

**TEMPLATE**

**TOWN ROAD UPGRADE AND MAINTENANCE AGREEMENT**

This TOWN ROAD UPGRADE AND MAINTENANCE AGREEMENT (this “Agreement”) is made and entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ by and between the Town of Holland (the “Town”), and \_\_\_\_\_ (the “Operator”).

**RECITALS**

WHEREAS, [insert appropriate language describing the operation such as mining, manure hauling, timber sales, etc.] [In the case of a mining operation: *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 the Town of Holland, Wisconsin, and has submitted an application for a Non-metallic Mining Reclamation Permit for the Project with the County of La Crosse in accordance with the Non-metallic Mining Reclamation Ordinance of La Crosse 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 Town (collectively, the “Town 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 Town Roads, which may in certain cases be in excess of the design limits of the Town Roads; and both parties acknowledge that certain of the Town 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 Town Board to enter into an agreement with any owner or operator of any vehicle being operated on a highway maintained by the Town that provides that the Town will be reimbursed for any damage done to the highway, and

WHEREAS, Operator has provided to Town 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 Town 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 Town Roads listed on the attached Exhibit B and, subject to Section 4.B. herein, any other Town 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 and effect 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 Town Roads listed on Exhibit B, whichever occurs later.

The Operator shall notify the Town in writing of the designated haul route at least three weeks before hauling materials over a Town road. The Town or its representative will subsequently survey the existing condition of that haul route to establish a baseline for assessing damage that the Operator’s hauling operation might cause. The process of surveying the route will incorporate but is not limited to, previous PASER rating logs, video recording, soil borings and structure evaluations.

Section 2.                    Operator, in respect to the Project constructed, developed, operated, maintained and reclaimed by it, acknowledges and agrees the Project may require Town to undertake the following activities in order to preserve Town 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.     The cost of upgrading pavement sections on Town Roads to withstand the hauling of products and equipment that are necessary for the Project shall be done to standards in accordance with the appropriate/applicable sections of the WIDOT, Facilities Development Manual, and in accordance with Chapter 82 of the State Stats and TRANS 204 of the Administrative Code.
  
- B.     The cost of upgrading the geometric design of the Town Roads 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, shall be done to a standard as directed by the WIDOT, Facilities Development Manual and in accordance with Chapter 82 of the State Stats and TRANS 204 of the Administrative Code. Geometric improvements shall also include any improvements to Structures and Culverts necessary to accommodate the increased traffic from the Project.

Structures already programmed for replacement or reconstruction in the Wisconsin Department of Transportation Bridge Program will not be subject to cost share. During the replacement of a WIDOT programmed structure, the Town will work with the Operator to ensure that the structure is replaced as quickly as possible so as not to inconvenience the operator, however, there may be periods of time that an alternate route shall be designated and that route may be subject to load posting or hauling permits.

- C. The cost for 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 Town 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 Town Roads indicated in Sections 2.A., 2.B. and 2.C. above are made. Town 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 to Operator prior to commencing work.

Town will invoice the Operator for exceptional maintenance costs incurred as the work is completed. Operator shall have thirty (30) days from the date of invoicing to make payment to Town.

- E. In order to compensate Town for repairs needed as a result of Operator's use and to accomplish the work indicated in Sections 2.A., 2.B. and 2.C. above, Operator shall make a payment to Town of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) at the time of execution of this Agreement. Based on the construction plans provided by the Operator and cost estimate agreed upon by both parties, the payment amount should be sufficient for Town to make needed improvements to the Haul Route.

Notwithstanding the above, Operator acknowledges that conditions may be encountered or additional requirements imposed by the WIDOT or other regulatory agency that require additional work by the Town and that the cost of all additional work is the responsibility of the Operator. When improvements are complete the Town will invoice the Operator for any additional costs incurred. Operator shall have thirty (30) days from the date of invoicing to make payment to Town.

After construction of the improvements is complete any remaining funds will be returned to Operator within thirty (30) days of project audit by Town.

