other permits or leases of the same lands for deposits of mineral resources other than rock, sand and gravel under applicable laws. However, operations under such other permits or leases shall not unreasonably interfere with or endanger operations under this Lease, nor shall operations under this Lease unreasonably interfere with or endanger operations under any other permit or lease. This Lease shall not be construed as superseding the authority which any state department or agency has with respect to the management, protection, and utilization of the lands and resources under its jurisdiction. The Commission may prescribe those conditions it deems necessary for the protection of other mineral resources.
- d. The Commission reserves whatever right it may have to grant to any person, upon such terms as it may determine, easements, rights-of-way, permits, leases or other interests in the Leased Lands, including easements for tunnels or wells bored through or in the Leased Lands as the Commission may determine to be necessary or appropriate; provided that interests which unreasonably interfere with or endanger Lessee's operations shall not be granted.

22. EXISTING RIGHTS

This Lease is issued subject to all existing rights in the Leased Lands at the effective date of this Lease, and such rights shall not be affected by the issuance of this Lease. If the surface estate of the Leased Lands has been sold by the State of California subject to a mineral reservation, Lessee shall comply with the conditions and limitations prescribed by law, including, but not limited to, those contained in Section 6401 of the Public Resources Code.

23. BREACH, RIGHT TO CURE BREACH, AND CANCELLATION

If Lessee fails to comply with any of the provisions of this Lease, or any applicable permit, regulation or law, Lessee shall have a 30-day period to cure the breach. The cure period shall commence with a written notice and demand from the Commission to comply with the breached provision. If the breach cannot be cured in 30 days, Lessee shall be afforded a reasonable period of time to cure the breach, with such reasonable period of time to be agreed to by Commission staff within the initial 30-day period. Such reasonable period of time shall not exceed 90 days without prior approval by the Commission at a regularly scheduled meeting. If Lessee fails to cure the breach, the Commission reserves the right, following the 30-day period to cure, or the reasonable period of time agreed upon to cure a breach that cannot be cured in 30 days, to declare forfeiture and cancel this Lease and to pursue any remedy it has in equity and at law. If this Lease is canceled, Lessee shall comply with the restoration, reclamation, and removal conditions in this Lease.

24. WAIVER OF BREACH

The waiver by the Commission of any default or breach of any term, covenant or condition of this Lease shall not constitute a waiver of any other default or breach whether of the same or of any other term, covenant or condition, regardless of the Commission's staff knowledge of other defaults or breaches. The subsequent acceptance of monies by the Commission shall not constitute a waiver of any preceding default or breach of any term, covenant or condition, other than the failure of Lessee to pay the particular monies accepted, regardless of the Commission's knowledge of any preceding default or breach at the time of acceptance of such monies, nor shall acceptance of monies after termination constitute a reinstatement, extension or renewal of this Lease or revocation of any notice or other act by the Commission.

25. SURRENDER OF PREMISES

If Lessee is not the surface owner at the expiration of this Lease, or at its sooner termination, Lessee shall surrender possession of the Leased Lands with all permitted or State-owned improvements, structures and fixtures in good order and condition unless inconsistent with SMARA, or the Commission may require Lessee, at its own cost, to remove, within 90 days, all or any designated improvements, structures and fixtures which were put on the Leased Lands by Lessee and restore the Leased Lands to the extent and in the manner specified by the Commission.

26. QUITCLAIM

The Lessee may make at any time a written quitclaim or relinquishment of all rights under this lease or of any portion thereof comprising a 10-acre parcel or multiple thereof in a compact form as provided in Public Resources Code section 6804.1. The quitclaim or relinquishment shall be effective when it is filed with the Commission, subject to the continued obligation of the Lessee and its surety to pay all accrued rentals and royalties, to abandon all mineral extraction sites into or through the Leased lands to be quitclaimed or relinquished in a manner approved in writing by the Commission and to restore such lands in accordance with the approved reclamation plan. The Lessee shall then be released from all obligations thereafter accruing under the lease with respect to the lands quitclaimed or relinquished.

However, the quitclaim or relinquishment shall not release the Lessee, or its surety from any liability for breach of any obligation of this lease with respect to which the Lessee is in default at the time of the Commission's acceptance of the quitclaim.

27. HOLDING OVER

Any holding-over by Lessee after the expiration of the lease term, with or without the express or implied consent of the Commission, shall constitute a tenancy from month to month and not an extension or renewal of the lease term, and shall be subject to the terms, covenants, and conditions of this Lease. Upon request of Lessee, the Commission staff shall confirm in writing Lessee's holdover status. All royalties due under this Lease shall be increased by 25 percent, which makes the updated royalty 7.5 percent during the holdover period.

28. COMPLIANCE WITH LAWS AND RULES

- a. Lessee shall comply with and be bound by all rules, regulations, statutes and ordinances, as they may be modified or amended, of the State Lands Commission and any other governmental entity having lawful authority and jurisdiction over Lessee's operations under this Lease.
- b. In its employment practices, Lessee shall not discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or veteran or military status.

