

TOWN OF DOVRE
Town Highway Repair & Maintenance Agreement

Final

This Highway Upgrade, Repair and Maintenance Agreement (“Agreement”) is made and entered into this 19th day of August, 2014, by and between the Town of Dovre, Barron County, Wisconsin (“Town”) and Northern Industrial Sand, LLC (“NIS”).

WHEREAS, NIS is in the business of mining silica sand and is in the process of siting a non-metallic dry plant and load-out facility (the “Project”) in the Town of Dovre; and,

WHEREAS, NIS has received an NR – 135 Permit for a Non-Metallic Mining Reclamation for the Project from Barron County in accordance with the Non-Metallic Reclamation Ordinance of the County and Wis. Adm. Code Ch. NR 135; and,

WHEREAS, NIS and the Town of Dovre have entered into an Operations Agreement on July 22, 2014, regarding the conditions and circumstances that will apply to the operation of the dry plant and load-out facility; and,

WHEREAS, the Parties desire to address certain issues relating to the Town Highways owned and maintained by the Town (collectively “Town Roads”) over which it will be necessary for NIS to, among other things, transport heavy equipment and silica sand, which may in certain cases be in excess of the design limits of the Town Roads. Both Parties acknowledge that certain of the Town Roads may not be constructed to withstand the frequency and weight shipments necessary for NIS to transport its products, equipment and supplies; and

WHEREAS, Section 349.16(1)(c), Wis. Stats., authorizes the Town Board to enter into an Agreement on behalf of the Town with any owner or operator of any vehicle being operated on a highway maintained by the Town that provides the Town will be reimbursed for any damage done to the highway; and,

WHEREAS, NIS and the Town wish to set forth their understanding and agreement as to the highway issue relating to the use of Town Highways pertaining to construction, development, operation, maintenance and reclamation of the Project; and

WHEREAS, the Agreement shall apply to those Town Highways listed in Exhibit A and any other Town Highway used by NIS or NIS representatives in direct support of the construction, development, operation, maintenance and reclamation of the Project in the Town of Dovre.

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 (“Effective Date”) and shall continue in full force and effect until NIS has fully discontinued its construction, development, operation, maintenance and reclamation of the Project, and any and all transportation activities related to the movement of silica sand thereto on the Town Highways listed in Exhibit A, whichever occurs first.

Section 2. Designated Haul Roads: Project Designation

NIS will make use of the Town Highways which begin at the intersection of County Road A and 6th Avenue, then east to the intersection of 6th Avenue and 5 ¼ Street, then south on 5 ¼ Street to the entrance of the Project site. The distance of the Haul Route on Town Highways is approximately 3,800 feet.

The Haul Route shall be utilized for trucks hauling non-metallic minerals from its mine site in the Town of Sioux Creek, for empty trucks returning to the mine site, for trucks hauling reject materials back to the mine site and for trucks hauling construction materials and supplies to the dry plant and load-out facility in the Town of Dovre.

Section 3. Notice to Town

NIS shall notify the Town in writing at least three weeks before first commercially hauling materials on those Town Roads described in Exhibit A. Said notice shall trigger the assessment of Town Highways required under Section 4 below. Said assessment shall evaluate the existing condition of the Haul Route(s) to establish a baseline for assessing damage that may be caused by NIS's truck hauling operation.

The process of surveying the Haul Route(s) will incorporate, but is not limited to, PASER rating logs, video recording, soil borings and structure evaluation. The Town and NIS (or their representatives) may be present for the road survey.

In the event that the survey reveals a need, prior to engaging in an upgrade to the Haul Route(s), for immediate repairs or improvements, temporary measures shall be taken at the expense of NIS to make the Haul Route Highway(s) safe for public travel and/or more resistant to damage from NIS's truck hauling activities pending finalization of a plan to improve the Town highway(s) in question to the standards required.

Should NIS seek to have permitted, open, develop, operate and reclaim another non-metallic mining site beyond the current Project in the Town of Sioux Creek, haul trucks from which shall use the Haul Route specified in the Agreement, the impacts upon safety of the Haul Route, road conditions and access to and from the Haul Route shall be reviewed and made part of this Agreement prior to commencing the development of any such additional non-metallic mining site.

Any necessary road construction, reconstruction or improvements necessary as a result of such additional non-metallic mining site to accommodate additional hauling traffic shall be the sole financial responsibility of NIS, including any engineering costs.

