

Fill in this information to identify the case:

Debtor Superior Silica Sands LLC

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 19-11566

**Official Form 410
Proof of Claim**

04/19

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>A-1 Excavating, Inc.</u> <small>Name of the current creditor (the person or entity to be paid for this claim)</small>	
	<small>Other names the creditor used with the debtor</small> _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
<small>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</small>	<small>Contact phone</small> <u>7158397786</u>	<small>Contact phone</small> _____
	<small>Contact email</small> <u>wwallo@weldriley.com</u>	<small>Contact email</small> _____
	<small>Uniform claim identifier for electronic payments in chapter 13 (if you use one):</small> _____	
4. Does this claim amend one already filed?	<input type="checkbox"/> No <input checked="" type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ <small>MM / DD / YYYY</small>	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____

7. How much is the claim? \$ 1,388,939.89. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Services performed

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: real estate and mining personal property
Basis for perfection: Statutory mining lien under Wisconsin law
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$1,195,911.89
Amount of the claim that is unsecured: \$193,028.00 (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,025* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$13,650*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/22 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 09/09/2019
MM / DD / YYYY

/s/William E Wallo
Signature

Print the name of the person who is completing and signing this claim:

Name William E Wallo
First name Middle name Last name

Title Attorney

Company Weld Riley, S.C.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (877) 634-7165 | International 001-310-823-9000

Debtor: 19-11566 - Superior Silica Sands LLC		
District: District of Delaware		
Creditor: A-1 Excavating, Inc. c/o William E Wallo Weld Riley, S.C. 3624 Oakwood Hills Parkway P.O. Box 1030 Eau Claire, WI, 54702 United States Phone: 7158397786 Phone 2: Fax: Email: wwallo@weldriley.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement:	
Has Related Claim: No Related Claim Filed By:		
Filing Party: Authorized agent		
Other Names Used with Debtor:	Amends Claim: Yes Acquired Claim: No	
Basis of Claim: Services performed	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 1,388,939.89	Includes Interest or Charges: Yes	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: Yes: 1,195,911.89 Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Real Estate Other Describe: real estate and mining personal property Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Statutory mining lien under Wisconsin law Amount Unsecured: 193,028.00	
Submitted By: William E Wallo on 09-Sep-2019 2:40:15 p.m. Eastern Time Title: Attorney Company: Weld Riley, S.C.		

Calculation of A-1 Excavating Proof of Claim

Unpaid pre-petition services and charges (see invoice):	\$1,195,911.89
Damages associated with breach of mining agreement (from unjustified termination without required notice):	
Lost profits (1 month):	\$100,000.00
Interest/finance charges on outstanding invoices:	\$93,028.00
Total:	\$1,388,939.89

Secured claim:

Of the above amount, \$1,195,911.89 was for excavating/ mining activities performed on the mines in Barron County, Wisconsin. A-1 has a mining lien claim under Wisconsin law against any mining-related real estate to secure \$712,157.37 of that amount. The entire \$1,195,911.89 is secured by a first and paramount lien on all mining-related personal property of Superior located in the state of Wisconsin. A-1 is also entitled to recover as part of its secured claim all accrued and accruing interest, fees, and costs associated with those charges.

5. Date of first unpaid services: May 18, 2019

6. Date of last unpaid services: June 30, 2019

7. Amount of unpaid services
Within 60 days: \$712,157.37

8. The Total Amount owed to Claimant: \$ 1,195,911.89

Amount paid or otherwise satisfied to date: (\$ 0.00)

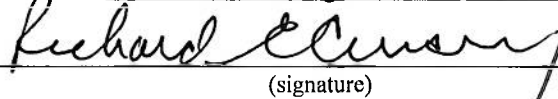
LIEN AMOUNT CLAIMED: \$ 712,157.37

Statement of Claim

Claimant makes and files this claim for a lien upon the interest held by the Owner in the Property under Wis. Stat. §§ 779.35 and 779.36(2) not more than 60 days after the claim became due and payable. Claimant certifies to the best of Claimant's knowledge and belief that all information contained in this Claim for Lien is correct. Based upon the above information, Claimant claims a lien upon all of the interest which the Owner has in the above described Property and improvements on it at the time of first visible commencement of the work of improvement, or that Owner may have acquired since that time, along with any personal property belonging to Owner connected with the mining operation belonging to Owner, including the products of the mine, in the amount of Seven hundred twelve thousand one hundred fifty seven and 37/100ths Dollars (\$ 712,157.37).

This claim is subject to amendment in the event foreclosure action is commenced.

Claimant's Name: A-1 Excavating, Inc.

By: 
(signature)

Authorized Agent's Name: Richard E. Crusing
(print name of person signing above)

Title: Controller

Address: 408 26th Avenue, Bloomer WI 54724

Telephone No: 715-568-4141

PARCEL 1

Lot 1 of Certified Survey Map No. 6098, recorded in Volume 40 of Certified Survey Maps, Page 178 as Document No. 812121, which is part of the fractional Southwest Quarter of the Southwest Quarter of Section 19, Township 33 North, Range 13 West, in the Town of Arland, Barron County, Wisconsin.

Parcel Identification Number: 004-1900-18-010

PARCEL 2

The Northwest Quarter of the Southwest Quarter of Section 20, Township 33 North, Range 13 West (in the Town of Arland), Barron County, Wisconsin.

