

## ROAD MAINTENANCE AGREEMENT

THIS AGREEMENT is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2022, by and between the Board of County Commissioners of Ouray County, Colorado, (hereinafter referred to as the "**County**"), attn.: Connie Hunt, County Administrator, 541 Fourth Street, PO Box C, Ouray, CO 81427 and Red Mountain Trust, LLC, a Colorado limited liability company, attn.: Eli Doose, 19911 Highway 550, Montrose, CO 81403-8614 (hereinafter referred to as the "**Company**").

MATERIAL to this agreement, County and Company make the following recitals:

A. The Company owns several mining claims (hereinafter referred to as the "**Company Property**") located off of Ouray County Road 20A, Ouray County, Colorado, approximately two (2) miles from the intersection of said County Road with Highway 550.

B. The Company Property will be utilized for reclamation, construction, mining and maintenance activities (hereinafter referred to as the "**Mine Activities**") at the Von Doose Mine under the approval and authority of the Colorado Division of Reclamation Mining and Safety.

C. The County is responsible for the maintenance of Ouray County Road 20A ("**CR20A**" and hereinafter referred to as the "**Road**"). The County provides limited maintenance of the Road during the spring and summer months, including an initial plowing of snow on or about the first two weeks in May of each year. The section of the Road from its beginning to the Company Property (hereinafter referred to as the "**Road Section**") is susceptible to washout and mud slides following thunderstorm events during the summer which requires the County to mobilize equipment from other locations in the County in order to remediate said washouts and mud slides.

D. The Company intends to use the Road Section for access to the Company Property year-round, with winter access being "over the snow" and not requiring plowing or other maintenance. During the spring, summer and fall months, Company may need to maintain the Road Section for safety as well as proper vehicle maintenance. The County may support the Company's maintenance of the Road Section to the extent that resources are available to do so and without jeopardizing the availability of such resources for other areas of Ouray County.

E. The County and the Company understand and acknowledge that certain areas of the Road Section may have a significant risk of avalanche danger. This agreement does not authorize avalanche mitigation.

F. The Company and the County recognize and agree that the Company's use and snow removal activities may result in damage to the Road Section and the Company shall be responsible for repair of any such damage.

G. The Company and the County have reached an agreement regarding the Company's maintenance and removal of snow from the Road Section as set forth herein.

H. The County finds that this Agreement is consistent with the intent of Resolution 2016-019 and House Bill 22-1046, *Local Designation of "Over-Snow Use on Highways."*

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the sufficiency of which are hereby acknowledged, the Company and the County agree

as follows:

1. Term and Conditions. Beginning on the date of this Agreement, and continuing through November 1, 2023, the Company shall have the authority, but not the obligation, to plow and maintain the Road Section as follows:

- a. The Company may conduct the initial plowing of snow on the Road Section, which typically occurs in the first two weeks of May of each year, but not prior to May 1 of each year and not prior to the County Road and Bridge Superintendent authorizing said initial snow plowing in writing.
- b. The Company may conduct maintenance of the Road Section during the spring, summer and fall months, meaning the period between May 1 and November 1, unless that period is otherwise altered by the County pursuant to Sections 1.a. and 1.b of this Agreement. Said maintenance may include the clearing of any mudslide or washouts that may occur during said period of time, and said maintenance shall cease upon a determination by the County that the Road Section shall be closed to vehicular traffic due to snow accumulations, or on November 1 of each year, whichever occurs first. No maintenance activities shall occur during the winter months, meaning the period between November 1 and May 1, unless that period is otherwise altered by the County pursuant to Sections 1.a. and 1.b of this Agreement. During the winter months, the County may also designate the Road Section for over-snow use only for public and/or recreational access, at its discretion, pursuant to House Bill 22-1046.
- c. The Company may contract with a sub-contractor for snow plowing or other road maintenance permitted pursuant to this Agreement. The Company shall propose the name of the contractor, whether an individual or a corporate entity, and provide information as may be reasonably requested by the County regarding the qualifications and credentials of any proposed sub-contractor. The County Road and Bridge Superintendent, or his authorized designee, may approve or disapprove the use of any contractor or sub-contractor, in which case, no portion of the Company's rights or obligations under this Agreement may be assumed or performed by such contractor or sub-contractor. However, if the County Road and Bridge Superintendent approves the selected contractor or sub-contractor, the Company may have that contractor or sub-contractor perform work permitted pursuant to this Agreement, including providing indemnity and insurance to the County, as provided in paragraphs 10 and 11 below. If any change to the designated contractor occurs the Company will notify the County Road and Bridge Superintendent in writing within 10 days of the change and will provide such documentation as is required by the County Road and Bridge Superintendent for approvals. The Company will remain responsible for any work performed by the contractor or sub-contractor, and any deficiencies, damages or repairs resulting from work performed by the contractor or sub-contractor.
- d. The Company shall remove snow from and maintain the Road Section in a safe manner so as to permit 4WD or similar motor vehicles to pass through safely. The Company shall ensure that no snow or other debris is piled in such a manner as to cause traffic hazards or drainage problems on the Road Section or adjacent properties.
- e. The Road Section may be signed to warn of private summer maintenance with no