Section 4 NIS Dutes

NIS, in respect to the Project constructed, developed, operated, maintained and reclaimed by it. Acknowledges and agrees the Project may require the Town to undertake the following activities in order to preserve Town Highways. NIS further acknowledges and agrees that NIS shall be financially responsible for all costs associated with such activities to the extent provided for under the terms of this Agreement, including, but not limited to:

- A. The cost of upgrading pavement sections on Town Highways to a design standard as directed by the WIDOT, Facilities Development Manual, Section 140, or Section 5 of this Agreement, whichever is more stringent, to safely and efficiently haul products, equipment and supplies that are necessary for the Project.**

Such upgrades shall include improvements at entrances, intersections and to the typical cross-section of Town Highways. Geometric improvements shall also include any improvements to the Structures and Culverts necessary to accommodate the increased traffic generated from the Project.

- B. The costs for providing Engineering Plans for all improvements necessary, including any right-of-way acquisition costs, shall be paid by NIS.**
- C. NIS shall be responsible for all exceptional maintenance costs, above normal maintenance requirements, that are attributable to damage to Town Highways from the hauling of products, equipment and supplies related to the Project.**

Such exceptional maintenance cost may occur either before or after any improvements to Town Highways referenced above are made. The Town shall inform NIS if the Town has a good faith basis to believe any exceptional maintenance costs may become necessary and the Town shall provide a good faith estimate of costs to NIS prior to commencing work to repair or replace the Town Highway(s).

- D. Prior to starting any work indicated by the Town, NIS shall make a payment to the Town for the estimated costs of the project agreed to by both parties for the improvements to the Haul Route. The cost estimate shall be attached to the project plan and labeled as an Exhibit thereto.**

The NIS payment to the Town shall be in an amount sufficient for the Town to make the necessary improvements to the Haul Route based on the construction plans and the cost estimate agreed upon by the parties.

- E. Notwithstanding the above, NIS acknowledges that conditions may be encountered, or additional requirements may be imposed by WIDOT or other regulatory agency, that require additional work by the Town beyond the estimate provided. NIS specifically accepts that the cost of all additional work under such circumstances shall be the responsibility of NIS.**

Section 5. Haul Route(s) Upgrade(s)

During the first road construction season following the effective date of this Agreement, the Town shall, subject to payment by NIS for the same, bid out the partial or total rebuilding of the Haul Route(s) to cause said Haul Route(s) to consist of a paved surface of thirty (30) feet in width plus shoulders of three (3) feet on either side of the paved surface.

Such construction shall be designed for year-round use, using Wisconsin State DOT standards for Grade and Curvatures.

The Town may request the use of specified alternative Haul Route(s) during such construction or reconstruction.

Section 6 Road Upgrades and Road Account

NIS shall retain, at its cost, a consulting engineering firm experienced with Wisconsin road structure and weather conditions to perform an independent engineering assessment of required upgrades of the designated Town Highways to withstand the hauling of products, equipment and supplies that are necessary for the Project.

The independent engineering assessment will consider and evaluate the replacement, repair and maintenance of the designated Town Highways that will be required to accommodate the traffic volume NIS has indicated it anticipates in conjunction with the Project. The assessment shall determine the extent to which Town Highways will suffer damages, additional wear and tear or shortened lifespan as a result of the traffic generated by NIS, its subcontractors and agents or representative.

The selection of the consulting engineering firm shall be subject to the approval of the Town Board of Supervisors.

Upon execution of this Agreement, the Town and NIS shall develop a plan to upgrade Town Highways in accordance with the findings of the independent engineering assessment and in accord with Section 5 of this Agreement.

The Town of Dovre shall solicit bids for such upgrades, as required by law, and shall select the lowest responsible bidder.

NIS shall make a payment to the Town for the cost of such upgrade(s) and the payment shall be deposited by the Town into a segregated account titled "NIS Road Account". If the actual costs of such upgrade(s) is less than estimated, any unused monies in the "NIS Road Account" will be transferred to the "NIS Maintenance Account" described in Section 7 of this Agreement.

If the actual costs of the upgrade(s) exceed the amount deposited in the "NIS Road Account", the Town shall bill NIS for the additional costs and NIS shall pay the same within thirty (30) days of receipt of the billing.

Section 7 NIS Road Maintenance Account

NIS shall pay the sum of Fifty Thousand Dollars (\$50,000) to the Town within ten (10) business days of the effective date of this Agreement. The monies shall be deposited in a segregated "NIS Road Maintenance Account" and the Town shall use such monies for the maintenance of Town Highways used by NIS.

