

## TOWN ROAD USE AND MAINTENANCE AGREEMENT

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

### RECITALS

WHEREAS, Operator is in the business of mining and production of silica sand, and is in the process of constructing, developing, and operating a non-metallic mining facility (the "Project") in Chippewa County, Wisconsin;

WHEREAS, in connection with the Project, the Parties desire to address certain issues relating to the roads owned, operated and maintained by the Town (collectively, the "Town Roads") over which it will be necessary for Operator and Operator's Representatives to, among other things, transport heavy equipment and certain materials, including, but not limited to, silica sand, over certain Town Roads, which may in certain cases be in excess of the design limits of the Town Roads; and,

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

### AGREEMENT

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

Section 1. Term of Agreement.

This Agreement shall commence upon the date indicated above (the "Effective Date") and shall continue in full force and effect for twenty (20) years. The parties agree that Operator may extend this Agreement without modification for an additional ten (10) years if the life of the Project continues beyond the initial twenty (20) years.

Section 2.

Use of Haul Route.

- A. During the Term, Operator and Operator's Representatives shall be permitted to use the Haul Route. For purposes of this Agreement Haul Route shall mean either: (i) the portion of Town road beginning at 4621 186<sup>th</sup> Ave., then proceeding eastbound to 60<sup>th</sup> Street (also named Gun Club Road), and then proceeding southbound on 60<sup>th</sup> Street to State Hwy 40 (a length of 2.75 miles) or (ii) 4621 186<sup>th</sup> Avenue westbound to the intersection of 186<sup>th</sup> Avenue and County Road DD (a length of 1.65 miles). Operator shall notify Town in writing of such its election to use either option (i) or (ii) above. If Operator and Operator's Representatives cease use of option (i) within two calendar (2) months from the effective date of this Agreement, then Operator's liability for repairs to option (i) shall be capped and in no event ever exceed \$50,000. Assessment of repairs for option (i) shall be done in the same manner as set forth in Section 3(C) below and the amount of the Bond required by Section 3(E) shall be reduced proportionately during the annual review of the Bond amount.
- B. The Operator agrees to comply with the seasonal spring special weight restriction imposed upon Town roads for the approximate six (6) week period beginning in March. The Town agrees to notify the Operator when the seasonal spring special weight restriction goes into effect and the Town agrees not to unnecessarily or unreasonably extend application of such restrictions giving due consideration to this Agreement.
- C. During the Term no additional restrictions, other than those agreed to in writing by both Parties for good cause shall be imposed by Town upon the use of the Haul Route by Operator and Operator's Representatives.

Section 3.

Payments by Operator; Escrow.

- A. Town and Operator agree that a portion of the Haul Route will require an immediate third party assessment and repair. Town and Operator shall promptly engage a mutually agreeable third party to assess and recommend necessary repairs. Operator will prepay an additional \$100,000 to be added to the prepaid \$50,000 Operator placed into the interest bearing escrow account (the Road Maintenance Escrow") with the Town on May 10th, 2011. The additional \$100,000 Road Maintenance Escrow prepayment will be

paid in four (4) equal monthly installments of \$25,000 beginning June 15<sup>th</sup> and continuing on the 15<sup>th</sup> of each month thereafter until paid in full. The Town agrees to make the repairs recommended by the third party assessment. The \$150,000 paid to the Town pursuant to this Section 3(A) shall be considered a dollar-for-dollar pre-payment of any amounts due under Section 3(B).

- B. Operator shall pay \$0.10 per ton of sand for each mile (pro-rated for portions of a mile) such sand is hauled over the Haul Route into the Road Maintenance Escrow. Such payments shall be made quarterly by Operator and Operator shall provide such reasonable documentation to support the payments as may be reasonably requested by Town. If the balance of the Road Maintenance Escrow reaches \$250,000 then Operator shall be entitled to suspend payments to the Road Maintenance Escrow until such time as the Escrow balance reduces to \$50,000.
- C. Operator and Town shall mutually agree to an independent third party who will conduct the initial and annual assessments (the "Assessment") of the Haul Route, in cooperation with and including input from the Parties. Such Assessment shall set forth repairs needed as a result of Haul Route use by Operator and Operator's Representatives and such Assessment shall also contain a reasonable estimate of costs for such repairs. Town shall use, and shall ensure any third party engaged for the Assessment uses, sound planning practices for any and all Haul Route maintenance activities, and Town shall make all reasonable efforts to mitigate and reduce cost of repairs to the Haul Route. Such efforts may include, but would not be limited to, preventive maintenance aimed at overall cost reduction of Haul Route repairs.

