

OPTION AND AGREEMENT FOR SALE OF MATERIALS

THIS AGREEMENT, made this 25th day of September, 1963, betweenTONY MILLER and VIVIAN MILLER, husband and wife

hereinafter called the OWNER, and the STATE OF NEVADA, on relation of its Department of Highways, hereinafter called the STATE,

WITNESSETH:

1. That the OWNER, for and in consideration of the sum of SIX HUNDRED - - - - Dollars (\$ 600.00 - - - -), lawful money of the United States of America, the receipt whereof is hereby acknowledged, and of the covenants hereinafter set forth, and in accordance with Chapter 408 of the Nevada Revised Statutes, hereby agrees to give unto the STATE the sole and exclusive option and right to take materials, consisting of rock, gravel, sand and earth from the hereinafter described tract of land, for the purpose of constructing and maintaining highways, canals, irrigation ditches, buildings and other structures by the STATE, in such quantities as the STATE may deem necessary, and at any and all times from the day and year first above written until the 1st day of August, 1965; 1966 together with the right to operate all necessary equipment thereon, including crushing, screening, mixing and washing plants, and with the right of free ingress and egress for the purpose of removing said materials therefrom, or temporarily stockpiling the same thereon, with the privilege of constructing the necessary haul roads upon said tract of land and upon other portions of the property of the OWNER for the purpose of transporting said materials thereover by the most practical and feasible manner to I-080-4(6)254; said tract of land situate, lying and being in the County of Eureka, State of Nevada, and located in the E-1/2 NE-1/4 of Section 35, T. 33 N., R. 48 E., M.D.B. & M.; and in the S 1/2 SW 1/4 NE 1/4, the NW 1/4 SE 1/4, the N 1/2 SW 1/4 SE 1/4, and the E 1/2 NE 1/4 SW 1/4 of Section 23, T. 33N., R. 48E., M.D.B. & M.

The STATE agrees to remove and stockpile the overburden on the above described pit in Section 23, T. 33 N., R. 48 E., M.D.B. & M. and to smooth the sides of the excavated area after removal of the necessary materials and to replace and level the overburden in the excavated area.

2. As further consideration, the STATE hereby agrees to pay the OWNER a royalty of 9 cents per cubic yard or 6 cents per ton for such materials from said tract of land, the measurement or weight of which shall be made or taken by the STATE, and the quantity of materials to be paid for shall be the quantity actually removed from the premises for the purposes described in Paragraph 1 hereof.

The STATE also agrees, that at all times when materials are being removed from the premises, the OWNER shall be furnished a monthly estimate and statement prior to the tenth day of each month, showing the amounts of the respective materials removed during the previous month and the royalties due therefor, and immediately thereafter pay or authorize the payment of said royalties to the OWNER, or to any other party herein authorized by the OWNER to receive the same.

The STATE also agrees, that upon the expiration or termination of this agreement, the STATE will leave said tract of land in a neat and presentable condition, with all fences, structures and other property belonging to the OWNER, which the STATE may find it is necessary to remove or relocate in order to take, stockpile or transport said materials as herein provided, replaced as nearly in their original condition and position as is reasonably possible, and with the sides of the excavated area sloped at the ratio of 2 to 1.

3. It is hereby mutually agreed that the STATE may terminate this instrument at any time upon written notice by the STATE to the OWNER releasing all interest in the above described land and by performing those obligations on the part of the STATE as are herein stipulated, including the payment of all royalties then due; or said instrument may be extended, amended or modified upon the mutual consent of the parties hereto.

It is also mutually agreed that, at the option of the STATE and upon written notice by the STATE to the OWNER, the rights and privileges granted by the OWNER and the liabilities and responsibilities of the STATE as they are respectively herein set forth, or any portion of the same, may be assigned to and/or exercised either partially or totally by any duly authorized agent or contractor of the STATE; except that no such agent or contractor shall have the right to terminate, extend, or in any way amend or modify this instrument without the consent of the STATE and the OWNER.

4. The OWNER hereby waives all claims for damage or compensation for and on account of the use of said land and of the exercise of the rights granted by this instrument, except the payment of the royalty and the performance of other obligations on the part of the STATE as are herein stipulated. The OWNER also hereby waives all claims for damages for failure by the STATE to take or purchase, or cause to be taken or purchased, any of the above-designated materials, it being expressly understood and agreed that the STATE is not obligated in any way to pay royalty hereunder except upon material actually removed from said premises.

5. It is hereby further agreed that the provisions of this instrument shall extend to and be obligatory upon the heirs, executors, administrators, successors and assigns, as the case may be, of the respective parties.

6. As used herein the term OWNER shall include the plural as well as the singular, and the neuter as well as the feminine and the masculine.

IN WITNESS WHEREOF, the parties hereto have executed this agreement the day and year first above written.

APPROVED:

John S. Shewring
Asst. Chief Right of Way Engineer

As to Legality and Form:

Robert J. Padden
Chief Counsel
Deputy Attorney General

Tony Miller
Tony Miller

Vivian Miller
Vivian Miller

STATE OF NEVADA, on relation of its Department of Highways.

By

W. C. Wright
State Highway Engineer

SEAL
Affixed

STATE OF California

County of Sacramento

ss.

On this 25th day of September, 1963, personally appeared before me, the undersigned, a Notary Public in and for the County of Sacramento, State of California, TONY MILLER and VIVIAN MILLER

known (or proved) to me to be the persons described in and who executed the foregoing instrument, who acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

R. E. Tarbell
R. E. TARBELL

Notary Public

My Commission Expires: December 14, 1966

STATE OF NEVADA

ss.

SEAL
Affixed

County of Ormsby

On this 30th day of September, 1964, personally appeared before me, the undersigned, a Notary Public in and for the County of ORMSBY, State of Nevada, W. C. WRIGHT

known to me to be the State Highway Engineer of the State of Nevada who executed the foregoing instrument for the State of Nevada on relation of its Department of Highways, who upon oath did depose that he is the State Highway Engineer as above designated; that he is acquainted with the seal of said Department; that the seal affixed to said instrument is the seal of said Department; and that said instrument was executed for the State of Nevada on relation of its Department of Highways, freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

FILE NO. 39688

Filed for record at the request of State Highway Dept. *George D. Wickham*
March 16, 1964, at 01 minutes past 8 A.M. Recorded in
Book 3 of Official Records, page 443-444, Record of EUREKA
COUNTY, NEVADA.

SEAL
Affixed

Fee: \$ No fee

Willis A. DeTar
Recorder