Any unused monies in the NIS Road Account described in Section 6 of this Agreement shall be transferred to the NIS Road maintenance Account.

After completion of the upgrade(s) described in Section 6, and as frequently as once per year thereafter, the Town may request a joint engineering re-inspection of the Town Highways to determine the extent of any damages, wear and tear or shortened

expected lifespan of such Town Highways caused by NIS, its subcontractors, agents or responsible parties. Such re-inspection shall identify the necessity of, and anticipated costs of, any necessary replacements, repairs and maintenance thereto. NIS shall be solely responsible for all costs of such engineering re-inspection.

In the event that the re-inspection identifies the need for reconstruction of the Town Highway(s) within the following three (3) year period, NIS and the Town shall negotiate an agreement to assign financing and cost sharing responsibility for the reconstruction project.

After each inspection or re-inspection, the Town shall solicit bids for the work necessary to reconstruct or repair the Town Highway(s), as required by law. All costs of such reconstruction or repairs shall be paid from the NIS Road Maintenance Account.

If the costs of reconstruction or repairs exceeds the balance available in the NIS Road Maintenance Account, NIS shall pay its share of such costs within thirty (30) days of the receipt of a billing from the Town.

NIS shall deposit additional monies in the NIS Road Maintenance Account, as required, to maintain an available balance of not less than Fifty Thousand Dollars (\$50,000) on January 2 of each year during which this Agreement is in effect.

Any monies remaining in the NIS Road Maintenance Account shall be returned to NIS within thirty (30) days of the expiration date of this Agreement.

Section 8 Exceptional Maintenance

NIS shall be responsible for all exceptional maintenance costs, above normal maintenance costs, that are attributable to damage to Town Roads from the hauling of products, equipment and supplies related to the Project, Said exceptional maintenance costs may occur either before or after any of the improvements to Town Highways, indicated in Section 5 above, are made.

The Town shall inform NIS if it has a good faith basis to believe that any exceptional maintenance costs have become necessary and the Town shall provide a good faith estimate of the costs to undertake said exceptional maintenance.

Reimbursement for costs under this Section shall be paid from the NIS Road Maintenance Account established in Section 7 of this Agreement.

The Town understands that, due to safety concerns, NIS requires a “bare highway” plowing policy during the winter months. NIS understands that the Town will attempt to maintain the bare road policy, weather permitting.

NIS agrees that any additional costs to the Town of plowing, sanding and salting the Haul Route shall be billed directly to NIS on a monthly basis, with the Town reimbursing itself from the NIS Road Maintenance Account, to the extent that monies are available in the account.

Section 9 Subsequent Town Highway Upgrades

The Town Highway upgrades provided for in Sections 3 and 4 of this Agreement have

an anticipated life of ten (10) years. Re-inspections of these upgrades shall be made by a mutually agreed-upon engineer at the end of each ten (10) year interval of this Agreement to determine the need for additional upgrade(s) of the designated Haul Route(s) over and above the beneficial effects of ordinary maintenance.

The process used in Section 6 shall apply to such additional upgrade(s) and NIS shall make payments for such upgrades according to the provisions of Section 6.

At the end of the Term of this Agreement, NIS shall leave the Haul Route in at least the same condition as it was in at the outset of this Agreement as determined in accord with the survey under Section 3.

Section 10. Exclusive Use of Funds

The Town agrees to exclusively use any payments received from NIS for road upgrades under this Agreement on Town Roads used as haul routes by NIS and NIS's representatives and agents.

The Town further agrees that if other Silica Sand Mining projects or heavy traffic users propose to use the Roads listed in Exhibit A, the Town will make a good faith effort to enter into road use agreements with such parties similar to this Agreement such that the respective parties are responsible for their appropriate pro rata share of road upgrade and maintenance expenses, including those expenses already incurred by NIS as a result of this Agreement.

Section 11. Access Points to Town Highways

The sole access point for all haul trucks, heavy equipment and supply trucks entering the dry plant and load-out facility shall be the access off of 5 ¼ Street.

Section 12 Haul Roads to Remain Open - Exceptions

Subject to the exceptions described below, the Town will keep those Town Highways listed in Exhibit A (Haul Route) of this Agreement open to NIS to haul products, equipment and supplies related to the project for the entire Term of this Agreement, for all vehicles meeting the statutory requirements for weight, width, height and length.

