

COUNTY ROAD UPGRADE AND MAINTENANCE AGREEMENT

This COUNTY ROAD UPGRADE AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this _____ day of _____, 2011 by and between Chippewa County (the "County"), and Preferred Sands of Minnesota, LLC (the "Operator"). Each of the Operator and the County are sometimes referred to herein individually as a "Party" and collectively as the "Parties". The term "Operator's Representatives" shall include Operator's contractors, sub-contractors, agents, employees, suppliers and designees.

RECITALS

WHEREAS, Operator is in the business of mining and production of silica sand, and is in the process of constructing, developing, operating, maintaining and reclaiming a non-metallic mining facility (the "Project") in Chippewa County, Wisconsin, and was granted a Non-metallic Mining Reclamation Permit for the Project from the Chippewa County Land Conservation and Forest Management Department in accordance with the Non-metallic Mining Reclamation Ordinance of Chippewa County, and

WHEREAS, in connection with the construction, development, operation, maintenance and reclamation of the Project, the Parties desire to address certain issues relating to the roads owned, operated and maintained by the County (collectively, the "County Roads") over which it will be necessary for Operator and Operator's Representatives to, among other things, transport heavy equipment and certain locally sourced materials, including, but not limited to, silica sand, over certain County Roads, which may in certain cases be in excess of the design limits of the County Roads; and both parties acknowledge that certain of the County Roads may not be constructed to withstand the frequency and weight of shipments necessary for the Operator to transport its products and equipment.

WHEREAS, Wis. Stat. §349.16(1)(c) authorizes the County highway commissioner to enter into an agreement on behalf of County with any owner or operator of any vehicle being operated on a highway maintained by County that provides that the County will be reimbursed for any damage done to the highway, and

WHEREAS, Operator has provided to County a site layout plan for the Project that shows the access road entrances, a copy of which is attached as Exhibit A (the "Plan"), and

WHEREAS, Operator and County wish to set forth their understanding and agreement as to the road issues relating to the construction, development, operation, maintenance and reclamation of the Project, and

WHEREAS, this Agreement shall apply to those County Roads listed on the attached Exhibit B and, subject to Section 4.B. herein, any other County Road(s) used by Operator or Operator's Representatives in direct support of the construction, development, operation, maintenance and reclamation of the Project.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the parties, intending to be legally bound, agree as follows:

Section 1. Term of Agreement.

This Agreement shall commence upon the date indicated above (the "Effective Date") and shall continue in full force for ten (10) years or until Operator's Non-metallic Mining Reclamation Permit has expired, has been terminated, or until Operator has fully discontinued its construction, development, operation, maintenance and reclamation of the Project and any and all transportation activities related thereto on the County Roads listed on Exhibit B, whichever occurs first.

Section 2. Operator, in respect of the Project constructed, developed, operated, maintained and reclaimed by it, acknowledges and agrees the Project may require County to undertake the following activities in order to preserve County Roads and that the Operator shall be financially responsible for the costs of said activities to the extent provided for under the terms of this Agreement:

- A. Upgrading Pavement Sections on County Roads to a design standard as directed by the WIDOT, Facilities Development Manual, Section 11-40, to withstand the hauling of products and equipment that are necessary for the Project.
- B. Upgrading the geometric design of the County Roads to a standard as directed by the WIDOT, Facilities Development Manual, Section 11-40, that will safely and efficiently accommodate the traffic that Operator has indicated the Project will generate; including improvements at entrances, intersections and to the typical cross-section. Geometric improvements shall also include any improvements to Structures and Culverts necessary to accommodate the increased traffic from the Project.
- C. Providing Engineering Plans for all improvements needed under Sections 2.A. and 2.B. above, including any Right-of-Way needed.
- D. Operator shall be responsible for all exceptional maintenance costs, above normal maintenance requirements, that are attributable to damage to County Roads from the hauling of products and equipment related to the Project. Said maintenance cost may occur either before or after any of the improvements to County Roads indicated in Sections 2.A., 2.B. and 2.C. above are made. County shall inform Operator if it has a good faith basis to believe any exceptional maintenance costs become necessary and provide a good faith estimate of costs Operator prior to commencing work.