Also being the same property surveyed and described by metes and bounds on that certain ALTA/ACSM Survey prepared by Jon M. Nelson, S-1969, of Cooper Engineering, dated July 10, 2014, executed by the surveyor on July 17, 2014, identified as Project No. 14365072.

Beginning at the W 1/4 corner of Section 20; thence S89°26'09"E, along the north line of the NW 1/4 of the SW 1/4, 1330.76 feet to the NE corner of the NW 1/4 of the SW 1/4; thence S00°16'54"W, along the east line of the NW 1/4 of the SW 1/4, 1321.37 feet to the SE corner of the NW 1/4 of the SW 1/4; thence N89°32'55"W, along the south line of the NW 1/4 of the SW 1/4, 1326.05 feet to the SW corner of the NW 1/4 of the SW 1/4; thence N00°04'41"E, along the west line of the NW 1/4 of the SW 1/4, 1324.01 feet to the point of beginning.

Parcel Identification Number: 004-1900-20-000

PARCEL 3

The Southwest Quarter of the Southwest Quarter of Section 20, Township 33 North, Range 13 West (in the Town of Arland), Barron County, Wisconsin.

Also being the same property surveyed and described by metes and bounds on that certain ALTA/ACSM Survey prepared by Jon M. Nelson, S-1969, of Cooper Engineering, dated July 10, 2014, executed by the surveyor on July 17, 2014, identified as Project No. 14365072.

Beginning at the SW corner of Section 20; thence N00°04'41"E, along the west line of the SW 1/4 of the SW 1/4, 1324.00 feet to the NW corner of the SW 1/4 of the SW 1/4; thence S89°32'55"E, along the north line of the SW 1/4 of the SW 1/4, 1326.05 feet to the NE corner of the SW 1/4 of the SW 1/4; thence S00°16'54"W, along the east line of the SW 1/4 of the SW 1/4, 1321.36 feet to the SE corner of the SW 1/4 of the SW 1/4; thence N89°39'44"W, along the south line of the SW 1/4 of the SW 1/4, 1321.34 feet to the point of beginning.

Parcel Identification Number: 004-2000-16-000

PARCEL 4

The Northeast Quarter of the Southeast Quarter, except the South 250 feet of the North 654 feet of the East 350 feet thereof, The East 198 feet of the Northwest Quarter of the Southeast Quarter; The East 198 feet of the Southwest Quarter of the Southeast Quarter; All in Section 19, Township 33 North, Range 13 West (in the Town of Arland), Barron County, Wisconsin.

Also being the same property surveyed and described by metes and bounds on that certain ALTA/ACSM Survey prepared by Jon M. Nelson, S-1969, of Cooper Engineering, dated July 10, executed by the surveyor on July 17, 2014, identified as Project No. 14365072.

Beginning at the E 1/4 corner of Section 19; thence $S00^{\circ}04'41''W$, along the east line of the NE 1/4 of the SE 1/4, 404.01 feet to the NE corner of the South 250 feet of the North 654 feet of the East 350 feet of the NE 1/4 of the SE 1/4; thence $S89^{\circ}43'32''W$, 350.01 feet to the NW corner of the South 250 feet of the North 654 feet of the East 350 feet of the NE 1/4 of the SE 1/4; thence $S00^{\circ}04'41''W$, 250.00 feet to the SW corner of the South 250 feet of the North 654 feet of the East 350 feet of the NE 1/4 of the SE 1/4; thence $N89^{\circ}43'32''E$, 350.01 feet to the SE corner of the South 250 feet of the North 654 feet of the East 350 feet of the NE 1/4 of the SE 1/4; thence $S00^{\circ}04'41''W$, along the east line of the NE 1/4 of the SE 1/4, 670.00 feet to the SE corner of the NE 1/4 of the SE 1/4; thence $S89^{\circ}59'45''W$, along the south line of the NE 1/4 of the SE 1/4, 1312.11 feet to the SW corner of the NE 1/4 of the SE 1/4; thence $S00^{\circ}07'00''W$, along the east line of the SW 1/4 of the SE 1/4, 1317.82 feet to the SE corner of the SW 1/4 of the SE 1/4; thence $N89^{\circ}44'03''W$, along the south line of the SW 1/4 of the SE 1/4, 198.00 feet; thence $N00^{\circ}07'00''E$, along a line located 198 feet west of (measured at right angles to) the east line of the SW 1/4 of the SE 1/4 and the east line of the NW 1/4 of the SE 1/4, 2633.77 feet to the north line of the NW 1/4 of the SE 1/4; thence $N89^{\circ}43'32''E$, along the north line of the NW 1/4 of the SE 1/4 and north line of the NE 1/4 of the SE 1/4, 1509.26 feet to the point of beginning.

Parcel Identification Number: 004-2000-17-000

PARCEL 5

Lot 1 of Certified Survey Map # 6054 recorded in Volume 40 of Certified Survey Maps, Page 134 as Document #808118 in Barron County, Wisconsin which is a part of the NW 1/4 of the NW 1/4 of Section 30, T. 33 N., R. 13 W., Town of Arland, Barron County, Wisconsin.

Parcel Identification Number: 004-3000-08-010

PARCEL 6

The East one-half of the Northwest Quarter of the Northeast Quarter of Section 31, Township 33 North, Range 13 West (in the Town of Arland), Barron County, Wisconsin.