Operator shall have an opportunity to review the Assessment and meet with appropriate Town representatives to discuss the Assessment. Parties shall also have the right to modify the recommendations put forth in the Assessment by mutual agreement.

The Town will provide a detailed written statement and accounting to Operator for maintenance costs incurred as the work contained in an Assessment is completed, together with any additional supporting documentation reasonably requested by Operator. Such statement shall be provided to Operator no less than thirty (30) days prior to a withdrawal from the Escrow by Town. Operator

shall have the right to review the documentation and identify errors or omissions. Town shall only receive re-imbursement from Escrow for actual out-of-pocket costs incurred by the Town from maintenance to the Haul Route necessitated by use of the Haul Route by Operator and Operator's Representatives. Such maintenance costs must be directly attributable to damage to the Haul Route caused by Operator and Operator's Representatives from the hauling of products and equipment related to the Project.

The Escrow funds may be used by the Town solely and exclusively for the purpose of carrying out repairs as set forth in an applicable Assessment, in accordance with and subject to the terms and conditions of this Agreement, resulting from use of the Haul Route by Operator and Operator's Representatives.

- D. Operator shall pay to the Town a fee of \$0.06 per ton of sand removed from the Project site for each mile (prorated for portions thereof) such sand is transported over the Haul Route. The payment shall be made by Operator on a quarterly basis and Operator shall provide Town with reasonably sufficient supporting data to the extent reasonably requested by Town. Notwithstanding the foregoing, in no event shall the fee paid under this Section 3(D) ever exceed \$50,000 per year. Town may use the money generated under this Section 3(D) for any purpose approved by the Town Board, which shall give preference to maintenance of any Town Roads, but must give priority to funding repairs needed on Town roads included within Haul Route option (i) and (ii) (as set forth in Section 2(A)) but not being utilized by Operator as the Haul Route.
- E. Operator shall secure a bond in the amount of \$450,000 which shall secure its performance under this Agreement and shall provide coverage for damage to the Haul Route caused directly by Operator and Operator's Representatives. Operator shall provide proof of the bond to Town within fifteen (15) days of the execution of this Agreement. In the event Operator elects to use option (ii) as set forth in Section 2(A) above, then the amount of the Bond shall be proportionately reduced upon the annual review and renewal of the Bond amount.

The parties agree and acknowledge that the Bond amount has been determined by using a total cost per mile for road repairs of \$167,000 per mile. The cost breakdown is as follows:

1. Grinding existing asphalt: \$7,000/mile.
2. Paving (two 2" asphalt lifts, 22' wide): \$150,000/mile.
3. Shouldering (2' shoulders, each side of road): \$10,000/mile.

The Bond amount shall be adjusted on an annual basis coincident with the expiry date of the bond in the event either party can establish either a decrease or an increase in the cost of road repair against the basis set forth in 1 through 3 above or in the event Operator elects to use Haul Route option (ii) as set forth in Section 2(A).

- F. Upon the termination or expiration of this Agreement, the Town shall have twelve (12) months to obtain an Assessment and conduct any repairs or reconstruction needed to the Haul Route as a result of the use by Operator and Operator's representatives. The Assessment and repair process shall be subject to the terms and conditions set out in Section 3(C) above. If no further repairs are needed, then Operator shall be entitled to immediately cancel the Bond. After the expiration of the twelve (12) months contemplated by this Section 3(F), Operator shall be permitted to cancel the Bond and shall have no further liability to the Town for Haul Route repairs. Any unused portion of the Escrow (principal and interest) will be returned to Operator within thirty (30) days.

Section 4. Other Obligations.