Reimbursement for costs under this section shall be paid from the Maintenance Account described in Section 2.E. of this Agreement.

- E. In order to compensate County for repairs needed as a result of Operator's use and to accomplish the work indicated in Sections 2.A., 2.B., 2.C. and 2.D. above, Operator shall make a payment to County in the amount of Five-Hundred Thousand dollars (\$500,000.00) into a uniquely identified construction project account (the "Construction Account") at the time of execution of this Agreement. Payment will be used by County to improve County Road DD from 186th Ave to STH 64 by adding approximately 3.5" of Hot Mix Asphalt, shouldering and other incidental items. Construction for this improvement is anticipated to be completed within 60 days of signed Agreement. Additionally, the amount of the payment remaining after adding approximately 3.5" of Hot Mix Asphalt to improve County Road DD from 186th Ave to STH 64 will be used to design and construct and make initial geometric improvements to the intersection of County Road DD and 186th Ave. Construction of geometric improvements to this intersection is anticipated to occur in 2012. If actual costs of the upgrades to County Road DD and geometric improvements to the intersection of County Road DD and 186th Ave exceed Five-Hundred Thousand dollars (\$500,000.00), Operator will be billed for the additional costs with payment due within 30 days of receipt of bill.

Any unused funds from the Five-Hundred Thousand dollars (\$500,000.00) paid for improvements to County Road DD shall be transferred to the Maintenance Account described in Section 2.E. of this Agreement.

Operator shall make monthly payments beginning on the first day of the month following the execution of this Agreement, and on the first day of each month thereafter, to County in the amount of \$0.05 per ton of sand hauled from the Mine Site indicated in Exhibit A in order to reimburse County for work indicated in Section 2.D. above. Operator shall provide County with production records for the previous month's production with each monthly payment in order to confirm payment amount. Payments shall be deposited in a County Maintenance Account (the "Maintenance Account") dedicated to maintenance on County Road DD and 186th Ave. Operator will be allowed to suspend payments when the Maintenance Account reaches Five-Hundred Thousand dollars (\$500,000.00). Maintenance Account payments shall resume at any such time as the balance of the Maintenance Account is depleted to One-Hundred Thousand Dollars (\$100,000.00).

Upon expiration of the Term of this Agreement as provided in Section 1, any remaining funds in the Maintenance Account will be returned to the Operator within thirty (30) days of project audit by County.

Section 3.

County, in accordance with the terms of this Agreement, agrees to:

- A. Review for approval all access points to the County Road system by giving consideration to sight distances, drainage and proximity to other entrances, in a reasonable manner, and in accordance with accepted engineering practices;
- B. Review for approval permits for all utility encroachments on County rights-of-way in a reasonable manner, and in accordance with accepted engineering practices;
- C. Coordinate with Operator and Operator's Representatives so as to minimize the impact of their use of the County Road system;
- D. Perform all maintenance and construction of all improvements pursuant to this Agreement on the County Roads used for the construction, development, operation, maintenance and reclamation of the Project.
- E. Keep those County Roads listed on the attached Exhibit B of this Agreement open to Operator to haul products and equipment related to the Project for the entire term of this Agreement without further restrictions, other than those indicated in this Agreement, for all vehicles meeting statutory requirements for weight, width, height and length. County shall retain the right and its authority to establish and set traffic speed limits in accordance with generally accepted highway standards and safety practices.
- F. Operator and County acknowledge that a separate agreement between the County and Town of Cooks Valley will be necessary for the County to carry out repairs on 186th Ave as indicated in Section 2.E. of this agreement. County agrees to negotiate in good faith and in a timely manner with the Town of Cooks Valley in an effort to secure such an agreement.

Section 4.

Road Inventory.

- A. Routing and Access Approval.