Parcel Identification Number: 004-3100-04-000

PARCEL 7

That part of the Southeast Quarter of Section 23, Township 34 North, Range 13 West (in the Town of Clinton), lying South of the Vermillion River.

The Northwest Quarter of the Northeast Quarter;

That part of the Southwest Quarter of the Northeast Quarter lying North of the North right-of-way line of the Soo Line Railroad;

All in Section 26, Township 34 North, Range 13 West (in the Town of Clinton), Barron County, Wisconsin.

Parcel Identification Number: 014-2600-03-000

PARCEL 8

Lot 1 of CSM 11-107, being a part of the East 1/2 - SE of 35-32-10 (in the township of Dovre), CSM MAP #1520

Parcel Identification Number: 022-3500-29-000

PARCEL 9

Outlot 4 of Certified Survey Map No. 5880, Volume 39, Page 140, Document No. 785496, a part of the NW 1/4 of the NE 1/4, part of the SW 1/4 of the NE 1/4, part of the SE 1/4 of the NE 1/4, and part of the NE 1/4 of the SE 1/4, of Section 35, Township 32 North, Range 10 West, Town of Dovre, Barron County, Wisconsin.

Parcel Identification Number: 151-8000-04-000

PARCEL 10

The Westerly 50 feet of the 250 foot wide railroad right of way, located in the SE 1/4 of the SE 1/4 of Section 35, Township 32 North, Range 10 West, Town of Dovre, Barron County, Wisconsin.

Parcel Identification Number: 151-8000-05-000

PARCEL 11

That part of the SE 1/4 of the SE 1/4 of Section 35, Township 32 North, Range 10 West, Town of Dovre, Barron County, Wisconsin; lying West of the railroad right-of-way and described as follows: Commencing at the intersection of the South forty line and the West line of the railroad right-of-way; thence West along the South forty line 259 feet; thence North 469 feet; thence East 127 feet to the railroad right-of-way; thence Southerly along said railroad right-of-way to the point of beginning.

Parcel Identification Number: 151-8000-06-000

PARCEL 12

That part of the NE 1/4 of the SE 1/4 of Section 27, Township 34 North, Range 12 West, City of Barron, Barron County, Wisconsin, described as follows:

Beginning at the Northwest corner of said NE 1/4 of the SE 1/4 of Section 27, Township 34 North, Range 12 West; thence East, on the quarter line a distance of 226 feet; thence South on a line parallel with the West line of said NE 1/4 of the SE 1/4 of Section 27, Township 34 North, Range 12 West a distance of 200 feet; thence East on a line parallel with the North line of said NE 1/4 of the SE 1/4 of Section 27, Township 34 North, Range 12 West a distance of 133 feet; thence South on a line parallel with the West line of said land, until the same intersects the center line of the Yellow River; thence Westerly, following the said center line of said Yellow River, until the same intersects with said West line of said land; thence Northerly, following the said West line of said land to the point of beginning;

EXCEPT lands conveyed for highway purposes in Volume 132 of Deeds, Page 173 as Document #315407; AND in Volume 2263 of Records, Page 821 as Document #785545;

AND EXCEPT Lot 1 of Certified Survey Map #2134 recorded in Volume 15 of Certified Survey Maps, Page 64 as Document #479636;

AND EXCEPT Commencing at the Northeast corner of said NE 1/4 of the SE 1/4 of Section 27, Township 34 North, Range 12 West; thence South along the East line of said forty, 11 feet to the center line of U.S. Highway 8; thence S 89°55' W 900 feet; thence S 0°5' E along the West line of 16th Street, 639 feet; thence S 89°55' W 46 feet to the place of beginning; thence S 89°55' W 16 feet; thence S 0°5' E to the thread of the Yellow River; thence Easterly following the thread of the Yellow River to a point S 0°5' E of the point of beginning; thence N 0°5' W to the point of beginning;

AND EXCEPT Commencing at the Northeast corner of said NE 1/4 of the SE 1/4 of Section 27, Township 34 North, Range 12 West; thence South along the East quarter line a distance of 11 feet to the center line of U.S. Highway 8; thence S 89°55' W a distance of 900 feet; thence S 0°5' E along the West line of 16th Street a distance of 460 feet to the point of beginning; thence continuing S 0°5' E along the West line of 16th Street a distance of 146 feet to the intersection of the center line of Riverview Drive extended West; thence S 89°55' W along said center line extended a distance of 150 feet; thence N 0°5' W parallel to the West line of 16th Street a distance of 146 feet; thence N 89°55' E 150 feet to the point of beginning.

Parcel Identification Number: 206-8045-75-000

MINING SERVICES AGREEMENT

THIS MINING SERVICES AGREEMENT (this "Agreement") is made as of the 18th day of March, 2019 (the "Effective Date"), by and between Superior Silica Sands LLC ("Company"), with an address of 5600 Clearfork Main Street, Suite 400, Fort Worth, TX 76109 and A1 Excavating, Inc. ("Contractor"), with an address of PO Box 90, Bloomer, WI 54724.

