

COUNTY HIGHWAY UPGRADE AND MAINTENANCE AGREEMENT

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This COUNTY HIGHWAY UPGRADE AND MAINTENANCE AGREEMENT (this "Agreement") is made and entered into this 1st day of August, 2012 by and between Wood County (the "County"), and Completion Industrial Minerals, LLC (the "Operator").

RECITALS

WHEREAS, Operator is in the business of non-metallic mining for frac sand with a processing plant located in the City of Marshfield, Wood County, Wisconsin, and

WHEREAS, the Parties desire to address certain issues relating to the highways owned, operated and maintained by the County (collectively, the "County Highways") over which it will be necessary for Operator and Operator's trucking sub-contractors ("Operator's Representatives") to transport sand, over certain County Highways, which could be in excess of the normal and historic traffic usage of the County Highways; and certain of the County Highways may not be constructed to withstand the frequency and weight of shipments, and

WHEREAS, Wis. Stat. §349.16(1)(c) authorizes the County highway commissioner to enter into agreements on behalf of the County that provides that the County will be reimbursed for any damage done to its highways, and

WHEREAS, Operator has informed the County which County Highways the Operator will utilize to haul sand to a production facility and which information is incorporated in the attached Exhibit A (the "Haul Route"), and

WHEREAS, Operator and County wish to set forth their understanding and agreement as to the highway issues relating to the extra fee charged by County for sand hauling on County Roads, and

WHEREAS, this Agreement shall apply to those County Highways listed on the attached Exhibit A and any other County Highway(s) used by Operator or Operator's Representatives to haul sand to a production facility. Any waste sand material or sand not hauled to a production facility is not covered by this Agreement. Exhibit A includes a detailed map and identifies the County Highways to be used by Operator and Operator's Representatives.

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

- A. This Agreement shall commence upon the date indicated above (the "Effective Date") and shall continue in full force and effect for one year or until the parties enter into a new agreement, whichever occurs first.

- B. The Operator reserves its right to terminate this Agreement immediately via written notice to the County should a legal challenge or legislative action void or modify the Agreement.

Section 2. County Highway Improvements

- A. Operator understands the County will undertake the following activities in order to preserve the County Highways and that the Operator shall only be financially responsible for the costs of said activities to the extent provided for under the terms of this Agreement:
- B. The cost of upgrading pavement sections on County Highways to a design standard as directed by the WISDOT, Facilities Development Manual, Section 11-40, to withstand the hauling of products and equipment that are necessary for hauling sand.
- C. The cost of upgrading the geometric design of the County Highways to a standard as directed by the WISDOT, Facilities Development Manual, Section 11-40, that will safely and efficiently accommodate the traffic that Operator has indicated the sand hauling will generate; including improvements at entrances, intersections and to the typical cross-section. Geometric improvements shall also include any improvements to structures and culverts necessary to accommodate the increased traffic from sand hauling.

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

- D. The cost for providing Engineering Plans for all improvements needed under Sections 2.B. and 2.C. above, including any Right-of-Way needed.
- E. In order to compensate County for repairs and maintenance needed as a result of Operator's use of the County Highways and to accomplish the work provided for in Sections 2.B., 2.C. and 2.D. above, should the County determine it necessary to perform said work, Operator shall make a payment to the County of a fee per ton per mile of Operator's sand transported over the County's Highways. The amount charged to Operator shall be based upon the specific highways set forth on Exhibit A and in the amounts set forth on the attached Exhibit B.

- F. The charges reflected in Exhibit B should be sufficient for County to make needed improvements and maintenance to the County Highways set forth therein. Should additional third party funding of the County Highways set forth on Exhibit A become available to either party, good faith efforts shall be made by the parties to secure said funding and those unanticipated funds received will serve as an offset to the cost estimates and the fee per mile set forth in Exhibit B.
- G. The County agrees to segregate funds for each road set forth on Exhibit A. The County will keep an accounting of Operator's contributions to the segregated account and will keep a record of Operator's contribution balance in such account.

In addition, the collection of monies shall stop when the segregated fund reaches 125% of the amount on Exhibit B for Operator and shall not restart until the Operator's amount is reduced to 100% of the amount on Exhibit B.

Operator shall have full audit rights with respect to the segregated accounts. The County shall provide, on request and at least quarterly, a report on each of the segregated funds' balance and each Operator's account balance. The County shall also provide the Operators' percentage of the fund if more than one Operator is contributing to the fund.

All County records are public records under State law. At least annually or when requested by Operator, detailed documentation will be provided for any and all expenses from said segregated accounts.

It is understood and agreed that the County's agreements and obligations under Section 2, paragraphs A., B., C., D., F., and G. may occur subsequent to the expiration and/or termination of this Agreement and they accordingly survive the expiration and/or termination of this Agreement, subject to any specific limitations as may be set forth in each paragraph.

- H. Operator shall have thirty (30) days from the date of invoicing to make monthly payments to the County. All overdue payments shall accrue interest at the rate of 1.5% per month.
- I. In order to verify the tons of sand transported by or for the Operator over the County Highways set forth on Exhibit A, Operator or Operator's Representative shall weigh the sand on a scale. Operator shall weigh each outgoing and incoming truck that is transporting sand at the site or at the processing plant. Operator shall provide the County on a monthly basis the number of trucks hauling sand over any county highway to a processing plant, the tons of sand on each truck, and which route, if any, set forth on Exhibit A utilized by said haul truck.

- J. The County may install, use and maintain traffic counters on the Operator's property, in a location that will not interfere with Operator's business, to verify the number of trucks carrying sand to and from processing plant. If the County has reason to believe that the Operator is not keeping full and accurate records of the tons of sand being transported over the County Highways set forth on Exhibit A, Operator will allow the County full access to its records for verification. County may charge the Operator its reasonable costs for verification of tonnage hauled and routes used if Operator's records are found to be materially inaccurate.

