

TOWN OF DOVRE

Application For Nonmetallic Mining Operations Agreement

Submitted By: Northern Industrial Sands, LLC
1000 Parkers Lake Rd
Wayzata, MN 55391

Authorized Company Representative: Larry McGlumphy

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Engineering Consultant: Cooper Engineering Company, Inc.
2600 College Drive
Rice Lake, WI 54868

Authorized Representative: Bruce Markgren, P.E.

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Date NR 135 Plan /Permit Approved: June 30, 2014

Date Reclamation Plan Approved: June 30, 2014

Date of Planned Construction Initiation: August 1, 2014

Date of Planned Construction Completion: June 30, 2015

Date of Planned Initial Operation: April 1, 2015

Date of Planned Cessation of Operations: 2065 or later

Estimated Volume of Finished Material to Be Shipped Annually: 1,200,000 Tons

Estimated Daily Haul Truck Volume:
-Inbound Haul Trucks: 203 Trucks/ Day
-Outbound Haul Trucks: Trucks/Day

Estimated Daily Rail Car Traffic: 30 Rail Cars/Day

Estimated Daily Water Usage: 2,100 Gallons (domestic)

Each Applicant for an Operations Agreement must list all federal, state, county and local permits and plans which must be approved for the Nonmetallic Mining Operation being proposed. The Applicant shall identify the status of each required permit or plan in the format noted below and must submit a copy of the approved permit or plan with the Application for a Nonmetallic Mining Operations Agreement.

	<u>Name of Permit/Plan</u>	<u>Administering Agency</u>	<u>Current Status</u>	<u>Exhibit Reference#</u>
1)	Nonmetallic Mine Operator License	Town of Sioux Creek	Approved	
2)	NR 135 Nonmetallic Mine Reclamation Plan (Sioux Creek)	Barron County	Conditionally Approved	
3)	High-Capacity Well (Sioux Creek)	WDNR	Submitted	
4)	Wetland Delineation (Sioux Creek)	WDNR/ACE	Approved	
5)	Wetland Delineation (Dovre)	WDNR/ACE	Approved	
6)	Nonmetallic Mining Operations WPDES Permit No. WI-0046515-5 (Sioux Creek)	WDNR	Pre-submittal	
7)	Tier 2 Industrial Stormwater WPDES Permit No. WI-S067857 (Dovre)	WDNR	Pre-submittal	
8)	Wetland General Permit for Commercial, Residential and Industrial Activities WDNR-GP1-2012	WDNR	Pre-submittal	
9)	Air Pollution Permit (Combined)	WDNR	Submitted	

Each Applicant for an Operations Agreement shall submit six (6) copies of the proposed Agreement together with all applicable Exhibits and Attachments as noted in the Table of Contents and all Permits/Plans noted above. The submission of the proposed Operations Agreement shall be accompanied by the payment of the Application Fee established in the Agreement (Twenty Five Thousand Dollars - \$25,000). The fee shall be made payable to "Treasurer, Town of Dovre" and shall be in the form of a cashier's check or bank certified check. There is no refund of the Application Fee.

The Application Form must be signed by the Operator. In the event that the land or lands in the Town of Dovre on which the nonmetallic mine operation is proposed to take place is owned by someone other than the Operator, the land owner shall join in and sign the Application Form as evidence of the land owner's willingness to allow nonmetallic mining operations to take place on his or her property.

The Operator shall identify whether or not the Operator intends to use Town highways for purposes of hauling sand. If Town highway use is required, the Operator shall complete a Road Use Agreement. No Operations Agreement shall be finalized with any Operator who intends to use Town highways to haul sand until a Road Use Agreement is finalized and signed by the Operator and the Town of Dovre.

The Town Clerk shall forward the Application Form and the proposed Operations Agreement to the Town Board for review. If the Town Board, in its sole discretion, determines that professional analysis is required to evaluate the proposed Operations Agreement or Road Use Agreement, the Board shall retain such professional services.

If the Town Board determines that professional assistance is required, the Board shall give written notice to the applicant that an additional administrative fee will be charged to pay for the fees and expenses of the professional services. Failure of the Operator to pay the additional fees and expenses as directed by the Town shall constitute cause for denying the proposed Operations Agreement.

Application Fee: Twenty-Five Thousand Dollars (\$25,000)

Authorized Representative of the Operator: _____(Signature)
Larry McGlumphy, General Manager of
Northern Industrial Sands & Northern Rail &
Transload LLC

Land Owner: _____(Signature)
Brian Gilbertson, Chief Operating Officer and VP
Northern Rail & Transload, LLC
1000 Parkers Lake Road
Wayzata, MN 55

Operations Agreement

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OPERATIONS AGREEMENT

This Operations Agreement ("Agreement") is made this 22nd day of July, 2014, (the "Effective Date") by and between Northern Industrial Sands, LLC., a Delaware limited liability company ("NIS"), and the Town of Dovre, a Wisconsin municipal corporation located in Barron County, Wisconsin (the "Town").

W I T N E S E T H:

WHEREAS, Northern Industrial Sands, LLC., proposes to develop and operate a sand mine and wet sand processing plant in the Town of Sioux Creek generally as indicated on Exhibit A (the "Mine Location") and to build a dry processing plant (the "Dry Plant") and a rail load-out facility (the "Load-Out") in the Town of Dovre as indicated on Exhibit B (the "Load-Out Facility"); and

WHEREAS, NIS proposes to transport wet sand from the Mine Location to the Load-Out Location by truck using the route indicated on Exhibit C (the "Haul Route") for a period of time as further defined in Article 9 of this Agreement and in the "Road Use Agreement"; and,

WHEREAS, the Town adopted a nonmetallic mining ordinance effective on December 12, 2012 (the "Ordinance") which provides that operators of silica sand mining and processing facilities in the Town may, in lieu of obtaining a license and otherwise being subject to the terms and conditions of the Ordinance, enter into an Operations Agreement with the Town which governs such activities; and

WHEREAS, NIS and the Town wish to enter into such an agreement and, after negotiations, have agreed on the terms and conditions of such an agreement; and

WHEREAS, NIS desires to maintain and foster a good working relationship with the Town and believes that entering into such an agreement promotes those desires; and

WHEREAS, the Town has determined that the terms and conditions of this Agreement are beneficial to the Town.