Operator shall be restricted to hauling on those County Roads listed on the attached Exhibit B of this Agreement. If conditions or circumstances change and Operator requests to change haul routes, it must first request authorization from the County. All expenses for additional haul routes are not part of this Agreement and shall be negotiated by the Operator and County in a separate agreement in the event any changes are requested.

B. Incidental Use

The Parties recognize that the Project traffic may, either through mistake or with the consent of County, use County Roads other than those listed on Exhibit B of this Agreement. Repairs for damage caused by Operator or Operator's Representatives during such mistaken or permitted use shall be treated as exceptional maintenance under Section 2.D. and cost for any maintenance or repair of damaged roads shall be reimbursed from Maintenance Account as described in Section 2.E. of this Agreement.

Section 5. Construction Cooperation.

A. Operator.

Operator shall provide County a schedule of planned activities that affect the County Roads. Said Schedule shall reasonably indicate the estimated number of trucks that will be hauling products and equipment and daily hours of operation. Operator shall submit the Schedule to County within two (2) weeks of execution of this Agreement. Operator shall further provide County with an updated Schedule within two (2) weeks of any material changes being made with the Project. Operator understands that County Road construction and maintenance activities will be on-going while Project hauling is occurring, and that while County Roads will be open to traffic, Operator acknowledges these activities may slow hauling operations.

B. County:

During the term of this Agreement, County and Operator shall meet as needed to discuss Project activities and County Road construction and maintenance schedules. County agrees to keep those County Roads specified in Exhibit B open to Project traffic during County Road construction and maintenance activities, except that County may temporarily close any of the County Roads specified in Exhibit B for replacement of a culvert, structure or due to an emergency. County will provide a temporary alternate haul route when reasonably practicable. Maintenance required on temporary haul route will be reimbursed from the Maintenance Account described in Section 2(E). Annual temporary seasonal weight limitations shall apply to all haul routes in Exhibit B and to any alternate routes approved by County.

County agrees to exclusively use any payments received from Operator as part of 2.E. of this Agreement on County Roads used as haul routes by the Operator.

C. Emergency Actions.

Notwithstanding the foregoing, in the event Operator or Operator's Representatives have caused damage to County Roads of a magnitude sufficiently great to create a hazard to the motoring public, which in County's opinion warrants an immediate repair or County Road closing, County may unilaterally close those County Road(s) affected and make or authorize repair, with the reasonable, documented costs thereof paid for by Operator from the Maintenance Account as described in Section 2.E. of this Agreement.

Both Parties acknowledge that while County is the Jurisdictional Authority for those County Roads listed in Exhibit B, certain emergency situation(s) may arise that fall under law enforcement, fire district or emergency management control. In such situations the road may be closed to traffic, including traffic from the Project, outside the control of County. County shall not be responsible for any harm to Operator, Operator's Representatives or the Project that may result from County Road closings that occur due to such emergencies.

Section 6.

Required Insurance.

Operator shall procure and maintain throughout the Term of this Agreement, Commercial General Liability insurance including bodily injury, property damage and personal injury in an amount not less than Five Million Dollars (\$5,000,000.00) per occurrence. The policy shall also provide contractual liability in the same amount. Operator's coverage shall be primary and list Chippewa County, its officers, officials, agents and employees as additional insureds. Operator shall require all Operator's Representatives under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing Chippewa County, its officers, officials, agents and employees as additional insureds. Operator shall provide County with certificate(s) of insurance showing the type, amount, class of operations covered, effective dates and expiration dates of the policy at the time of execution of this Agreement.

Section 7.

Remedies and Enforcement.

Each of the Parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party (the "Defaulting Party"), which default is not caused by the party

seeking to enforce said provisions (the “Non-Defaulting Party”) and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

Section 8. Due Authorization.

Operator hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Operator. County hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of County.

Section 9. Savings/Severability.