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

- A. Review for approval all access points to the County Highway system by giving consideration to sight distances, drainage and proximity to other entrances, in a reasonable manner, and in accordance with accepted engineering practices;
- B. Review for approval permits for all utility encroachments on County rights-of-way in a reasonable manner, and in accordance with accepted engineering practices;
- C. Coordinate with Operator and Operator's Representatives so as to minimize the impact of their use of the County Highway System;
- D. Legally perform all maintenance and construction of all improvements pursuant to this Agreement on the County Highways set forth on Exhibit A. The County agrees to comply with applicable state and federal laws and regulations in the construction of improvements described in Section 2. above, and will take no action that would impede the ability of the Operator to qualify for Federal, State or local cost sharing road improvement funding, or that will interfere with the lawful operations of Operator's business.
- E. Keep those County Highways listed on the attached Exhibit A open to the extent reasonably possible in consideration of the condition of the highway, the season, the weather conditions and the funds provided by Operator and the County to maintain said County Highways. The County will be responsible for posting the County Highways with normal and historic weight restrictions when conditions require it and the Operator agrees to comply with those weight restrictions.

Section 4. Highway Inventory

- A. Routing and Access Approval.

This Agreement applies only to the County Highways listed on the attached Exhibit A of this Agreement, except as provided in Section 4. B. If conditions or circumstances change and Operator wants to change haul

routes on County Highways, it must first request authorization from the County. All expenses for additional routes on County Highways are not part of this Agreement and shall be negotiated by the Operator and County and shall be set forth in an updated version of this Agreement's exhibits or in a separate agreement.

B. Incidental Use

The parties recognize that by reason of mistake or necessity, it may happen that Operator or Operator Representatives haul sand over County Highways other than those listed on Exhibit A. In such instances the County may bill Operator for the use of the County Highways at a reasonable rate based upon the same methodology used to arrive at the amounts set forth on Exhibit B..

Section 5. Construction Cooperation.

A. Operator.

Operator shall submit to County a schedule with planned activities that affect the County Highways as described in Exhibit A. Said schedule shall reasonably indicate the estimated number of trucks that will be hauling sand on those County Highways set forth on Exhibit A and the estimated number of tons to be hauled per truck. Operator shall submit the schedule to County within two (2) weeks of execution of this Agreement. Operator shall further provide County with an updated schedule monthly. Operator understands that County Highway construction and maintenance activities will be ongoing while sand hauling is occurring, and that while County Highways will be open to traffic, Operator acknowledges that these activities may slow the hauling process.

B. County.

County and Operator shall meet as needed to discuss sand hauling activities and County Highway construction and maintenance schedules. County agrees to keep those County Highways specified in Exhibit A open to hauling sand during County Highway construction, if any, and maintenance activities, except that County may temporarily close any of the County Highways specified in Exhibit A for replacement of a culvert, structure or due to an emergency, or when a situation arises wherein construction activities warrant an alternate route, in the County's opinion. Unless there is an emergency situation prior to closing a County Highway set forth on Exhibit A, prior to closing said County Highway, County will provide a temporary alternate haul route when reasonably practicable. Annual seasonal weight limitations shall apply to all County Highways set forth in Exhibit A and to any alternate county highway routes approved by County.

C. Emergency Actions.

Notwithstanding the foregoing, in the event Operator or Operator's Representatives have caused damage to County Highways of a magnitude sufficiently great to create a hazard to the motoring public, which in County's opinion warrants an immediate repair or County Highway closing, County may unilaterally close those County Highway(s) affected and make or authorize repair.

Both parties acknowledge that while County is the Jurisdictional Authority for those County Highways listed in Exhibit A, certain emergency situations may arise that fall under law enforcement, fire district or emergency management control. In such situations the County Highway may be closed to traffic. County shall not be responsible for any harm to Operator or Operator's Representatives that may result from County Highway closings hereunder.

Section 6. Required Insurance.

Operator shall at all times throughout the term of this Agreement maintain in full force and effect commercial general liability insurance in the aggregate amount of Three Million Dollars (\$3,000,000) of primary and excess insurance.

The Operator's actions under this agreement as well as those of its agents and subcontractors are understood to share the immunity provisions afforded the county by law.

Section 7. Remedies and Enforcement

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 remedies of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

Section 8. 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 9. Designated Representative

FOR COUNTY:
Douglas J. Passineau
Wood County Highway Commissioner
555 17th Avenue North
Wisconsin Rapids, WI 54495

FOR OPERATOR:

Thomas Giordani, President
Completion Industrial Minerals, LLC
2100 N. Main Street, Suite 212
Fort Worth, TX 76164

COPY TO:
Charles V. Sweeney
Axley Brynson, LLP
2 East Mifflin Street, Suite 200
Madison, WI 53703

Drew Calvert
Dwyer Murphy Calvert, LLP
1301 West 25th Street, Suite 560
Austin, TX 78705

Section 10. 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 certified mail, or other service showing a signed delivery or hand delivered to the addresses of the designated representatives listed above. Notice shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

Section 11. Assignment

This Agreement shall be binding on the Parties hereto, their respective heirs, devisees, assigns and successors. Notice to the Parties shall be made to parties within 30 days of said assignment.

Section 12. 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 Wood County, and the parties further agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

Section 13. Waiver of Terms and Conditions

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

Section 14. Cooperation

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OPERATOR

By: Thomas Giordani
President, Completion Industrial Minerals, LLC

Date

COUNTY:

Wood County, a municipal corporation

By: Douglas J. Passineau
Wood County Highway Commissioner

Date