NOW, THEREFORE, in consideration of the foregoing premises and the mutual commitments made hereunder, the parties agree as follows:

ARTICLE 1 – SCOPE

This Agreement is an Operations Agreement as defined in the Ordinance dated 12/19/12. This Agreement applies to all of NIS's Nonmetallic Mining Operations in the Town including the Load-Out Facility shown in Exhibit B and the Truck Route shown in Exhibit C.

A map detailing the location of nonmetallic mining operations of NIS in the Town of Dovre and identifying all adjoining property parcels located within one-half (1/2) mile and ¼ mile of said nonmetallic mining operations is attached as Figure 1-1 (Exhibit B).

The legal descriptions of the parcels included in Exhibit B are contained in Attachment C prepared by Cooper Engineering Company, Inc and incorporated as part of this Operations Agreement.

This Operations Agreement specifically includes only those parcels, if any, identified in Exhibits A and B. NIS explicitly acknowledges that no additional parcels shall be included under this Operations Agreement without the express written approval of the Town as witnessed by amendment of this Operations Agreement or by written approval of the Town through an independent Operations Agreement applied to such additional parcels.

This Operations Agreement shall be limited to nonmetallic mining operations conducted under and pursuant to this Agreement as of the date of approval. NIS shall provide the Town with a complete site plan or site plans which identifies and details the following:

- 1) All structures including, but not limited to, wet plants, dry plants, load-out facilities and any other structures to be constructed pursuant to this Operations Agreement;
- 2) Driveways;
- 3) Parking lots
- 4) Railroad facilities, including spur lines and rail car storage areas;
- 5) Ingress and egress points to any public highways;
- 6) Storage and/or maintenance facilities; and
- 7) Any other manmade construction associated with the Nonmetallic Mining Operation.

Notwithstanding the above, substantial reconstruction of structures, driveways, railroad spur lines, access points to public highways, parking lots, storage and/or maintenance facilities, and any other manmade construction associated with the Nonmetallic Mining Operation after the effective date of this Agreement.

NIS shall provide the Town with a complete parcel listing, including the parcel identification number and legal description, of all parcels in the Town which NIS has purchased or intends to purchase as of the date of this Agreement (See Attachment D)..

ARTICLE 2 – AUTHORIZATION TO PROCEED

Subject to the terms and conditions hereof, NIS may build and operate the dry plant and load-out facility. NIS may also truck washed sand from the Location of the Mine Site to the Location of the Load-Out Facility using the route indicated in Exhibit C, subject to the terms and conditions of this Agreement and the Road Use Agreement.

ARTICLE 3 – APPLICATION FEE & RENEWAL FEE

The submission of any Operations Agreement for consideration by the Town of Dovre shall include an Application Fee in the amount of Twenty-Five Thousand Dollars (\$25,000). Such fee shall be paid at the time of submission of the proposed Operations Agreement to the Town of Dovre.

Any Operator who has received approval of an Operations Agreement from the Town of Dovre Board of Supervisors and who desires to enter into a renewal term regarding said Operations Agreement shall pay a Renewal Fee of Fifty Thousand Dollars (\$50,000). Such Renewal Fee shall be paid at the time of submission of the Request for Renewal Term Agreement.

ARTICLE 4 – TERM

The Initial Term of this Agreement shall commence on the Effective Date and shall continue until the earlier of: (a) the date NIS has notified the Town that it has completed all Nonmetallic Mining Operations in the Town; or (b) twenty five (25) years after the Effective Date of this Operations Agreement.

The "Initial Term" of this Agreement shall renew for an additional term (the "Renewal Term") unless NIS provides the Town with written notice of termination not less than one hundred eighty (180) days prior to the end of the Initial Term or unless the Town provides NIS written notice of termination not less than one hundred eighty (180) days prior to the end of the initial term.

The "Renewal Term" shall commence at the end of the Initial Term and shall continue until the earlier of (a) the date NIS has notified the Town that it has completed all Nonmetallic Mining Operations in the Town; or (b) twenty five (25) years after the commencement date of the "Renewal Term".

The Town agrees to approve the Renewal Term provided NIS is in no material breach of the terms of this Operations Agreement, as defined in Attachment A to this Agreement, at the time of expiration of the Initial Term. The approval of the Renewal Term shall also be subject to the payment of the Renewal Fee.

ARTICLE 5. DEFINITIONS

The following definitions shall apply to and govern interpretation of the terms:

1. **Adjoining Property:** Adjoining Property" means all legally described and recorded parcels of real estate that are located within one-half (1/2) mile of the border of a legally described and recorded parcel on which Northern Industrial Sands, LLC., conducts nonmetallic mining operations as defined in this Agreement and upon which a single or multi-family residence is situated and which residence existed on the effective date of this Operations Agreement.
2. **Appraiser:** An individual, properly trained, licensed and certified by the State of Wisconsin to establish Market Value of Eligible Property.
3. **Appraisal Report:** The report prepared by an appraiser properly licensed and certified by the State of Wisconsin at the direction of the Town Board.
4. **Barron County or County:** County means Barron County, a Wisconsin Municipal Corporation located in Barron, Wisconsin.
5. **Board or Town of Dovre Board:** Means the then Board of Supervisors of the Town of Dovre, Barron County, Wisconsin.
6. **Building Permit:** Building Permit means a permit issued by the Town of Dovre which allows construction or building activities to occur.
7. **Closing Statement:** Closing Statement means those real estate documents prepared for the closing of a sale of an Eligible Property.
8. **Conveyor:** Conveyor means the system designed and constructed to transport wet sand from the Mine Site to the Load-Out Facility.
9. **Department of Natural Resources or DNR:** Department of Natural Resources or DNR means the Wisconsin Department of Natural Resources.
10. **Department of Transportation or DOT:** Department of Transportation or DOT means the Wisconsin Department of Transportation.