RECITALS

- A. WHEREAS, Company wishes to secure the services of an experienced mining contractor willing to, upon Company's request, provide mining of sand and related materials at certain of Company's mining or other facilities located in the United States;
- B. WHEREAS, Contractor is willing to provide such mining services to Company upon request in accordance with the terms and conditions set forth herein and any Purchase Order (as defined below) issued hereunder; and
- C. WHEREAS, accordingly, Company and Contractor now wish to set forth in this Agreement the terms and conditions under which Contractor will provide mining services to Company.

NOW THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Company and Contractor hereby agree as follows:

AGREEMENT

1. Definitions.

Business Day – means each day other than a Saturday, Sunday or other day on which banks in Fort Worth, Texas are not required by law to be open.

Contract Year – each 12-month period beginning on the Effective Date of this Agreement and each anniversary thereof.

Facility – means each mining facility located in the United States where the Contractor will perform the Mining Services (as defined below) as requested by Company hereunder.

Purchase Orders – means Company's desired form of purchase order for Mining Services which may be provided to Contractor electronically or in hard copy from time to time, which form may be amended by Company at any time, in its sole discretion. Each Purchase Order, at a minimum, shall specify the type of Mining Services to be provided and the agreed to compensation to be paid by Company to Contractor for such Mining Services.

2. Term, Termination and Cancellation.

- (a) Term. This Agreement shall be effective as of the Effective Date and shall continue for one year thereafter (the "Initial Term"). At the conclusion of the Initial Term and each Continuation Term (as defined below), this Agreement shall

automatically renew for an additional one-year period (each a “**Continuation Term**”, and collectively, together with the Initial Term, the “**Term**”), unless Company provides written notice to Contractor of its desire to terminate this Agreement at least 30 days prior to the expiration of the then current Term.

(b) Cancellation for Convenience. Either party may terminate this Agreement as it applies to the issuance of future Purchase Orders upon thirty (30) days’ prior written notice to the other party; provided, however, that in no event shall any such termination affect the parties’ respective obligations under any Purchase Orders outstanding as of the effective date of any such termination.

(c) Cancellation for Default.

(1) Either party may cancel this Agreement, including any or all outstanding Purchase Orders, upon an occurrence of any event of default as to the other party, such cancellation to be effective upon the defaulting party’s receipt of written notice of cancellation for default. An event of default shall include (a) fraud or any fraudulent practice with respect to this Agreement, (b) any material breach of this Agreement, provided that the non-breaching party shall give notice of such breach to the breaching party and the breaching party shall have failed to cure such breach within 15 days after notice of breach is given, (c) dissolution of the other party or (d) if the other party becomes insolvent, voluntarily files a petition for relief under bankruptcy or any similar or other insolvency laws (or has a petition filed against it and the same remains undischarged or unstayed for 60 days) or voluntarily or involuntarily enters receivership or any similar or other insolvency proceeding. Upon the occurrence of an event of default as to a party, the non-defaulting party shall have all rights and remedies available to it under this Agreement, at law and in equity.

(2) If Company cancels this Agreement under this Section 2(c), Company, in addition to any other remedies available to Company at law or in equity, shall have the right to enter into direct agreements with another contractor or with Contractor’s subcontractors for the performance of the Mining Services and charge Contractor for any payments made to such third parties and/or set such amounts off against amounts due to Contractor under this Agreement or any Purchase Order issued hereunder.

(d) Effect of Termination or Cancellation. Company and Contractor shall have no obligations under this Agreement or any new Purchase Orders issued after the effective date of the termination hereof; provided, however, that any such termination shall not excuse Company or Contractor from any obligation or liability hereunder or under any Purchase Order that accrues prior to or upon the effective date of such termination or any obligation that expressly survives the termination or expiration of this Agreement.

3. Scope of Services.

(a) Mining Services. During the Term of this Agreement, Company or its designated agent shall be entitled to request Contractor to perform the mining services as outlined in each Purchase Order issued by the Company to Contractor in connection with this Agreement (collectively, “**Mining Services**”) and such mining services shall be subject to the terms and conditions set forth herein and in each Purchase Order.

(b) Work Scheduling. Company or its designated agent shall work with Contractor to develop a schedule for Mining Services as required by Company to fulfill its processing requirements. Contractor shall be available to provide the Mining Services Monday through Sunday (including holidays) and up to 24 hours per day.

(c) No Minimum Obligation. Company shall not be obligated to order any minimum amount of Mining Services from Contractor. Company expressly reserves the right to obtain from other contractors mining and other services of the same or similar type as it may require Contractor to perform hereunder or under any Purchase Order.

4. General Terms Applicable to the Mining Services.

(a) Timely Performance. Contractor shall perform the Mining Services in a timely manner to ensure the delivery of unprocessed sand in accordance with Company's reasonable processing and/or transportation requirements.

(b) Care. Contractor shall follow prudent and safe practices to maintain the quality and integrity of the unprocessed sand. Contractor shall also follow any special care instructions provided by Company and shall cooperate with Company to protect the quality and physical integrity of the unprocessed sand in connection with the Mining Services and any transportation of the unprocessed sand related thereto.