guarantee of motor vehicle access by the public during road maintenance and will be reopened upon completion of maintenance activities. The County will provide verbiage for the signs to also indicate that the public may access trails and public lands in the area by foot or other means at their own risk. Summer maintenance will be on an “as needed” basis for Company’s use of the road, but may incidentally improve conditions for the traveling public. Summer maintenance may include remediation of mudslides, rock falls, limited grading, and other responses to typical summer weather storm events. Company is not obligated to perform summer maintenance within any specific schedule after a weather event, but may perform such road maintenance as necessary to access the Company’s property. Company shall consult with Superintendent regarding any such remedial work.

- f. A standard motor grader, bulldozer, snow cat, loader, or other County-approved track-mounted plow shall be used for snow removal and other maintenance.
- g. Prior to the Company commencing its maintenance operations on the Road Section in May of each year, the Ouray County Road and Bridge Superintendent shall perform an evaluation of the Road Section with a representative from Company to determine the condition of the Road Section as close as practical prior to the commencement of activities by Company under this Agreement. The Road and Bridge Superintendent shall conduct an evaluation of the Road Section with a representative of the Company again in the fall, prior to the Road Section being closed to vehicular traffic, to determine any damage attributable to the Company’s maintenance, or maintenance performed by the Company’s contractor. Thereafter, the Company shall repair, or have repaired, any damage to the Road Section that may be directly attributable to its maintenance operations, such repair to be made to the reasonable satisfaction of the County. The Company shall act affirmatively to repair any such damage it finds to have occurred and shall further repair any damage identified by Road and Bridge Superintendent in order to restore the Road Section to the condition it was in prior to commencing activities authorized by this Agreement. The parties recognize that certain areas of the Road Section may have experienced damage as a result of erosion and inadequate drainage. The Company shall repair any damage identified by the County in a timely fashion after notice by County of the required repairs. An initial determination of damage to the Road Section shall be made by the Road and Bridge Superintendent, who shall give written notice to the Company of damage resulting from the Company’s maintenance operations along with required repairs. In the event that the Company disputes any of the damage or disagrees with the required repairs, the Parties agree to consult with a neutral third party with expertise in road construction and maintenance who shall informally mediate the dispute as a condition precedent to either party filing suit.
- h. The Company agrees to cooperate with other property owners with road maintenance agreements on CR 20A in accomplishing mutually agreed upon road maintenance. Such cooperation may include cost sharing agreements. The intent of the Parties is to eliminate redundant or inconsistent road work, and eliminate disruption of CR 20A as access for property owners and recreational visitors or users of public lands accessed by CR 20A.