Exceptions to this provision shall include the following:

- A. Where, due to natural disasters, the effects or impacts of winter weather or other causes outside the control of the Town, despite the performance by the Town of general maintenance of the highway or highways, the highway becomes impassable or unsafe in the opinion of the Town.
- B. Where, all or a portion of the Haul Route has been discontinued as a Town Highway pursuant to Section 66.1003, Wis. Stats., provided that in the process the project has not been landlocked and is directly accessible to another public highway.
- C. Where the Haul Route, or part thereof, is temporarily closed due to scheduled or unscheduled maintenance or repairs. In the event of a

temporary closing, the Town will provide NIS with an alternate Haul Route.

The Town shall retain the right and authority to establish and set traffic speed limits in accordance with generally accepted highway standards and safety practices.

Section 13 Use of Town Highways Restricted

NIS agrees to restrict its motor vehicle, heavy equipment and supply traffic to the Town Highways identified in Exhibit A. NIS shall not, under any circumstances, use any other Town Highway for any purpose associated with the construction, development, operation or maintenance of the Project site without first obtaining the approval of the Town Board charged with the operation, maintenance and repair of such Town Highways.

Section 14. Incidental Use

The Parties recognize that Project traffic may, either through mistake or with the consent of the Town, use Town Highways other than those listed in Exhibit A of this Agreement. Any repairs necessitated by damage to such Town Highways caused by NIS or any of its subcontractors during such mistaken or permitted use shall be treated as “exceptional maintenance” under Section 8 above.

Section 15 Use of County Highways Subject to Separate Agreement

Nothing in this Agreement shall be construed to authorize NIS to make use of any Barron County highways or roads for the purposes described in this Agreement. Any such use shall be subject to separate agreement and contract between NIS and Barron County.

Section 16 Hours of Hauling Operations

NIS may haul product, equipment and supplies on the established Haul Route Monday through Friday between the hours of 6:00 am and 6:00 pm, local time. NIS may also haul product, equipment and supplies between the hours of 6:00 am and 12:00 pm, local time, on Saturdays. No hauling of product, equipment or supplies shall be allowed on the holidays noted in the Operations Agreement.

In the event that any or all portions of the Haul Route are used by school buses to pick up or drop off students residing on the Haul Route, NIS agrees that it shall limit its operation of haul trucks and heavy equipment on Town Highways during scheduled school years for the time period every morning and every afternoon when school buses are operating on Town Highways.

Section 17 Operations Practices

NIS agrees it will use its best efforts to ensure that NIS, its subcontractors, agents and responsible parties adhere to the following operating practices:

- A. All Haul Trucks shall be covered so as to minimize dust.
- B. Trucks shall not use compression release brakes, commonly referred to as “Jake Brakes”.

C. All Haul Trucks shall be equipped with mud flaps.

D. All trucks shall adhere to all posted speed limits.

Said agreements shall bind NIS, whether or not the Town has adopted ordinances relating to the subject matter hereof.

Section 18. Estimated Number of Trucks Hauling Daily

NIS estimates that an average of 200 or 175 loaded and unloaded haul trucks will travel each way to and from the Mine Site each day that truck hauling is allowed per the NIS Operations Agreement when the Dry Plant is operating at maximum capacity.

The average number of haul trucks per day is based on 22 tons per truckload. If NIS should utilize 25 ton haul trucks, an average of 175 loaded and unloaded trucks will travel each way to and from the Mine Site each day that truck hauling is allowed per the NIS Operations Agreement when the Dry Plant is operating at maximum capacity.

NIS anticipates a decrease in the total number of round trips per day during the winter months (November through February).

NIS anticipates the annual volume of raw material to be transferred from the Mine Site to the Dry Plant/Load-Out Facility will be 2.5 million tons which includes an average of 6% moisture and 5% unsold sand. These estimates are based on projected mining conditions and processing plant capacity and efficiencies of 100%.

The maximum weight of all haul trucks shall not exceed legal standards. NIS agrees to confer in good faith with the Town in the event of a proposal for a substantial deviation from either the standard weight for haul trucks or in the annual volume of raw materials transferred from the Mine Site to the Dry Plant/Load-Out Facility. NIS understands that it shall be responsible for any highway modification or upgrade resulting from such weight deviation.