(c) Personnel. Contractor shall provide an adequate number of qualified and experienced operators and other qualified, experienced and competent personnel to perform the Mining Services (collectively, "**Personnel**"). Such personnel shall be adequately trained by Contractor or outside subcontractors to perform the Mining Services. The contractor shall follow all applicable codes of federal regulation as stated for metal/non-metal mining operation (30CFR) and applicable state regulations as they may vary from state to state. The contractor shall adhere to all environmental, health & safety policies/procedures of the company, federal regulations and state regulations (as amended from time to time). Should the contractor receive a monetary fine assessment for violation of the CFR30 by the Department of Labor (MSHA) or the environmental entity for their state where work is being performed and the company is subsequently issued the same violation and monetary fine that the contractor received (known as duality citation), the contractor shall reimburse the company for all fine assessments and legal fees if applicable. The contractor shall furnish their own person in charge of safety (Safety Specialist/Manager) who shall oversee all required training and required certifications. The contractor safety personnel shall oversee all subcontractors and insure that the subcontractors follow all required training and certification requirements. All personnel shall be certified under the regulations of the Mining Safety and Health Administration (as amended from time to time, "**MSHA**") to perform the Mining Services to the extent required by applicable law. Contractor shall cause its operators, other employees, subcontractors and agents to perform the Mining Services in strict compliance with this Agreement, each Purchase Order and all applicable law, and shall cause such personnel to conduct themselves in a safe and professional manner. Contractor shall promptly remove from the performance of the Mining Services any operators, other employees, subcontractors or agents whose continued performance is determined by Company to be detrimental to Company's best interests, in Company's sole discretion.

(d) Subcontractors. Contractor may engage subcontractors and agents for the performance of the Mining Services, provided that such subcontractors and agents shall be subject to Company's prior approval. If Contractor engages subcontractors, agents or other third parties for the performance of any of the Mining Services, Contractor shall be liable for the payment to such parties of all sums due such parties for any such performance and shall cause such parties to comply with the provisions of this Agreement and all Purchase Orders issued in connection herewith. Company shall not be liable for any payments or other liabilities to any such subcontractors, agents or other third parties.

(e) Inspections. Contractor shall make its Equipment (as defined below) and Personnel available to any official presenting proper identification of a governmental agency having jurisdiction over the Equipment, Personnel, Mining Services, Company or any of its Facilities for inspection if such inspection is mandatory to comply with applicable laws, rules or regulations, including, without limitation, MSHA standard inspections, if applicable. Except for any such governmental officials and Contractor's operators, other employees, subcontractors and agents who are performing the Mining Services, Contractor must obtain Company's prior written permission before allowing any person or group to enter any Facility to inspect any Equipment or Personnel located thereon. If any entity requests an inspection of the Equipment, Personnel, Mining Services, Company, any Facility or Contractor's records related thereto, Contractor shall promptly notify Company in writing. Personnel and Equipment shall at all times be available for inspection by Company and its authorized agents.

(f) Security.

(1) Company and its authorized agents shall have the right to verify the identity of Contractor's Personnel when entering or exiting a Facility. Contractor shall cause its Personnel to comply with Company's policies relating to Facility security. Without limiting the foregoing, Contractor shall cause each of its Personnel to present his or her valid and current driver's license or other acceptable form of identification at any Facility as required by Company or its authorized agent.

(2) Contractor, as to all Personnel who perform (or will perform) any Mining Services (whether current employees, independent contractors or new hires), prior to assigning any Personnel to perform any Mining Services, shall have a reputable third-party background screening company conduct an employment and criminal background check, and, to the extent permitted by local, state, and federal laws, Contractor shall not permit any person with an "Adverse Finding" (as specified below) to enter any Facility or to perform any Mining Services. Contractor also shall comply with Company's audit requirements set forth below:

(A) *Employment Verification.*

- (i) Social Security to establish identity including any subsequent checks (Adverse Finding: No or invalid Social Security Number, or an inconsistency as to the Social Security Number among the subject's documentation);
- (ii) The verification of the last two residences (or five years), and employment history for the past three years. Gaps in

excess of 30 days must be accounted for (Adverse Finding: Unaccounted 30-day or more gap);

- (iii) Military Service (DD-214) which applies only when applicant self discloses the military as an employer and/or subsequent checks through the government (Adverse Finding: Misrepresentation of service or dishonorable discharge);
- (iv) I-9 Verification (Immigration Reform and Control Act of 1986) (Adverse Finding: No verification or missing underlying documentation); and
- (v) Personnel shall not be on any Denied Persons List or the Specially Designated Nationals and Other Blocked Persons List (Adverse Finding: Employee is on either list or any similar list).

(B) *Criminal Investigation.*

- (i) Conduct a criminal background check to determine if the employee or contractor was ever convicted of a crime or has pled guilty to any criminal charge. This criminal background check must be conducted at local, state and federal levels and through the applicable Department of Motor Vehicles. A review of records must be conducted in any state where any employee who may operate any motor vehicle has resided in the past seven years or as allowed by applicable state law (Adverse Finding: Felony or multiple misdemeanor convictions other than minor traffic violations);
- (ii) For employees or contractors who will be required to operate a motor vehicle, verification, through the applicable Department of Motor Vehicles' records, whether such employee or contractor has a valid CDL. Checks must be conducted in any state or as allowed by applicable state law, whereby, the employee or contractor has resided in the past seven years; and
- (iii) A five-panel drug screening test will be conducted as per Federal Motor Carrier Regulations for: marijuana (THC metabolite), cocaine, amphetamines, opiates (including heroin), phencyclidine (PCP) (Adverse Finding: Employee tests positive for any of these substances).