11. **Dry Processing Plant:** Dry Processing Plant means all contiguous areas in the Town of Dovre shown in Exhibit B including the following:
 - a. Storage and processing areas whether contiguous or not to areas excavated for nonmetallic mining, including the load-out facility;
 - b. Areas where nonmetallic mining refuse is deposited;
 - c. Areas where rail transportation facilities are constructed and maintained including actual rail lines;
 - d. Areas affected by activities such as the construction or improvement of driveways, private roads or haulage ways for nonmetallic mining.
12. **Eligible Owner:** Eligible Owner means the legal owner of an Adjoining Property on the effective date of this Agreement.
13. **Eligible Property:** Eligible Property means any legally described and recorded property parcel, or portion thereof, in the Town of Dovre, on which was located a "residence" and which existed on the effective date of this Operational Agreement and which legally described and recorded property parcel, or portion thereof, was located within One-half ($\frac{1}{2}$) mile of the borders of the Nonmetallic Mining Operations of NIS.
14. **Eligible Property Selling Price:** The selling price of any Eligible Property as contained in the Offer to Purchase or Sales Contract. The selling price of any Eligible Property shall not include any personal property, seller concessions or incentives such as contributions towards closing costs or other items so as to increase the selling price.
15. **Exceptional Maintenance:** Exceptional maintenance means maintenance above and beyond the normal maintenance which is occasioned by the use of Town highways by motor vehicles and heavy equipment by the Operator in conjunction with the construction, operation, maintenance and reclamation of a Nonmetallic Mine Site.
16. **Family Unit:** Family Unit means an individual or two (2) or more persons related by blood or marriage, adoption or legal guardianship, or evidence of a stable family relationship, or a group of not more than four (4) persons unrelated by blood or marriage, living together for single housekeeping purposes in a residence.
17. **Highway:** Highway is defined as having the meaning at Section 990.01(12), Wis. Stats.
18. **Initial Term:** Initial Term means the twenty five (25) years immediately following the effective date of this Operations Agreement.
19. **Load-Out Facility:** Load-Out Facility means the wet plant, dry plant and the rail loading facility for finished sand product located in the Town of Dovre.
20. **Market Value:** Market Value is the most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition are the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:
 - a. Buyer and seller are typically motivated;
 - b. Both parties are well informed or well advised, and acting in what they consider to be their own best interests;
 - c. A reasonable time is allowed for exposure in the open market;
 - d. Payment is made in terms of cash in US dollars or in terms of financial arrangements comparable thereto; and

- e. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.
 - f. The price represents the amount the property will sell for in an arm's-length transaction on the open market between a willing seller not obliged to sell and a willing buyer not obliged to purchase the property.
21. **Mine Location:** Mine Location means the site of the Fry Hill sand mine in the Town of Sioux Creek as shown in Exhibit A.
 22. **NR 135 Reclamation Permit Plan or NR 135 Permit Plan:** NR 135 Reclamation Permit Plan or NR 135 Plan Plan means the DNR or County approved Nonmetallic Mining Operation Plan for each Nonmetallic Mining Site.
 23. **Nonmetallic Minerals:** Nonmetallic Minerals means a product, commodity or material consisting principally of naturally occurring, organic, inorganic, nonmetallic, nonrenewable materials. Nonmetallic minerals include but are not limited to stone, rock, gravel, sand, asbestos, beryl, diamond, clay, coal, feldspar, silica, peat and talc.
 24. **Nonmetallic Mine Site or Mine Site:** Nonmetallic Mine Site or Mine Site means all areas of present or proposed nonmetallic mining operations including:
 - a. The area where the nonmetallic mining is proposed or conducted.
 - b. Storage and processing areas whether contiguous or not to areas excavated for nonmetallic mining.
 - c. Areas where nonmetallic mining waste or refuse is deposited.
 - d. Areas affected by activities such as the construction or improvement of private roads, driveways or haulage ways for nonmetallic mining.
 - e. Areas where grading or regrading are necessary.
 25. **Nonmetallic Mining Operations:** Nonmetallic Mining Operations means any or all of the activities, processes, methods of approach, applications and means utilized, both mechanically and otherwise, including but not limited to blasting, grading, crushing, screening and scalping to cause the occurrence of one or more of the following:
 - a. Extraction or excavation from the earth of nonmetallic minerals for site use or sale;
 - b. Transportation of nonmetallic minerals, finished product or waste materials to or from a mine site, whether by means of haul trucks over County or Town highways or by means of a conveyor belt system or by any other means, whether or not the Nonmetallic Mine Site from which or to which said transportation is located in or outside the Town of Dovre..
 - c. Manufacturing or processing operations that may involve the use of equipment for the washing, drying and loading of or the crushing, screening, separating or blending of or other related processing of nonmetallic minerals obtained in the extraction process from the earth or using nonmetallic materials or other materials transferred to the site at which the operations are taking place;
 - d. Manufacturing processes whose aim or goal is the production of nonmetallic products for sale or use by the Operator;
 - e. Stockpiling of nonmetallic minerals for sale or use on site and stockpiling of waste materials;
 - f. Disposal of waste materials; and
 - g. Reclamation of a Mine Site.