2. Company Maintenance during Non-Winter Months. The Company agrees to periodically maintain, as necessary for safety and proper equipment maintenance, the Road

Section during the period of time from May 1 through November 1. The Company will coordinate maintenance activities with the County Road and Bridge Superintendent. The Road and Bridge Superintendent may, at his discretion, elect to perform such maintenance activities or modify the Company's activities in the interests of public safety or proper maintenance of the roadway. All costs associated with Company maintenance, its contractor costs, including the cost of materials, shall be borne by the Company and/or other property owners in accordance with the "Terms and Conditions" paragraphs 1 a-h.

3. County Assistance. Ouray County Road and Bridge crews and equipment may be made available to assist with maintenance operations of the Road Section after a large thunderstorm event. The assistance of Ouray County Road and Bridge crews will be at the discretion of the Road and Bridge Superintendent only after an assessment of the safety of such operations on the Road Section has been made.

4. Bond. The Company shall deposit with County a good and sufficient security, in a form acceptable to County, in the amount of \$5,000.00, in order to secure the Company's obligation to repair damage to the Road Section. The security may be in the form of cash, performance bond, Certificate of Deposit, or irrevocable letter of credit. Such security may be forfeited to the extent of any agreed-upon payments made as part of the mediation process pursuant to Section 1.g., above, or otherwise forfeited at County's discretion. If forfeited, the Company must replace the bond prior to conducting any additional maintenance work on the Road Section.

5. Temporary Closure. The County Road and Bridge Superintendent may order a temporary closure of the Road Section, upon determining that significant safety concerns warrant such closure. Any temporary closure shall not automatically preclude the Company's employees from accessing the Company's property by traveling the Road Section. Before ordering a temporary closure of the Road Section, the Superintendent shall make reasonable efforts to confer with Company personnel to inform them of the impending closure and the anticipated duration of the closure. The Company will provide appropriate signs, the text of which shall be approved by County, to be placed on the Road Section in the event of closure.

6. Termination. This Agreement shall terminate on November 1, 2023. In the event of a default by the Company, or for any other reason at the County's sole discretion, the County may terminate this Agreement upon thirty (30) days written notice. In the event termination is due to a default by the Company, the County shall provide the Company notice of the default and a reasonable opportunity to cure such default, but any default shall be corrected in not more than thirty (30) days.

7. USFS. The parties acknowledge that County claims County Road 20A as a county road owned by the county and traversing U.S. Forest Service lands. The County and USFS have disputes regarding the ownership and jurisdiction over portions of these roads. This Agreement does not relieve Company from obtaining any applicable permits from the USFS. The Company will provide a copy of any applicable USFS permit to the County.

8. Indemnity and Assumption of Risk. Company acknowledges that there is an inherent risk to its employees, agents, representatives and contractors by traveling to the Company Property adverse weather-related and other conditions. The Company specifically assumes all of such risks and shall save, hold harmless, defend and indemnify the County, its public officials, employees, agents, representatives, and contractors for losses, damages or judgments and expenses, including reasonable attorney's fees and costs, on account of bodily injury, death, lack of public or private access including recreational access or otherwise,

or property damage of any nature whatsoever, and by whomsoever made, arising, in whole or in part, out of the activities of Company, its employees, subcontractors or agents and Company's guests and invitees, under the terms of this Agreement. Nothing stated under this Agreement is intended to nor shall it be interpreted as diminishing or otherwise affecting any statutory or common law protection or immunity that Ouray County may otherwise enjoy, including, but not limited to, the governmental immunities, limitations and protections provided by C.R.S. Section 24-10-101 et seq.

9. Insurance. The Company shall purchase, at a minimum, the types and amounts of insurance coverage as stated herein and agrees to comply with any revised insurance limits the County may reasonably require during the term of this Agreement. A company authorized to do business in Colorado shall underwrite any policy of insurance required hereunder. Any such policy shall include Ouray County as an additional insured, and such policy shall contain a provision that coverage shall not be cancelled or altered until at least thirty (30) days prior written notice has been given to County. If the insurance policy lapses or becomes void for any reason whatsoever, Company's rights under this Agreement shall be suspended until a new insurance certificate is provided to County. At the inception of this Agreement, the Company shall provide the County with a properly authorized and executed current certificate of insurance reflecting insurance coverage that complies with the terms of this Agreement, the Company shall not operate under the terms of this Agreement until all appropriate insurance is acquired and notice of the same has been supplied to County.