(C) *General.* A person also shall be deemed to have an Adverse Finding if Contractor knows, or, in the exercise of reasonable care, should have known, that

the subject person presents a more than insignificant risk to the safety or the physical integrity of any other person at the Facility or to the competent performance of the Mining Services. Similarly, if Contractor or Company, becomes aware (subsequent to a background check or otherwise) of facts or circumstances that would be an Adverse Finding under this Section 4(f), Contractor shall immediately remove such person from the Facility and from performing any Mining Services and thereafter shall not assign such person to perform any Mining Services or permit them to enter any Facility.

(D) *Compliance.* Company may periodically audit Contractor's records to ensure compliance with these requirements. Such audits will be undertaken with advance notification to Contractor by Company. The audit will primarily consist of randomly selected Personnel used by Contractor. The audit documentation required by Company, in its sole discretion, will be matched against Contractor's invoice from the background screening company showing evidence of the background screening investigation. For the purposes of this audit, Contractor shall maintain redacted copies of the invoices from the background screening company performing the services. The invoices must itemize the types of background checks conducted for all the subject personnel identifying the checks performed for each such individual in accordance with this policy.

(g) Performance and Safety Standards.

(1) Contractor's safety standards shall conform to the highest standards of the mining industry in the United States, and Contractor shall perform the Mining Services in compliance with all such standards and all applicable laws. Contractor will use commercially reasonable efforts to provide the highest quality service available through maximizing the availability of Contractor's Equipment and Personnel while minimizing costs and losses as the result of any accidents or other loss events.

(2) Contractor acknowledges that Company may periodically assess Contractor's performance of the Mining Services according to criteria developed by Company. For example, as part of such assessments, Company may consider, without limitation, Contractor's deliveries, quantity and timing thereof, Equipment problems and accidents, claims, losses, etc. Company may, in its sole discretion, use the results of such assessments in determining whether the Company considers the Contractor for additional Mining Services or other work. In its discretion, Company may share the results of any such assessment with Contractor. Contractor agrees to use its best efforts to remedy any deficiencies in its performance of the Mining Services as may be identified by Company as a result of any such assessment.

(h) Inability to Timely Perform. Contractor shall immediately notify Company of any expected delays in performing its obligations in accordance with the provisions in this Agreement or any Purchase Order for any reason.

(i) Relationships with Third Parties. In the performance of the Mining Services, Contractor shall use all reasonable efforts to cooperate with Company employees, agents and other third-parties involved in operations of each Facility.

(j) Title and Risk of Loss. All materials mined under this Agreement and each Purchase Order shall remain the sole and exclusive property of Company. Moreover, none of the materials mined shall be transferred or delivered by Contractor to any person or entity except as directed by Company. To the extent permitted by applicable law, Contractor waives any right to claim a lien on any materials mined under this Agreement or any Purchase Order, and Contractor shall obtain a similar lien waiver from any subcontractor, agent or other party engaged by Contractor to perform any of the Mining Services.

(k) Performance Bond. At any time Company may require Contractor or any of its subcontractors to issue a performance bond relating to any Mining Services.

5. Equipment.

(a) General Requirements. Contractor shall obtain and keep available a sufficient amount of equipment (“**Equipment**”) suitable for mining to enable Contractor to provide the Mining Services as required by Company in accordance with this Agreement. In addition, Contractor shall ensure that all Equipment complies with all applicable MSHA and other applicable laws, rules and regulations.

(b) Maintenance. Contractor shall maintain the Equipment in good working order at its sole cost and expense, including all routine and non-routine maintenance required during the useful life of the Equipment.

6. Warranties and Remedies.

(a) Contractor Warranties. Contractor represents and covenants to Company that:

(1) Contractor has all necessary power and authority to enter into and perform its obligations under this Agreement and each Purchase Order, including all necessary permits, licenses and similar authorizations. Contractor holds all required MSHA certifications, and all such certificates are valid and in full force and effect.

(2) The execution, delivery and performance by Contractor of this Agreement and each Purchase Order have been duly authorized by all necessary corporate, partnership or limited liability company action.

(3) This Agreement and each Purchase Order constitute a legal, valid and binding obligation of Contractor enforceable against it in accordance with its terms.

(4) There is no action, suit or proceeding, at law or in equity, or official investigation before or by any government authority, arbitral tribunal or other body pending or, to the best knowledge of Contractor, threatened against or affecting Contractor or any of its properties, rights or assets, that could reasonably be expected to result in a material adverse effect on Contractor’s ability to perform its obligations under this Agreement or any Purchase Order, or on the validity or enforceability of this Agreement or any Purchase Order.

(5) Contractor is financially solvent, able to pay its debts as they mature, and possesses sufficient working capital to complete its obligations under this Agreement and each Purchase Order. Contractor is able to furnish the tools, materials, supplies, equipment, labor and services needed to perform this Agreement and each Purchase Order

(including all Equipment), is experienced in providing the Mining Services that may be required by Company, and is competent to perform Contractor's obligations under this Agreement and each Purchase Order.

(b) Services. Contractor warrants that it has experience and expertise in performing services of the type required herein and that the Mining Services performed under this Agreement and each Purchase Order shall (i) be performed in strict accordance with all conditions and requirements herein, (ii) be performed in strict accordance with all applicable laws and regulations, (iii) be performed in a diligent and workmanlike manner by qualified and skilled personnel appropriately supervised and (iv) reflect the highest level of care, skill, knowledge and judgment required or reasonably expected of providers of comparable services. If Company discovers that any Mining Services performed by Contractor fail to conform to the above warranties, then Company may obtain the services of another contractor to remedy the nonconforming Mining Services and Contractor shall reimburse Company for all remedial costs Company may incur.