26. **Normal Maintenance:** Normal maintenance means such recurring and non-recurring maintenance of the right-of-way, roadbed, or pavement of any or all portions of the designated Town highways as are occasioned by the normal wear and tear, weather conditions, both anticipated and unanticipated, and other factors taken into account in establishing both the remaining useful life of a highway in accord with accepted highway maintenance practices utilized by the Town in accord with DOT standards and to meet or exceed the remaining useful life of a highway.
27. **Northern Industrial Sand, LLC (NIS)** means the Wisconsin limited liability company which is a party to this Operations Agreement.
28. **Offer to Purchase:** Offer to Purchase means the written Offer to Purchase an Eligible Property including any counter-offers or addendums.
29. **Operator:** Operator means Northern Industrial Sands, LLC (NIS), a Delaware limited liability company.
30. **Property Value Guarantee Payment:** The calculated payment which NIS shall provide to an Eligible Owner if the sale of an Eligible Property is completed pursuant to the provisions and procedures of this Operational Agreement and if a diminution of Market Value has occurred due to the Eligible Property's location within one-half (1/2) mile of the borders of any Nonmetallic Mining Operations conducted by NIS, as defined in this Operational Agreement..
31. **Property Value Guarantee Program:** Property Value Guarantee Program means the program established under this Operational Agreement which provides payments to Eligible Owners of Eligible Property who sell such property at less than Market Value.
32. **Property Value Guaranty Program Eligibility Area:** An area that includes all legally described property parcels that are wholly or partially located within one-half (1/2) mile of the borders of the dry processing plant and load-out facility.
33. **Reclamation Plan:** Reclamation Plan means a DNR or County approved nonmetallic mining reclamation plan for a Mine Site.
34. **Renewal Term:** Renewal Term means the twenty-five (25) year period immediately following the expiration of the Initial Term of this Agreement.
35. **Residence:** Residence means:
 - a. A building, or portion thereof, in the Eligible Area which existed as of the date of this Operational Agreement which is owner occupied and includes services such as water and sewer, provisions for heat and lighting and other amenities so as to make the building suitable for human habitation by one family unit which is used exclusively for residential occupancy. A residence, as used in this paragraph, shall also be the Eligible Owner's permanent home as supported by the qualification of the Property Parcel for the Wisconsin Homestead Credit Program. A residence is also the location listed on the Eligible Owner's Wisconsin Driver's License and the address used by the Eligible Owner for purposes of voting in Federal, State and local elections; or,
 - b. A building, or portion thereof, in the Eligible Area which existed as of the date of this Operational Agreement and which included services such as water and sewer, provisions for heat and lighting and other amenities so as to make it suitable for human habitation and which is suitable for occupancy by more than one (1) family unit. Such buildings do not include hotels, motels, boarding or rooming houses. Such multi-family residence may, but is not required to be, the location listed on the Eligible Owner's Wisconsin Driver's License and the address used by the Eligible Owner for purposes of voting in Federal, State and local elections.

36. **Residential Unit:** Residential Unit means one or more rooms in a building designed for occupancy by a single family unit for living purposes and having its own permanently installed water, sewer, heat, lighting and other amenities so as to make it suitable for human habitation.
37. **Royalty Fund:** The monetary Fund at a financial institution selected by the Town Board in which all Royalty Payments from NIS are deposited and from which any Town of Dovre Property Value Guarantee Payments are made.
38. **Royalty Payment:** The Royalty Payment means the payment the Town of Dovre shall receive as a result of the royalties paid pursuant to the Operational Agreement with Sioux Creek Silica, LLC., SCS is responsible for payment of the Royalty Payment to the Town of Dovre according to the terms of this Agreement.
39. **Town or Town of Dovre:** Town or Town of Dovre means the Town of Dovre, a Wisconsin Municipal Corporation located in Barron County..
40. **Town Highway:** Town highway means a highway, as that term is defined in Chapter 990, Wis. Stats., that is operated, maintained and repaired by the Town for the purposes of facilitating public travel under Chapter 82, Wis. Stats. Et al.

ARTICLE 6. PAYMENTS TO TOWN

Section 6.1 General Provisions. NIS agrees to make royalty payments to the Town commencing September 30, 2014. The amount of each royalty payment shall be calculated based on the number of tons of sand dried, processed, loaded and shipped from NIS's Load-Out Facility in the Town in the previous calendar quarter multiplied by \$.10/ton. (example: 10,000 tons per month x \$.10/ton = \$1,000.00). The royalty payments shall apply to all sand dried, processed, loaded and shipped from the NIS Load-Out Facility in the Town regardless of the source of the sand.

For example, if NIS loads and ships from the Load-Out Facility during the 4th quarter of 2014 (October – December), then on January 30, 2015, NIS shall pay a royalty payment based on the sand loaded and shipped from the Load-Out Facility in the period of October through December of 2014.

Commencing on January 1, 2020, and continuing each and every fifth (5th) year thereafter, the royalty payment shall increase based on the following:

Period	<u>Royalty Amount</u>
January 1, 2020 – December 31, 2024	\$.115 /Ton
January 1, 2025 – December 31, 2029	\$.130 /Ton
January 1, 2030 – December 31, 2034	\$.145 /Ton
January 1, 2035 – December 31, 2039	\$.160 /Ton

Royalty payments to the Town during any Renewal Term shall be established at the time of the Renewal of this Operations Agreement.

The weight of the sand for the purposes of calculating the Royalty Amount shall be determined after completion of the drying process at the processing site.

Section 6.2 Weight Calculations Records. For purposes of this section, tonnage shall be based on dried sand. NIS agrees that all sand shall be weighed before it is transported away from the Load-Out Facility. NIS shall retain all weight slips and associated records for a period of three

(3) years. At the conclusion of three (3) years, NIS shall transfer all such records to the Town. All such weight slips and associated records shall be made available to the Town for inspection or copying during normal business hours provided that the Town shall notify NIS of the intent to inspect and copy such records at least five (5) business days in advance of the date requested for inspection and copying.

Section 6.3 Due Date for Royalty Payments. NIS agrees that each royalty payment shall be made on the last day of the month immediately succeeding the calendar quarter for which such royalty payment is due.

Section 6.4 Application of Royalty Payments. All royalty payments shall be made payable to "The Town of Dovre". NIS understands and accepts the Town of Dovre shall have the exclusive right to determine the proper use and application of any and all royalty payments.