Section 19 Scaling of Trucks: Weight Limitations

NIS agrees that each truck shall be weighed at the mine site or processing scales in its loaded state and that all weight slips shall be kept by NIS for a period of three (3) years. A copy of each weight slip shall be provided to the Town after the end of each production year of operation. In lieu of weight slips, NIS may submit a summary report indicating the weight of product shipped from the mine site by day throughout the calendar year.

An empty Tare Weight shall be obtained on each Haul Truck weekly. No Haul Truck shall be operated on Town Highways in excess of statutorily permitted weight limits under Chapter 348, Wis. Stats.

Section 20 Indemnification/Hold Harmless and Liability Insurance Provisions

NIS hereby releases and agrees to indemnify and hold harmless the Town and its respective officers, employees, and agents, and their respective heirs, executors, administrators, successors and assigns (hereinafter collectively "Town Releasees") from any and all third party actions, causes of actions, suits, claims, expenses

(including reasonable attorney's fees) and demands against Town Releasees arising out of or related to the performance by NIS of its obligations under this Agreement.

More particularly, but without in any way limiting the foregoing, NIS 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 of Town Highway(s) subject to this Agreement by NIS or any of its subcontractors, agents or representatives.

In no event shall the Town or any of its officers, agents or employees be liable (in contract or in tort, involving negligence, strict liability or otherwise) to any other party or their 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.

Section 21. Insurance

NIS 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) per occurrence. NIS's insurance coverage shall be primary and list the Town, its officers, officials, agents and employees as additional insured.

NIS shall require all NIS subcontractors, representatives and agents under this Agreement (if any) to procure and maintain insurance meeting the above criteria, applying on a primary basis and listing the Town, its officers, officials, agents and employees as additional insured.

NIS shall provide the Town 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.

In the event that NIS subcontracts functions related to the use of Town Highways by haul trucks to third party agents, it shall be the responsibility of NIS to either assure the Town that its insurance coverage applies to such use, or that its contract agents carry insurance of the type and amount included in this Section, designating the Town, its officers, officials, agents and employees as additional insured.

Section 22. Annual Meeting & Discussion

The Town and NIS shall meet at least annually, or as needed, to discuss Town Highway upgrade and maintenance schedules during the term of this Agreement.

The Town agrees to keep those Town Highways specified in Exhibit A open to Project traffic during Town Highway upgrade and maintenance activities, except that the Town may temporarily close any of the Town Highways specified in Exhibit A for the replacement of a culvert, other structure or due to an emergency, in which event the Town will provide a temporary alternate Hall Route.

Maintenance which may be required to provide a Temporary Haul Route capable of accommodating Haul trucks shall be the responsibility of NIS and will be reimbursed to the Town from the Maintenance Account described in Section 8.

Annual temporary seasonal weight limitations shall not apply to Haul Route(s) specified in Exhibit A, but may be applied to any alternate haul routes in the sole discretion of the Town.

Section 23. Emergency Actions

Notwithstanding the foregoing, in the event that NIS or any of its subcontractors, has caused damage to Town Highway(s) of a magnitude sufficiently great to create a hazard to the motoring public, which in the Town's opinion and sole discretion, warrants an immediate repair or Town Highway closing, the Town may unilaterally close the Town Highway(s) affected and make or authorize the necessary repair. The reasonable, documented costs of any such closure and repair thereof shall be paid by NIS from the Maintenance Account established under Section 7.

Section 24 Remedies and Enforcement

Each of the Parties hereto covenant and agree that in the event of a 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 to proceed to a court of competent jurisdiction for relief at law or equity including, but not limited to, termination of this Agreement for substantial breach.

The failure or refusal of NIS to remit required payments under this Agreement in a timely manner shall constitute cause for the Town to immediately suspend all haul truck operations and use of Town Highways until the payment has been made.

Section 25 Savings/Severability

It is mutually agreed by the Parties that in the event any provision of this Agreement is determined by any court or 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 26 Entire Agreement

This Agreement and the exhibits attached hereto constitute the entire Agreement among the Parties hereto with respect to the subject matter hereof, and supersedes 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, provisions and conditions 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 27 Agent Designation

NIS designates Larry McGlumphey, its Plant Manager, as Agent with primary responsibility for the performance of this Agreement. In the event the Agent is replaced by another for any reason, NIS shall designate another Agent within seven (7) calendar days and provide notice to the Town pursuant to Section 28 below.

Section 28 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 address of the Parties listed below. Notices shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipts.