29. POSSESSORY INTEREST TAXES AND OTHER TAXES:

- a. Lessee shall pay, when due, all taxes and assessments lawfully assessed and levied under the laws of the State of California, any of its political subdivisions, or the United States of America, against any and all improvements, property or assets of Lessee situate upon the Leased Lands or other rights of Lessee arising out of this Lease. The payment of any taxes by Lessee shall not reduce the amount of consideration due the Commission under this Lease.
- b. The leasehold interest created by this Lease may be a possessory interest subject to property taxation, and Lessee shall pay all property taxes levied on such possessory interest.

30. MODIFICATION OF LEASE:

The parties, by mutual agreement in writing, may alter or modify the terms of this Lease, or may terminate this Lease, with any adjustments and for considerations as may be fair and equitable in the circumstances.

31. NOTICES:

All notices to be given under this Lease shall be in writing and shall be deemed to have been fully given when deposited with the United States Postal Service, registered and with postage prepaid, or when deposited with a responsible private overnight mail delivery company and addressed to the parties as follows:

To The Commission: California State Lands Commission
Mineral Resources Management Division
301 East Ocean Boulevard, Suite 550
Long Beach, CA 90802

To Lessee: Hi-Grade Materials Co.
17671 Bear Valley Road
Hesperia, CA 92345
Attn.: Lori Clifton

- a. The addresses to which the notices shall be sent may be changed by written notice given by one party to the other in any manner provided above.
- b. All notices to Lessee shall also be deemed to have been fully given if made in writing and personally served upon Lessee or any of its officers.

- c. All payments specified in this Lease shall be made to the Commission at the address above.

32. FORCE MAJEURE

The obligations imposed upon Lessee by this Lease may be suspended when Lessee is prevented from complying with them by wars, riots, acute and unusual labor or material shortages, acts of God, laws, rules and regulations of any federal, state, county or municipal agency, or by other unusual conditions beyond the control of Lessee.

33. TIME OF ESSENCE

Time is of the essence in this Lease.

34. RELATIONSHIP OF PARTIES

This Lease does not constitute, and the parties do not intend it to create a partnership or joint venture or the relationship of master and servant or principal and agent.

35. CAPTIONS

The captions in this Lease are for convenience only and are not a part of this Lease and do not in any way limit or amplify the provisions of this Lease.

36. SEVERABILITY

If any provision of this Lease is judicially determined to be invalid, it shall be considered deleted from this Lease and shall not invalidate the remaining provisions.

37. BINDING DATE

This agreement will become binding on the Commission only when approved by the State Lands Commission and when executed on its behalf.

38. EXAMINATION OF BOOKS

Lessee waives all rights it may have to prevent the Commission's examination at reasonable times of the books and records of any individual, association or corporation which has transported for, or received from, Lessee any mineral resources produced, utilized, saved or sold from the Leased Land. Lessee waives all rights it may have to prevent the Commission's examination at reasonable times of the books and records of any such individual, association or corporation with respect to such individual's, association's or corporation's operations, wells, improvements, machinery and fixtures used on or in connection with the Leased Land.

39. WAIVER OF USE OF DATA

Lessee waives any statutory or other right to prevent disclosure to the Commission, or a duly authorized employee or representative of the Commission, of any information, reports, data or studies of any kind filed by Lessee with any federal, state or local agency relating to the Leased Land, the mineral resources thereunder or any operations performed on the Leased Land or lands unitized therewith, irrespective of whether such information, reports, data or studies contain sensitive, proprietary or confidential information or trade secrets. All information filed with the Commission as required by this Lease shall always be available for any use of the Commission or its duly authorized representatives. Any information, reports, data or studies obtained by the Commission from any public agency, and which are not public records shall be deemed to have been "obtained in confidence" for purposes of Government Code Section 6254(e), and may be disclosed to other persons only with the written consent of Lessee or upon the Commission's determination that their disclosure is in the public interest. For purposes of this Lease in determining the public interest the State shall consider the interest of Lessee.

40. SOLVENCY

If at any time during the term of this Lease, Lessee is insolvent under the federal bankruptcy laws, makes a voluntary assignment of its assets for the benefit of creditors, or is adjudged as bankrupt either upon Lessee's voluntary petition in bankruptcy or upon the involuntary petition of Lessee's creditors, the Commission shall have all the rights and privileges afforded it by federal bankruptcy laws to protect its interests under this Lease.

[SIGNATURES ON NEXT PAGE]

CALIFORNIA STATE LANDS COMMISSION

Date: _____

By: _____

Name

Title

LESSEE*

Date: _____

By: _____

Name

Title

*In executing this document, the following are required:

Corporations:

1. Affix Corporate Seal.
2. Attach certified copy of the resolution or other document authorizing its execution on behalf of the corporation.

Individuals:

1. Attach acknowledgment of Signature.