ARTICLE 7 - IMPACTS ON ADJOINING LANDOWNER'S PROPERTY VALUES

Section 7.1 In an effort to mitigate the potential adverse impact of NIS's nonmetallic mining activities which may result in a diminishing of property values, NIS shall provide a property value guaranty program as follows:

- a. **Eligible Properties East of Highway 53 Within One-Quarter (1/4) Mile of NIS Dry Plant and Load Out Facility.** For a period of ten (10) years from the effective date of the Operations Agreement, as to lands now constituting Adjoining Property or ten (10) years from the date of approval of any amendment to the Reclamation Plan or expansion of the Nonmetallic Mining Operations to additional property parcels, or portions thereof, located in the Town of Dovre, as to lands that become Adjoining Property after the date of this Operations Agreement, NIS shall provide a Property Value Guarantee of a maximum of \$50,000, as set forth in this Article.
- b. **Eligible Properties East of Highway 53 Between One-Quarter (1/4) Mile – One-Half (1/2) Mile of NIS Dry Plant and Load Out Facility.** For a period of five (5) years from the effective date of the Operations Agreement, as to lands now constituting Adjoining Property or five (5) years from the date of approval of any amendment to the Reclamation Plan or expansion of the Nonmetallic Mining Operations to additional property parcels, or portions thereof, located in the Town of Dovre, as to lands that become Adjoining Property after the date of this Operations Agreement, NIS shall provide a Property Value Guarantee of a maximum of \$25,000, as set forth in this Article.
- c. **Eligible Properties West of Highway 53 Within One-Half (1/2) Mile of NIS Dry Plant and Load Out Facility.** For a period of five (5) years from the effective date of the Operations Agreement, as to lands now constituting Adjoining Property or five (5) years from the date of approval of any amendment to the Reclamation Plan or expansion of the Nonmetallic Mining Operations to additional property parcels, or portions thereof, located in the Town of Dovre, as to lands that become Adjoining Property after the date of this Operations Agreement, NIS shall provide a Property Value Guarantee of a maximum of \$25,000, as set forth in this Article.

Only the owner of an Adjoining Property on the effective date of this Operations Agreement is eligible for the Property Value Guarantee. Any owner meeting the requirements of this Section is referred to as an Eligible Owner.

Section 7.2 Procedures for Sale of Adjoining Property. The following procedures shall be followed by any Eligible Owner within the NIS nonmetallic mining operations eligibility area when applying for any Property Value Guarantee Payment under this Operations Agreement:

1. The Eligible Owner shall notify the Town Clerk/Treasurer and NIS in writing of the desire to sell the Eligible Property, The date of receipt of the notification by the Town Clerk/Treasurer shall be determined to be the date of initial application for Property Value Guarantee Payment;
 - a. Prior to notifying the Town Clerk/Treasurer and NIS of the desire to sell the Eligible Property, the Eligible Owner shall retain the services of a licensed, practicing real estate surveyor who shall prepare and provide a certified statement identifying the distance between the closest NIS Nonmetallic Mining Operations border as shown in Map A or as such border is included in a Reclamation Plan (NR 135 Plan) approved by the appropriate regulatory body (bodies).
2. The Town Board may waive the survey requirement in its sole discretion.
3. The Town of Dovre shall, in its sole discretion and within thirty (30) days of receipt of notification of the desire to sell an eligible property and the required survey statement, appoint an appraiser, properly licensed in the State of Wisconsin, to establish the Market Value of the Eligible Property. The Town of Dovre shall be responsible for payment of the services provided by the appraiser;
4. The appraiser shall appraise the Eligible Property as if the NIS Nonmetallic Mining Operations were not in existence.
5. The Town of Dovre shall provide a copy of the appraisal report to NIS and the Eligible Owner within five (5) days of receipt by the Town Clerk/Treasurer.
6. If the Town of Dovre, NIS and the Eligible Owner agree that the "Market Value" as reflected in the appraisal report is accurate, such Market Value shall serve as the base value upon which any Property Value Guarantee Payment shall be made.
7. If the Eligible Owner does not agree with the "Market Value" in the appraisal report, the Eligible Owner may seek a separate appraisal at the sole expense of the Eligible Owner.
8. The Town of Dovre and NIS may, in their sole discretion, consider the "Market Value" established in the appraisal report obtained in the separate appraisal report obtained by the Eligible Owner.
9. The Eligible Owner shall enter into a real estate listing with a licensed real estate broker, who is an active member of the Multiple Listing Service, for a period of not less than six (6) months or more than twelve (12) months in an effort to sell the Eligible Property. Such real estate listing shall be published and the listing shall provide for inspection of the property by prospective buyers.
10. Before accepting any bona fide offer to purchase for the property received during the term of the listing contract at a price less than the Market Value as determined by appraisal as provided in this Article, the Eligible Owner shall provide NIS not less than five (5) business days' written notice by facsimile, e -mail, or personal delivery of the Eligible Owner's intention to accept the offer to purchase, which notice shall include a copy of the offer to purchase. If the notice is by facsimile or e-mail it shall also require confirmed receipt by NIS. For the avoidance of doubt, unless and until an Eligible Owner provides NIS with a bona fide offer to purchase that the Eligible Owner intends to accept, NIS shall have no liability or obligation under Article 5.
11. NIS may, within five (5) business days of receipt of the notice and copy of the offer, notify the Eligible Owner by facsimile, e-mail or personal delivery that it elects to purchase the property for its Market Value, and if NIS makes such an election, the Owner shall sell the property to NIS at the Market Value and upon the other terms and

conditions contained within the purchase offer (not including the purchase price, which shall be the Market Value).