- A. Town shall keep the Haul Route open to Operator to haul products and equipment related to the Project for the entire term of this agreement without further restrictions, other than those indicated in this Agreement, for all vehicles meeting statutory requirements for weight, width, height and length.
- B. If conditions or circumstances change and Operator desires to change haul routes, it must first request authorization from the Town. Expenses may be incurred by the Operator for the new haul routes. Except to the extent otherwise provided for elsewhere in this Agreement, all expenses for additional haul routes are not part of this Agreement and shall be negotiated by the Operator and

- Town in a separate agreement in the event any changes are requested.
- C. The Operator shall not be responsible to the Town for any additional costs except those related to road repair as expressly set forth in this Agreement.
  - D. In all aspects of this Agreement, the parties shall deal in good faith with one another using all reasonable efforts to cooperate and reach mutually agreeable solutions in the event of disputes.
  - E. Operator will furnish the Town with the Non-metallic Mining Reclamation Permit within 30 days of Chippewa County Land Conservation and Forest Management's approval, Operator will use its commercially reasonable efforts to provide Town answers to the questions asked in Exhibit A, to the extent that they are not contained within the Chippewa County Land Conservation and Forest Management's approved Non-metallic Mining Reclamation Permit; provided, however, that Operator shall not be required to provide sensitive competitive business information.
  - F. Operator and Operator's Representatives shall tarp all sand loads when travelling on the Haul Route.
  - G. Operator and Operator's Representatives shall adhere to posted speed limits along the Haul Route.
  - H. Trucks of Operator and Operator's Representatives shall not use compression brakes (also known as "jake brakes") along 186<sup>th</sup> Avenue or along 60<sup>th</sup> Street.
  - I. Operator and Operator's Representatives shall promptly clean up any sand load accidentally dumped on the Haul Route.
  - J. Trucks will only cross the Haul Route during the hours of 6:00 a.m. local time until 6:00 p.m. local time, Monday through Saturday.
  - K. The Town agrees to give Operator no less than two (2) weeks notice of any special circumstances affecting travel over the Haul Route; provided, however, that this provision shall not be deemed to exempt the Town from the other provisions of this Agreement with respect to any impediments to travel over the Haul Route.

Section 5. Construction Cooperation.

A. Operator.

Operator understands that Town Road construction and maintenance activities will be on-going while Project hauling is occurring, and that while Town Roads will be open to traffic,

Operator acknowledges that these activities may occasionally slow hauling operations.

B. Town:

During the term of this Agreement, Town and Operator shall meet as needed to discuss Project activities and Town road construction and maintenance schedules. Town agrees to keep the Haul Route open to Project traffic during Town road construction and maintenance activities, except that the Town may temporarily close the Haul Route for replacement of a culvert, structure or due to an emergency. Within its jurisdiction, Town will provide a temporary alternate haul route without additional cost to Operator during such emergency closure.

Section 6. Liability.

- A. Limitations of Liability. In no event shall Town or Operator or any of their Board, officers, elected or appointed officials, agents, investors, principals, shareholders, members, or employees be liable (in contract or in tort, involving negligence, strict liability, or otherwise) to 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 7. Termination.

Operator shall have the option to terminate this agreement for any reason and at any time upon thirty (30) days advanced written notice to Town. Upon such a termination, the final Assessment shall be conducted in accordance with the terms and conditions of Section 3(C). If the final Assessment recommends repairs with a total cost in excess of the then-current balance of the Road Maintenance Escrow, such overages will be billed to the Operator. If the Operator does not pay undisputed charges, then the Bond can be used to cover the shortfall. Operator shall have the right to terminate the Bond pursuant to Section 3(F) and the Unused Escrow will be returned to Operator pursuant to Section 3(F).

Section 8. Use of Haul Route by Other Parties.

In the event any third party begins industrial hauling begins operations in the area and intends to travel or travels across the Haul Route (or a portion thereof), then the Town shall either (i) collect no less funding from the third party than as provided for in this Agreement and any draws from escrow accounts must be done on an equalized basis among users of the Haul Route; or (ii) reduce the requirements under this Agreement to match those of the agreement with other third party users of the Haul Route. In no event shall an agreement between the Town and a third party user of the Haul Route (or a portion thereof) be cause to increase any costs or liability of Operator.