For the Town:

Town of Dovre
Office of Clerk/Treasure
2894A 3 ½ Avenue
New Auburn, WI 54757

For NIS:

Larry McGlumphey
1000 Parkers Lake Road
Wayzata, MN 55391

Section 29 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 hereinafter determined by the Parties.

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

Section 30 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 omission of the Party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

Section 31 Modification

No modification of this Agreement or of any covenant, condition or limitation contained herein shall be valid unless in writing and duly executed by the Parties hereto.

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

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 31 shall not be waived unless herein set forth.

Section 32 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 the instrument. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or telecopier shall be as effective as delivery of a manually signed counterpart of this Agreement.

Section 33 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 Barron County.

Section 34 Default Termination

In the event NIS shall default in any of the covenants, provisions, agreements, commitments, conditions or obligations herein contained and such default shall continue without remedy for a period of thirty (30) calendar days after written notice thereof to NIS, the Town may, at its sole option and in equity against NIS, including expressly the specific enforcement hereto, forthwith have the cumulative right to immediately terminate this Agreement and all rights of NIS under this Agreement.

Section 35 Waiver of Terms and Conditions

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

Section 35 Compliance with Applicable Laws

NIS 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 NIS and its employees, subcontractors, agents or responsible parties with respect to the terms, provisions and obligations under This Agreement.

Section 36 Cooperation

The parties hereto agree to cooperate with each other in addressing any unforeseen or extraordinary events caused by NIS's activity that would result in significant impacts to the Town Highways. The parties further agree to cooperate with each other in addressing any unforeseen impact of NIS's ability to utilize the Haul Route or any alternative route provided for in this Agreement.

Section 37. NIS Responsible for All Agents

It shall be the duty of NIS under this Agreement to require of all of its contract haulers, subcontractors and agents who operate haul trucks or heavy equipment on Town Highways on its behalf, to comply with all of the terms and conditions of this Agreement applicable to operating heavy vehicles on Town Highways.

The failure or refusal of NIS to meet the requirements of this Section shall constitute a Breach of Contract or Breach of Agreement.

Section 38 Evaluation of Alternative Haul Route

This Agreement shall be effective on September 19, 2014. In the thirty (30) days immediately preceding the effective date of this Agreement, NIS shall evaluate the feasibility of designing and constructing an alternate haul route basically described as a driveway entrance to the Dry Plant and Load-Out Facility built parallel to 5 ¼ Street extending south from 6th Avenue to the Project entrance. NIS shall report the results of the feasibility evaluation to the Town Board prior to September 19, 2014.

Section 39. Definitions

"Exceptional Maintenance" means road construction including, but not limited to, repaving, milling, pulverizing pavement and the adding of base course together with required redesign of highways for safety purposes or to meet State standards at the time of said redesign.

"General Maintenance" includes, but is not limited to, snow plowing, crack sealing, seal coating, shoulder work, and the brushing of rights-of-way.

"Haul Route" means the Town Road or Town Roads designated under this Agreement as being the exclusive route for hauling associated with respect to and from the Project Site.

"Hauling Trucks" means trucks used to haul materials, supplies, and equipment to and from the Project Site as well as filled and empty trucks used for the purpose of hauling non-metallic minerals away from the Project Site.

"NR 135 Reclamation" means the requirement for non-metallic mining operations to reclaim their mining sites, consistent with a permit granted under Wis. Adm. Code Ch. NR 135 and local regulations.

"Project" or "Project Site" means the legally-described parcel or parcels of land from which non-metallic minerals are being processed in the Town of Dovre.

"Representatives" shall mean those agents or third party service providers retained, hired or otherwise engaged by NIS to provide hauling services over Town Roads subject to this Agreement.

"Road Upgrade" includes both general maintenance and exceptional maintenance.

"Roads" shall mean Town Highway, as that term is used in Ch. 82, Wis. Stats.

"Substantial Deviation" shall mean an increase in the number of hauling trucks in excess of 5% above the number of trucks per day specified in this Agreement.

"WIDOT" means the Wisconsin Department of Transportation.

This Agreement Dated this 19th Day of August, 2014

For the Town of Dovre:

Dean Trowbridge _____

Tim Nelson _____

Dan North _____

James Plummer _____

Mitchell Hanson _____

For Northern Industrial Sand, LLC

Larry McGlumphy _____

Attest:

Linda Reinolt: _____
Clerk/Treasurer