12. If NIS does not so notify the Eligible Owner within said time, the Eligible Owner may then accept the offer and sell the property as provided in the offer.
13. Upon the sale and closing of the Eligible Property, the Eligible Owner or the listing real estate agent shall provide a copy of the Purchase Agreement and closing documents to the Town Clerk/Treasurer and to NIS.
14. In the event that NIS does not exercise its right to purchase the property, NIS shall pay a Property Value Guarantee Payment to the Eligible Owner if the selling price of the Eligible Property is less than Market Value as established under this Operations Agreement.
15. The amount of the Property Value Guarantee Payment shall be equal to the difference between the selling price pursuant to the purchase offer and the Market Value determined as provided in this Article. Provided, however, that the maximum amount that NIS shall be obligated to pay to the Eligible Owner shall not exceed the maximums established in Section 7.1
16. NIS shall calculate the Property Value Guarantee Payment due to the Eligible Owner as follows:

Market Value of Property	\$
Less Selling Price of Eligible Property:	-\$_____
Property Value Guaranty Payment Due	\$

17. NIS shall pay the Property Value Guarantee Payment, if any, within ten (10) days of the date of closing of the sale.
18. In no instance shall the Property Value Guaranty Payment paid by NIS exceed Fifty Thousand Dollars (\$50,000) for Eligible Property which is located east of US Highway 53 and which Eligible Property is within one-quarter (1/4) mile of the border its Nonmetallic Mining Operations as such borders are shown on the Map included as Attachment C.
19. In no instance shall the Property Value Guaranty Payment paid by NIS exceed Twenty Five Thousand Dollars (\$25,000) for any other Eligible Property pursuant to the provisions of Section 7.1 as such borders are shown on Map included as Attachment C..
20. In any instance wherein the selling price is greater than the Market Value as established through the appraisal process, the Eligible Property shall not qualify for a Property Value Guaranty Payment from NIS.
21. No Eligible Property may receive more than one (1) Town Property Value Program Payment.

Section 7.3 Adjoining Property Eligible for More Than One Guarantee. Notwithstanding any other provision of this Article, if an Adjoining Property is eligible for a Property Value Guarantee under this Agreement and is also eligible for a similar payment from one or more other Operators either under the Ordinance or under an Operations Agreement the Property Value Guarantee Payment shall be paid in equal shares by NIS and the other Operators.

Section 7.4 Property Remaining Unsold. If the property is not sold within twelve (12) months of the date of the listing contract, NIS shall have the option to purchase the property for the Fair Market Value as established in the Appraisal Report. The Eligible Owner may also relist the property for sale should NIS not exercise the option to purchase.

Section 7.5 Ineligible Property. Any property owned by a Nonmetallic Mining Operations Site Operator, including, but not limited to NIS, or any subsidiary of a Nonmetallic Mining Operations Operator shall not be eligible for any payment under the Property Value Guaranty Program.

ARTICLE 8 - OPERATING RESTRICTIONS

NIS's Nonmetallic Mining Operations, including the mining, transporting, processing, loading and shipping of nonmetallic products shall be subject to the restrictions set forth in this Article.

Section 8.1 Applicable Laws. NIS shall conduct its Nonmetallic Mining Operation in accordance with all applicable laws and regulations.

Section 8.2 Building Permits. NIS agrees and warrants that no construction activity shall occur on the property noted in Exhibit B without NIS first obtaining the necessary building permits from the Town of Dovre. NIS shall pay the Building Permit Fees per the attached Building Permit Fee Schedule (see Exhibit D). No Building Permit shall be issued without payment of the appropriate Building Permit Fee.

Section 8.3 Hours of Operation. NIS's Nonmetallic Mining Operations may be conducted on a 24 hours per day, seven (7) days per week basis except as otherwise provided by the Agreement (restrictions as to trucking activities, including days and hours of operation are addressed in Article 9 of this Agreement and in the Road Use Agreement).

Section 8.4 Blocking of Town Highway By Rail Engines/Cars. NIS shall, to the maximum extent possible, conduct its business transportation activities so as to avoid the blocking of any rail road crossing on any Town Highway.

Section 8.5 Requirements. NIS's Nonmetallic Mining Operations shall be conducted in such a manner as to meet or exceed the following minimum requirements:

- (a) Buffers. NIS shall provide a buffer area of fifty (50) feet around the boundaries of its Load-Out Facility as shown in Map A. If a berm is placed within this fifty (50) foot buffer area and it lies along a public highway, the bottom edge of the berm shall be a minimum of ten (10) feet from the edge of the right-of-way and shall be seeded down and covered with erosion matting.
- (b) Berms. NIS shall notify the Town when the construction of any rail line(s) adjacent to the northern boundary of the NIS property is scheduled to commence. The Town, in its sole discretion, may require NIS to construct a berm along the northern boundary of the NIS property to provide visual and sound separation from Adjoining Properties. Said berm shall not exceed a height of twenty (20) feet in elevation from the level of the rail line and shall not exceed a linear distance beyond the western most location of the rail line(s). The berm shall be seeded down.
- (c) Lighting. NIS shall minimize, to the extent possible, light pollution, glare, and light trespass from fixed light sources on its property, while maintaining night time safety, utility, security, and productivity in the course of its operations. Light emitted from fixed, artificial sources to be incorporated in the facilities located on the site shown in Exhibit B shall be subject to these standards and restrictions.

Additionally:

- (1) All lighting must be fully shielded in a manner that light rays emitted by the fixture, either directly from a lamp or indirectly from a fixture, are projected below a horizontal plane running through the lowest point on the fixture where the light is emitted.
- (2) Lighting must be directed away from Adjoining Properties to prevent light from trespassing or spilling onto those properties.
- (3) Except for lighting on vehicles or moving equipment, there shall be no flashing, revolving or intermittent lighting, which could be considered a nuisance or distraction to vehicular traffic.
- (4) Search lights, laser source lights, or any similar high intensity light shall not be permitted, except in emergencies by law enforcement or fire personnel or at the direction of such personnel.
- (5) Prohibited Lighting. All outdoor flood light projection above the horizontal is prohibited. Temporary lighting that does not conform to this Section may be allowed with the prior approval of the Town Board for a period of not more than thirty (30) total days within each year.
- (6) Repeated violations of this Section in any twelve (12) month period shall result in the forfeiture to the Town of \$500 for each day of violation. For purposes of this subsection only, repeated violations means more than ten (10) violations in any twelve (12) month period.

(d) Noise. NIS shall ensure through all appropriate measures that noise emitted from its Nonmetallic Mining Operations shall not exceed 80 decibels at the boundary line or property line of any Nonmetallic Mining Operations site: provided, however, that such limits shall not apply to haul trucks entering or leaving the site, site preparation or construction of site improvement or repairs, or work pursuant to the Reclamation Plan. Without limitation to the foregoing. NIS shall use so-called "white noise back-up alarms" on its mobile equipment and shall not permit its haulers to use so-called "box vibrators" except when it is not reasonably possible, because of humidity or other factors, to empty the hauler's boxes without using the vibrators.