If Town enters into more favorable terms and/or conditions with a third party operating on Town roads, then Town shall offer the more favorable terms and conditions to Operator effective as of the same date such terms and conditions became effective with the third party.

Section 9. Remedies and Enforcement.

Each of the Parties hereto covenant and agree that in the event of default of any of the terms, provisions or conditions of this Agreement by any party (the “Defaulting Party”), which default is not caused by the party seeking to enforce said provisions (the “Non-Defaulting Party”) and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

Section 10. Due Authorization.

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

Section 11. Savings/Severability.

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

Section 12. Entire Agreement.

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

Section 13. Designated Representative.

Operator designates \_\_\_\_\_ as Agent with primary responsibility for the performance of this Agreement. In the event this Agent is replaced by another for any reason, Operator will designate another Agent within seven (7) calendar days and provide notice to Town of replacement pursuant to the procedure set forth in Section 14., Notices.

Section 14. Notices.

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

FOR TOWN: Town of Cooks Valley  
3717 County Highway A  
Bloomer, Wisconsin 54727  
Email: Vicky Trinko at vicinvalley@bloomer.net

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

Section 15. Assignability/Consent.

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

Section 16. Force Majeure.

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

Section 17. Modification

No modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith. No evidence

of any modification shall be offered or received in evidence in any proceeding arising between the Parties hereto out of or affecting this Agreement, or the rights or obligations of the Parties hereunder, unless such modification is in writing and duly executed. The parties further agree that the provisions of this Section 17 will not be waived unless herein set forth.

Section 18. Counterparts.

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

Section 19. 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.

Section 20. Waiver of Terms and Conditions.

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

Section 21. Compliance with Applicable Laws.

Both Operator and Town 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 the terms and obligations under this Agreement.

Section 22. Captions.

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

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

OPERATOR: Preferred Sands of Minnesota, LLC

By: Preferred Unlimited Inc., its manager

\_\_\_\_\_

By \_\_\_\_\_

Its \_\_\_\_\_

TOWN:  
Town of Cooks Valley

\_\_\_\_\_

By:

## Exhibit A

**This Exhibit A is provided to the Town of Cooks Valley Board for informational purposes only. The information provided is true and accurate to the best of the Operator's ability at this point in time, but subject to change based on changed market conditions or business model. Nothing in this Exhibit A is tied to or provided in connection with any Town of Cooks Valley ordinance concerning mining, zoning, permitting, or otherwise.**

Company Name:

Contact Person:

Address:

Phone:

Fax:

Cell:

Email:

Legal Description of land

Tax parcel number

Name and address of surface land owner

Name and address of mineral owner

1) Type of Mine:

2) Final destination of mined material:

3) Describe current land uses within and adjacent to the project area..

4) Permits:

A) Does this mine have a current reclamation permit from Chippewa County to operate?

B) List other permits (county, state, federal, DNR, etc.) necessary for this project, indicate status and provide a copy (if available).

5) Size:

A) Expected maximum depth of mine?  
Depth is relative to what benchmark?

B) Groundwater level in the project area?  
Confirmed or estimated?  
Depth is relative to what benchmark?

C) Will any part of the mine extend below the water table?  
If yes - do you intend to dewater?

If yes - Estimated dewatering rates in gallons per day?  
What impact, if any, will mine dewatering have on neighboring wells?

D) Specify total area (in acres) to be affected by this project. Include areas for future expansion, stockpiling, processing, haul roads, settling basins, buildings, parking facilities. Show all phases for the removal of material. Give a complete description of the entire site. Use a separate sheet if necessary.

6) Mining operations:

A) Describe the method that will be used to dispose of brush and other vegetative debris. Describe the process completely:

B) Describe the methods that will be used to retain topsoil and all other overburden. Describe how the topsoil, subsoil, and other materials will be stored until the reclamation process takes place.