It is mutually agreed by the Parties that in the event any provision of this Agreement is determined by any court of law of competent jurisdiction to be unconstitutional, invalid, illegal or unenforceable in any respect, it is the intention of the parties that such unconstitutionality, invalidity, illegality or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such unconstitutional, invalid, illegal or unenforceable provision had never been contained in this Agreement.

Section 10. Entire Agreement.

This Agreement and the exhibits attached thereto constitute the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersede any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement. No amendment, modification, cancellation or alteration of the terms of this Agreement shall be binding on any party hereto unless the same is in writing, dated subsequent to the date hereof and is duly authorized and executed by the Parties hereto.

Section 11. Designated Representative.

Operator designates _____ as Agent with primary responsibility for the performance of this Agreement. In the event this Agent is replaced by another for any reason, Operator will designate another Agent within seven (7) calendar days and provide notice to County of replacement pursuant to the procedure set forth in Section 12. below.

Section 12. Notices.

All notices to be given under the terms of this Agreement shall be in writing and signed by the person serving the notice and shall be sent via registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below. Notice shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

FOR COUNTY: Bruce Stelzner
Chippewa County Highway Commissioner
801 East Grand Avenue
Chippewa Falls, WI 54729

FOR OPERATOR: Preferred Sands of Minnesota
c/o Preferred Unlimited, Inc.
One Radnor Corporate Center, Suite 101
100 Matsonford Road
Radnor, Pennsylvania 19807
ATTN: General Counsel

Section 13. Assignability/Consent.

This Agreement shall be binding on the Parties hereto, their respective heirs, devisees and successors. Except as otherwise provided herein, or except as may be hereafter determined by the Parties, Operator may not sell, assign or transfer its interest in this Agreement, or any of its rights, duties or obligations hereunder, without the prior written consent of County. Whenever the consent or the approval of County is required herein, County shall not unreasonably withhold, delay or deny such consent or approval.

Section 14. Force Majeure.

The performance of this Agreement shall be subject to events of force majeure. Events of force majeure shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto government action (unless caused by acts of omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

Section 15. Modification

No modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly

executed by the party to be charged therewith. No evidence of any modification shall be offered or received in evidence in any proceeding arising between the Parties hereto out of or affecting this Agreement, or the rights or obligations of the Parties hereunder, unless such modification is in writing and duly executed. The parties further agree that the provisions of this Section 15 will not be waived unless herein set forth.

Section 16. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, with the same effect as if the signatures thereto and hereto were upon the instrument. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be as effective as delivery of a manually signed counterpart to this Agreement.

Section 17. Choice of Law and Forum Selection.

This Agreement shall be governed by, and construed, interpreted and enforced in accordance with the laws of the State of Wisconsin. The Parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be in the Circuit Court of Chippewa County, a court of competent jurisdiction within the State of Wisconsin, and the parties further agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

Section 18. Default Termination.

In the event Operator shall default in any of the covenants, agreements, commitments, conditions or obligations herein contained, and any such default shall continue unremedied for a period of ten (10) calendar days after written notice thereof to Operator, County may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Operator, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Operator under this Agreement.

Section 19. Waiver of Terms and Conditions.

The failure of County to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Section 20. Compliance with Applicable Laws.

Operator shall become familiar with, and shall at all times comply with and observe all federal, state and local laws, ordinances and regulations which in any manner affect the conduct or performance of Operator and its agents and employees of the terms and obligations under this Agreement.

Section 21. Captions.

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

Section 22. Cooperation.

The Parties agree to cooperate with each other in addressing any unforeseen or extraordinary events caused by Operator's activity that would result in significant impacts to the County Roads. The parties further agree to cooperate with each other in addressing any unforeseen impact to Operator's ability to utilize the haul route or any alternative route provided for in this Agreement.

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

OPERATOR:

Preferred Sands of Minnesota, LLC

By: Preferred Unlimited, Inc., its manager

By: _____

Its _____

COUNTY:

Chippewa County, a municipal corporation


By: Bruce G. Stelzner

Chippewa County Highway Commissioner