- F. At the discretion of the Town, a bond may be required to insure against costs associated with excessive wear and tear on Town Roads.

Section 3. Town, in accordance with the terms of this Agreement, agrees to:

- A. Review for approval all access points to the Town 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 Town 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 Town Road system;
- D. Perform all maintenance and construction of all improvements pursuant to this Agreement on the Town Roads used for the construction, development, operation, maintenance and reclamation of the Project.
- E. Keep those Town 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. Town shall retain the right and its authority to establish and set traffic speed limits in accordance with generally accepted highway standards and safety practices.

Section 4. Road Inventory.

- A. Routing and Access Approval.

This Agreement applies only to the Town Roads listed on the attached Exhibit B of this Agreement. If conditions or circumstances change and Operator desires to change haul routes, it must first request authorization from the Town. All expenses for additional haul routes are not part of this Agreement and shall be negotiated by the Operator and Town 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 Town, use Town 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. above.

Section 5.

Construction Cooperation.

A. Operator.

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

B. Town:

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

Town agrees to exclusively use any payments received from Operator as part of 2(E) of this Agreement on Town 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 Town Roads of a magnitude sufficiently great to create a hazard to the motoring public, which in Town's opinion warrants an immediate repair or Town Road closing, Town may unilaterally close those Town Road(s) affected and make or authorize repair, with the reasonable, documented costs thereof paid for by Operator.

Both Parties acknowledge that while Town is the Jurisdictional Authority for those Town Roads listed in Exhibit B, certain emergency situations 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 Town. Town shall not be responsible for any harm to Operator, Operator's Representatives or the Project that may result from Town Road closings that occur due to such emergencies.

Section 6. Indemnification/Hold Harmless and Liability Insurance Provisions.

A. Indemnification by Operator. Operator hereby releases and agrees to indemnify and hold harmless Town and its respective officers, employees, elected or appointed officials, and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Town Releasees") from any and all third party actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands against Town Releasees arising out of or relating to the performance by Operator of its obligations under this Agreement. More particularly, but without in any way limiting the foregoing, Operator hereby releases Town Releasees and agrees to indemnify and hold harmless Town Releasees from any and all third party actions, causes of action, suits, claims, expenses (including reasonable attorney's fees) and demands arising directly or indirectly from any personal injury, death or property damage arising out of the use by Operator or Operator's Representatives of any Town Road subject to this Agreement.

1. Limitations of Liability. In no event shall Town or any of their Board, officers, elected or appointed officials, agents, investors, principals, shareholders, members or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to the Operator or its contractors, suppliers, employees, members and shareholders for indirect, incidental, consequential or punitive damages resulting from the performance, non-performance or delay in performance under this Agreement.

2. Required Insurance. Operator shall at all times throughout the term of this Agreement maintain in full force and effect commercial general liability insurance, naming Town, its Board, officers, elected or appointed officials, agents and employees as an additional insured, in the aggregate amount equal to \_\_\_\_\_ dollars (\$ \_\_\_\_\_) of primary and/or excess insurance to satisfy this requirement.

Or

Required Escrow. Operator shall at all times throughout the term of this Agreement establish and maintain in full force and effect an escrow account in the amount of \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to cover performance 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. 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 9. 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 10. Designated Representative.

FOR TOWN:  
David Carlson, Chair  
Town of Holland  
W7937 County Road MH  
Holmen, WI 54636

FOR OPERATOR:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Section 11. 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.

Section 12. 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 Town. Whenever the consent or the approval of Town is required herein, Town shall not unreasonably withhold, delay or deny such consent or approval.

Section 13. 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 La Crosse County, 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 14. Waiver of Terms and Conditions.

The failure of a Party 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 15. 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 Town 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:

\_\_\_\_\_.

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

TOWN:

\_\_\_\_\_  
By: David Carlson  
Chairman, Town of Holland

## EXHIBIT A

The Plan

## EXHIBIT B

Haul Routes