- a. The Company shall provide comprehensive general liability insurance against claims occasioned by actions or omissions of Company in carrying out the activities and operations authorized hereunder. Such insurance shall not be less than five hundred thousand (\$500,000.00) dollars per occurrence and one million (\$1,000,000.00) in the aggregate covering both bodily injury and property damage. If claims reduce available insurance below the required per occurrence limits, the Company shall obtain additional insurance to restore the required limits. An umbrella or excess liability policy, in addition to a comprehensive general liability policy, may be used to achieve the required limits.
- b. All liability policies shall specify that the insurance company shall have no right of subrogation against the County and the insurance company shall have no recourse against the County for payment of any premium or assessment.

10. Notification to County. The Company shall immediately notify the County of all accidents that occur in connection with the activities contemplated under this Agreement, and in no event later than twenty-four (24) hours following any such accident.

11. Entire Agreement. This instrument contains the entire agreement between the parties, and no statements, promises, or inducements made by either party or agent of either party that are not contained in this written contract shall be valid or binding. This contract may not be enlarged, modified, or altered except in writing signed by the parties.

12. Binding Effect. This Agreement shall inure to the benefit of and be binding upon the parties, their heirs, executors, administrators, assignees, and successors. However, the Company may not assign its rights or obligations under this Agreement without the written permission of the County.

13. Severability. If any part, term, or provision of this contract is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions

or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term or provision held to be invalid.

14. Governing Law. This Agreement shall be governed by the laws of the State of Colorado, both as to interpretation and performance.

15. Notices. Each notice, demand, request, or other communication required to be given or served by either party to the Agreement on the other, or which either party desires to give or serve on the other shall be in writing and any statute, ordinance, or regulation to the contrary notwithstanding, shall not be effective for any purpose whatsoever unless given or served as provided by this Agreement.

- a. If given by County, notice shall be either emailed, with confirmation of delivery, or mailed, postage prepaid, by first class mail, addressed to: Red Mountain Trust, LLC, 19911 Highway 550, Montrose, CO 81403-8614, or at such other address as Company may designate by notice given to County in the manner provided by this Agreement.
- b. If given by the Company, notice shall be either emailed with delivery confirmation, or mailed, postage prepaid, by first class mail, addressed to Connie Hunt, County Administrator, and Board of County Commissioners, P.O. Box C, Ouray, CO 81427, or at such other address as County may designate by notice given to Company in the manner provided by this Agreement.

16. Waiver. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this contract shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

17. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

18. Facsimile Signatures. For the convenience of the parties, signatures to this Agreement may be provided through facsimile or email transmission. The signature of a party to this Agreement supplied by facsimile or email transmission shall be as binding as an original.

19. Authority. By their signatures below, the parties acknowledge that they have the necessary authority and approvals to execute this Agreement and bind the respective entities.

20. Attorney Fees. In the event that either party to this Agreement brings an action to interpret the terms of this Agreement or to enforce its terms, both parties shall be responsible for their own costs and attorney's fees incurred in such action.

21. The County reserves the right to add additional conditions, pursuant to Resolution 2016-019 as may be amended, attached hereto as Exhibit A, and HB 22-1046.

IN WITNESS WHEREOF, the parties have signed this Agreement the day and year first written above.

BOARD OF COUNTY COMMISSIONERS  
OURAY COUNTY, COLORADO

RED MOUNTAIN TRUST, LLC  
a Colorado limited liability company

By: \_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Eli Doose, Manager

ATTEST:

\_\_\_\_\_  
Michelle Nauer, Clerk and Recorder  
By Harlan Thompson, Deputy Clerk of the Board