(c) Permits and Authorizations. Contractor represents and warrants that Contractor has procured, and that it shall keep in full effect during the Term, all permits and authorizations required by applicable law for Contractor to provide the Mining Services, including, without limitation, any required federal, state or local permits. To the extent that Contractor engages subcontractors, agents or others for the performance of any of the Mining Services, Contractor shall cause all such subcontractors, agents or others to procure, and shall cause such parties to keep in full effect at all relevant times, such required permits and authorizations. When requested by Company, Contractor shall provide Company with written documentation satisfactory to Company evidencing compliance with this subsection.

7. Compensation.

(a) Purchase Orders. Company will pay Contractor for the Mining Services provided by Contractor according to the terms of the applicable Purchase Order. The compensation payable to Contractor under each Purchase Order constitutes the full and complete compensation that Contractor shall be entitled to receive in connection with the Mining Services provided thereunder, and no other or additional compensation shall be payable to Contractor in connection with such Purchase Order or this Agreement, including for the provision and maintenance of the Equipment, the provision of all labor and supervision (including all Personnel), the costs of all materials, consumables, tolls and taxes, and any other costs or expenses incurred by Contractor in the performance of its obligations under such Purchase Order or this Agreement.

(b) No Other Rates. All rates and other terms and conditions contained in this Agreement and the applicable Purchase Order have been specifically negotiated for, and such rates and other terms and conditions supersede any inconsistent rates, terms or conditions set forth in any invoice, purchase order, rate schedule, or other published standards of Contractor or any of its agents or subcontractors.

8. Invoices and Payment.

(a) Invoices. Contractor shall submit a weekly invoice to Company (or its designated agent) for all Mining Services performed under each outstanding Purchase

Order during the previous week (for purposes of this Section 8, “**week**” shall mean Monday through Sunday). Each invoice shall be submitted no later than Tuesday for the Mining Services provided during the previous week. Contractor’s invoices must be accompanied by all required documentation necessary to support all charges with respect to each applicable Purchase Order. Any invoices submitted to Company in an improper format or without the required documentation will be returned unpaid to Contractor for correction and resubmission.

(b) Payment. Except as may otherwise be agreed by the parties, Company (or its designated agent) shall pay all undisputed portions of properly documented invoices via electronic funds transfers within 30 days of receipt of Contractor’s invoice or Contractor’s performance of the Mining Services described on the invoice, whichever is later. If Company disputes any portion of an invoice, Company shall provide written notice to Contractor indicating the reason Company is withholding any amount and specify the applicable Purchase Order, and shall pay the undisputed portion of the invoice. Neither the payments made to Contractor, nor the method of such payments, shall relieve Contractor of its obligation to perform the Mining Services in strict compliance with the requirements herein and in the applicable Purchase Order. In addition, no payment by Company of any invoice shall be deemed Company’s acceptance of the Mining Services reflected thereon.

(c) Retainage. If Contractor breaches any provision of this Agreement or any Purchase Order or if any person or entity asserts a claim or lien against Company or any of Company’s property that arises out of this Agreement or any Purchase Order, Company shall have the right to retain out of any payments due or to become due to Contractor hereunder or under any Purchase Order an amount sufficient to protect Company completely from all such claims, liens or breaches (including costs and attorneys’ fees). Company shall provide notice to Contractor explaining Company’s reasons for such retainage. When the applicable claim, lien or breach has been released or resolved to Company’s satisfaction, Company will release the retained amounts to Contractor, net of any costs Company incurred as a result of such claim, lien or breach. Company shall also have the right to set-off any costs for which Contractor is responsible under this Agreement or any Purchase Order against any amounts that Company owes Contractor under this Agreement or any Purchase Order. Company’s right to withhold monies pursuant to this Section shall be in addition to all other rights and remedies available to it under this Agreement or any Purchase Order, at law or in equity.

(d) No Late Charges. No interest, penalties, loss of discount or other charges shall apply to any late payments made by Company under this Agreement or any Purchase Order.

9. Indemnity

(a) General. To the greatest extent permitted by law, Contractor shall indemnify, hold harmless and, at Company’s request, defend, Company, Company’s affiliates and the officers, directors, employees and agents of Company and Company’s affiliates (collectively “**Indemnitees**” and individually an “**Indemnitee**”) against any and all claims, losses, damages, liabilities and expenses (including reasonable attorneys’ fees) (collectively “**Losses**”) an Indemnitee is subject to in connection with this Agreement or

any Purchase Order or the performance of the Mining Services, whether such Losses arise in contract, tort or otherwise; provided, however, that nothing herein shall require Contractor to indemnify, hold harmless or defend an Indemnitee for Losses resulting solely from the gross negligence or willful misconduct of such Indemnitee. Contractor's obligations under this Section 9 shall survive the expiration, cancellation or termination of this Agreement or any Purchase Order.