- (1) Repeated violations of this Section in any twelve (12) month period shall result in the forfeiture to the Town of \$500 for each day of violation. For purposes of this subsection only, repeated violations means more than ten (10) violations in any twelve (12) month period.

(e) Dust. NIS shall ensure the effects of dust from its processing operations meet all federal and state standards and are minimized through the implementation of best management practices, new technology and industry standards that include:

- (1) Watering of non-paved road and travel-ways at least twice daily during all periods of operation unless weather conditions prevent such watering;
- (2) Daily use of dust collection/suppression and emission control equipment throughout the Nonmetallic Mine Operations facilities. All Town of Dovre roads identified by the Town shall be swept as necessary whenever haul trucks are transporting sand product to the site. The Town, in its sole discretion, reserves the right to impose mandatory, daily road sweeping requirements;
- (3) Repeated violations of this Section in any twelve (12) month period shall result in the forfeiture to the Town of \$500 for each day of violation. For purposes of this subsection only, repeated violations means more than ten (10) violations in any twelve (12) month period.
- (4) Use of berms and vegetative barriers along sensitive property boundaries.

- (5) Concurrent reclamation practices as mining progresses.

ARTICLE 9 TOWN ROADS

Section 9.1 Use Restrictions. The use of highways owned and/or maintained by Barron County or the Town and used by NIS for hauling shall be subject to the following conditions:

- (a) NIS shall not use any Town owned and/or maintained highway (that is highways which the Town owns and/or maintains) to haul sand from the Mine Location to the Load-Out Location, except as provided in this Article and in the Road Use Agreement.
- (b) NIS shall limit its use of Town owned and/or maintained highways within the Town to Mondays through Saturdays and not more than twelve (12) hours per day, commencing not earlier than 6:00 a.m. Local Time, and not later than 6:00 p.m. Local Time.
- (c) Notwithstanding the foregoing, such use of Town highways shall not be permitted on the following holidays: New Year's Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Eve Day (1/2 day) and Christmas Day.
- (d) NIS shall take all measures necessary to ensure that trucks traveling between the Mine Location and the Load-Out Location do not interfere, impede or delay the transportation and safety of children being taken to or returned from school.
- (e) The Town retains the exclusive right to impose time-of-day restrictions so as to avoid conflicts between trucks used for hauling by NIS and school buses.

Section 9.2 Speed Limits. NIS and all of NIS's subcontractors shall observe all posted speed limits.

Section 9.3 Load Limits. NIS and all of NIS's subcontractors shall comply with all load limits established by law or ordinance, including reduced load limits established during the spring thaw season, as established by Barron County.

Section 9.4 Compression Breaks. NIS and its subcontractor's shall not use compression release engine brakes (commonly known as Jake brakes) except in instances of emergency.

Section 9.5 Sand Loads Covered. NIS and its subcontractors shall ensure that all sand loads leaving the Mine Location or the Load-Out Location shall be covered so as to prevent sand loss and spillage. Repeated violations of this Section in any twelve (12) month period shall result in the forfeiture to the Town of \$500 for each day of violation. For purposes of this subsection only, repeated violations means more than ten (10) violations in any twelve (12) month period.

Section 9.6 Use of Mud Flaps. NIS and its subcontractors shall ensure that all sand trucks are equipped with mud flaps. Repeated violations of this Section in any twelve (12) month period shall result in the forfeiture to the Town of \$500 for each day of violation. For purposes of this subsection only, repeated violations means more than ten (10) violations in any twelve (12) month period.

Section 9.7 Responsibility for Damage. NIS shall be responsible for any damage caused to Town owned and/or maintained highways caused by NIS or any of its subcontractors during the term of its use of Town highways and roads to haul sand.

ARTICLE 10 FINANCIAL ASSURANCE Financial assurances may be required to be provided to the Town as a condition of the approval of this Operations Agreement. The amount of such financial assurances shall be determined by the Town Board, in its sole discretion, for impacts on Town highways as determined in the Road Use Agreement. Such financial assurances may include amounts reasonably necessary for the engineering, building, rebuilding or maintenance of Town highways and bridges, right-of-way acquisition, and stormwater drainage systems.

The form of the financial assurances made to the Town of Dovre shall be the form agreed to by the Town Board and may include cash deposits, performance bonds, irrevocable letters of credit or other means agreed to by the Town Board.

ARTICLE 11. ANNUAL REPORT OF OPERATIONS.

NIS shall provide the Town with an annual report and presentation at the Annual Town Meeting (second Tuesday in April). The report shall provide a summary of NIS's Nonmetallic Mining Operations in the Town in the prior year and plans for the upcoming year. NIS shall provide ten (10) copies of a written report summarizing prior year operations and plans for the current year to the Town Board no later than March 31 of each year. The Town Board, in its sole discretion, may require other presentations as circumstances may dictate.

ARTICLE 12 - BREACH OF AGREEMENT RESOLUTION PROCEDURE,.

In the event the Town claims that NIS has breached this Agreement, the means of resolving the matter (the "Dispute"), shall be as follows:

- (a) Negotiation. The parties agree to negotiate in good faith regarding the Dispute.
- (b) Mediation. Any Dispute that cannot be resolved through good faith negotiations shall be subject to mediation. Mediation shall be conducted by one mediator who shall be selected by the Town within ten (10) days after notice of the request for mediation; provided that the mediator shall be a person knowledgeable in the general subject(s) of the dispute. The mediation shall be nonbinding and shall commence within 30 days after the selection of the mediator. Each party shall attend the mediation personally and with any representatives they desire. The expenses of the mediator shall be shared equally by the parties. The mediation shall continue until the Dispute is settled or the mediator declares an impasse. In no instance shall such mediation extend for more than ninety (90) calendar days.
- (c) Arbitration. If the mediator declares an impasse or if the Dispute cannot be resolved through mediation or the Dispute cannot be resolved within ninety (90) calendar days, the remaining issue(s) may be submitted to arbitration. Except as expressly provided otherwise in this Agreement, the arbitration shall be conducted in accordance with the rules for the Resolution of Commercial Dispute of the American Arbitration Association. The arbitrator shall be selected jointly by the parties within ten (10) days after notice of the submittal to arbitration, but if the parties cannot agree on an arbitrator, the American Arbitration Association shall appoint an arbitrator to conduct the mediation. Judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. Arbitration shall take place in Barron County, Wisconsin, with the location of any such proceeding within such County shall be as selected by the arbitrator.
- (d) Any award or judgment rendered by the Arbitrator shall be final and binding on all parties and any party may commence an action in any court of competent jurisdiction to enforce the award or judgment.