C) Describe the processing methods that will be used at the site. (Processing methods may include stockpiling & storage, blending, grading, crushing, screening & cleaning, scalping, dewatering, and dust control).

D) Describe the method of extraction (shovel and truck, front-end loader and truck, hydraulic dredge, dragline and truck, self loading scraper, other):

E) Will explosives be used?  
If yes - specify the types & methods of explosives used and describe what precautions will be used to prevent physical hazards to persons and neighboring property from flying debris, excessive air blasts, or ground vibrations.

F) Will water be used at the site?  
(Water may be necessary for processing and also to keep dust under control at the pit site and the haul road, if present).

If yes - describe the volume of water needed, the source of the water, and any run off control measures (if needed).

G) Describe the methods used to control dust at the site. This includes mining processes, on haul roads, and while transporting to final destination.

H) Will fuel tanks, solvents, explosives, or other chemicals be stored on site?  
If yes - describe these materials and how they will be secured, stored, and method of containment.

I) Will any of structures need to be established on site? This includes any storage shed, portable toilet, employee facility, etc.  
If yes - specify the number, type, and location:

J) Identify the number of employees expected to work at the site and the facilities that will be provided.

K) Hours / days of operation (including maintenance):

L) Length of time the mine is to remain operational?

7) Trucking operations:

A) How many loads per day? Hours trucks will operate?

B) Weight per load?

C) Type of truck?

D) Which township and county roads will be used to transport material? Please provide a complete description of all roads to be used to transport and to return to the site. Performance bonds may be necessary for the repair and/or restoration of any township road affected in an adverse way. What specific contributions will be taken to insure that the township roads will be maintained to a safe and secure condition?

8) Environmental:

A) List resources that may be impacted by this project such as timber, agriculture, surface water, ground water, air quality, noise pollution, and plant, wildlife or fish habitat. Describe measures that will be taken to mitigate those impacts.

B) Are there any known endangered species on or near the mine site?  
If yes - Describe the species and whether an environmental impact statement will need to be prepared?

C) Are there any known acid producing minerals or soils present?  
If yes - how will acid water pollution from the excavation, stockpiling, and waste areas be controlled?

D) What is the schedule and method for well monitoring within a ¼ mile of the mine's boundaries before, during and after the mine is opened, worked, and reclaimed?

E) Describe erosion control practices that will be used during mining.

F) Describe measures that will be taken to screen the operation from view of surrounding land uses or an explanation of why such measures are not needed.

9) Reclamation:

A) Describe progressive reclamation activities that will occur over the life of the operation. Be complete in the description. If necessary show the reclamation in the various phases.

B) Is an excavated / impounded body of water to be left as part of the reclamation?

If yes - 1) Will it be secured to prevent unauthorized access by the public?

If yes - 2) Will it be stocked with fish?

If yes - what species?

C) Describe the methods that will be used at the cessation of seasonal operations to stabilize slopes from erosion. This includes both wind and water erosion.

D) Will the site will become inactive during current operations for an unspecified period of time?

If yes - Describe the interim reclamation methods that will be used:

E) Describe proposed reclamation including final slopes, high wall reduction, benching, terracing, and other structural slope stabilization measures. Will the reclamation practices being followed be in agreement with all items in Chapter 30 of the General Code of Ordinances of Chippewa County? Specifically, this is Chapter 30 (NON-METALLIC MINING RECLAMATION)

F) Describe anticipated topography, water impoundments, artificial lakes, and future land use of the site. This should be based upon the entire proposed site. It should include a detailed description of the process and how it will relate to the Chippewa County Non-Metallic Mining Reclamation Ordinance.

G) Describe plans for the disposition of surface structures, haul roads, and related facilities after completion of mining.

H) Describe the methods proposed for the disposal or reclamation of oversize and undersized materials. If returned to the site, how will they be incorporated into the reclamation process?

I) Describe or attach a copy of a seeding plan that includes methods of seed bed preparation, seed mixtures, seeding rates, mulching, and other techniques needed to accomplish site stabilization.

J) Describe long term maintenance needed to support reclamation

K) Provide an estimate of the reclamation cost of each phase of the project or the entire site if phasing is not planned.