(e) Court Action. Nothing in this Article shall prevent either party from proceeding to initiate an action in a court of competent jurisdiction, thus bypassing the arbitration otherwise called for hereinabove.

ARTICLE 13. REVOCATION OF OPERATIONS AGREEMENT If this Operations Agreement should be canceled, terminated or revoked, all rights thereunder shall terminate. The only nonmetallic mining operations which may be engaged in after such cancelation, termination or revocation shall be reclamation pursuant to the requirements and provisions of the Operator's NR 135 Permit.

ARTICLE 14. AMENDMENT OF ORDINANCE

NIS's Nonmetallic Mining Operations shall not be subject to any provision of the Ordinance which is inconsistent with any term of this Agreement or which materially adds to NIS's obligations or restrictions respecting its Nonmetallic Mining Operations.

ARTICLE 15. BINDING EFFECT; TRANSFER.

This Agreement is binding on the parties' successors and assigns. NIS may not, without the consent of the Town, sell, transfer, or assign its obligations hereunder to a third party or parties. No such sale, transfer, or assignment shall relieve NIS of any liability to the Town arising prior to the date of such sale, transfer, or assignment.

The Town specifically reserves the right to require successors to execute an agreement to subject such successor to all obligations to the Town and its property owners under this Agreement. The Town also reserves the sole right to require renegotiation of this Operations Agreement with any successor.

ARTICLE 16. SUBSTITUTE FOR LICENSE

Pursuant to Section 4.1 of the Ordinance, this Operations Agreement is a complete substitute for a license granted under the Ordinance.

ARTICLE 17. CONFLICT WITH ORDINANCE

In the event of a conflict between the provisions of this Operations Agreement and the Ordinance, the Agreement shall control.

ARTICLE 18 . MISCELLANEOUS

Section 18.1 Counterparts. This Operations Agreement may be executed in any number of counterparts, each of which shall be deemed an original.

Section 18.2 Modification. No modification of this Operations Agreement or of any covenants, conditions or limitations herein contained shall be valid unless in writing and duly executed by both Parties.

Section 18.3 Notices. All notices to be given under the terms of this Operations 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.

To the Town:

Town of Dovre
Attn: Town Clerk/Treasurer
2894A3-1/2 Ave
New Auburn WI 54757

To NIS

Northern Industrial Sands, LLC
Attn: Brian Gilbertson
1000 Parkers Lake Road
Wayzata, MN 55391

Section 18.4 Saving/Severability. In the event any provisions of this Operations 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 Operations Agreement shall be construed as if such unconstitutionality, invalidity, illegality or unenforceability shall not affect the other provisions, and the Operations Agreement shall be construed as if such unconstitutional, invalid, illegal or unenforceable provision has never been contained in this Operations Agreement.

Section 18.5 Due Authorization. NIS represents that this Operations Agreement has been duly authorized, executed and delivered on behalf of NIS. The Town represents that this Operations Agreement has been duly authorized, executed and delivered on behalf of the Town.

Section 18.6 Choice of Law. This Operations Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.

Section 18.7. Ordinance Identified.. For purposes of this "Operations Agreement", Ordinance shall mean the Town of Dovre Nonmetallic Mining Permits; Nonmetallic Mine Operation Ordinance adopted on December 12, 2012.

Section 18.8 Applicability of Ordinance. In the event of any conflict between the terms of this Operations Agreement and the Ordinance, the terms of the Agreement shall control.

Section 18.9 Copy of Operations Agreement May be Recorded. The parties agree that a memorandum of this Operations Agreement may be recorded against real estate on which Nonmetallic Mine Operations are maintained by NIS.

Section 18.10 Indemnification and Insurance Coverage. Before any Operations Agreement is effective, the applicant shall demonstrate that it is carrying insurance of such types and in such amounts as are approved by the Town's insurer and shall name the Town as as additional insured. Continuous insurance coverage shall be a condition for each Operations Agreement and the failure to maintain the same shall cause the Operations Agreement to be automatically revoked.

NIS shall indemnify and hold the Town harmless from any personal injury or property damage sustained due to its use of Town highways or that of its contracted truck haulers and provide to the Town a Certificate of Insurance to this effect, naming the Town, in amounts and types of coverage as are provided by NIS to Barron County.

Section 18.15 Operations Agreement Not Inclusive of Highway Maintenance or Use. The Town and NIS have entered into a separate agreement regarding the use of Town highways for sand hauling.

ARTICLE 19 – REIMBURSEMENT OF TOWN EXPENSES

NIS expressly agrees to reimburse the Town for all legal fees and expenses and consulting fees and expenses associated with the development and negotiation of this Operations Agreement. The total of such fees and expenses to be reimbursed to the Town shall not exceed \$15,000.

The Town shall provide an itemized accounting of all fees and expenses for which reimbursement is sought within sixty (60) days of the effective date of this Agreement. NIS shall pay such request for reimbursement within thirty (30) days of receipt of the request for reimbursement from the Town.

IN WITNESS WHEREOF, the parties have entered into this Agreement.

TOWN OF DOVRE

Dean Trowbridge _____

Tim Nelson _____

Danny North _____

James Plummer _____

Mitchell Hanson _____

NORTHER INDUSTRIAL SANDS, LLC

BRIAN GILBERTSON _____

LARRY MCGLUMPHY _____