(b) Liens and Claims. Contractor shall also indemnify the Indemnitees from all liens and claims asserted by Contractor's subcontractors or suppliers or other third parties claiming under Contractor against an Indemnitee for Mining Services performed or material or Equipment furnished to or by Contractor or its subcontractors, suppliers or such third parties, and from all Losses arising out of all such liens or claims. Contractor shall, at no cost to Company, promptly remove any such lien or claim by bonding, payment or otherwise and shall notify Company of such removal. If Contractor does not timely remove any such lien or claim, Company shall have the right (but not the obligation) to pay all sums necessary to obtain releases, including but not limited to, the settlement of any lien or claim. In such event, Company shall have the right to deduct all amounts so paid (plus reasonable costs and attorneys' fees) from amounts due to Contractor under this Agreement or any Purchase Order. Contractor shall cause its subcontractors to execute an indemnification agreement in favor of the Indemnitees in substantially the same form as this Section 9 prior to the start of their performance hereunder.

10. Insurance.

(a) Coverage Requirements. Contractor shall obtain, pay for and keep in force, and shall cause its subcontractors and agents to obtain, pay for and keep in force during the Term hereof, insurance policies evidencing coverage for the following:

(1) statutory workers' compensation coverage or other similar coverage meeting all state and local requirements;

(2) employer's liability, with limits of no less than \$500,000;

(3) commercial general liability ("CGL"), including coverage for products liability, completed operations for at least two years after the performance of the Mining Services and contractually assumed obligations, with liability limits of at least \$2,000,000 per occurrence for property damage, \$2,000,000 per occurrence for bodily injury and \$2,000,000 per occurrence for personal injury;

(4) comprehensive automobile liability covering all vehicles used by Contractor, whether or not owned by Contractor, with liability limits of at least \$2,000,000 per occurrence for property damage, \$2,000,000 per occurrence for bodily injury and \$2,000,000 per occurrence for personal injury. At Contractor's option, the CGL and automobile liability insurance may be satisfied with a combination of primary and umbrella coverage;

(5) excess liability insurance of at least \$2,000,000 over the employer's liability, general liability and automobile liability coverages specified above; and

(6) any other insurance that Contractor is required by law to maintain, with the minimum limits required by law.

(b) Endorsements and Other Requirements. Contractor shall cause its insurers to (a) waive all rights of subrogation against Company, its officers, directors and employees, except workers' compensation insurance, (b) name Company as an additional insured for the CGL and automobile insurance described above, (c) name Company as a loss payee on the insurance required in Section 10(a)(1) above, and (d) furnish certificates of insurance to Company evidencing that the above insurance is in effect and otherwise complies with the requirements of this Section 10. Contractor shall require its insurance contractors to give Company 30 days' written notice of any material change, alteration, or cancellation of any insurance policy required hereunder. The insurance afforded Company as an additional insured shall be deemed primary coverage without the right of contribution from any of Company's insurance. All other insurance maintained by Company (or for Company by a third party) is for the exclusive benefit of Company and will not inure to the benefit of Contractor. The carrying by Contractor of the insurance required herein shall in no way be interpreted as relieving Contractor of any other obligations it may have under this Agreement or any Purchase Order. If Contractor uses subcontractors in connection with Contractor's performance under this Agreement or any Purchase Order, Contractor will ensure that such subcontractors have comparable certificates of insurance, waive all rights of subrogation against Company, and name Company as an additional insured as described above.

11. Confidentiality.

(a) Confidentiality of Information and Materials. To meet Company's distinct confidentiality concerns, Contractor shall hold, and shall cause its personnel, agents and subcontractors to hold, strictly confidential all information and materials provided by Company to Contractor, or created or acquired by Contractor in connection with this Agreement and each Purchase Order, unless such information is (a) in Contractor's possession prior to Company's disclosure of such information to Contractor, (b) generally available to the public other than as a result of disclosure by or at the direction of Contractor, or (c) furnished to Contractor by a third party as a matter of right without restriction on disclosure and that was not directly or indirectly received from Company. Contractor acknowledges that any breach of this Section 11 will cause irreparable harm to Company, and Contractor agrees that, in the event of a breach or threatened breach of this Section by Contractor, its personnel, agents, or subcontractors, Company shall be entitled, in addition to other remedies that may be available to Company, to the granting of injunctive relief without proof of actual injury. The information and materials described in this Section shall at all times remain the property of Company. Within 30 days of the cancellation, termination or expiration of this Agreement, Contractor shall return all such information and materials to Company.

(b) Confidentiality of Agreement and Purchase Orders. Contractor and Company shall not disclose the provisions of this Agreement or any Purchase Order to anyone without the consent of the other, unless disclosure is required by governmental authority, court order, subpoena, proper discovery, request, other legal process, or applicable law; provided, however, that Company may disclose the provisions of this Agreement and each Purchase Order to its lenders, attorneys, accountants, financial advisors and other parties with which it has entered into a confidentiality or non-disclosure agreement.

(c) Publicity. Contractor shall not release any information concerning this Agreement or any Purchase Order for publication, advertising or any other purpose without Company's prior consent. Contractor shall require all subcontractors to agree that no information concerning this Agreement, each Purchase Order or any other agreement between Contractor and its subcontractors relating to this Agreement or any Purchase Order shall be released for publication, advertising or any other purpose without Company's prior consent.

(d) Survival. Contractor's obligations under this Section 11 shall survive expiration or termination of this Agreement.

12. Records and Audits.

(a) Records. During the Term of this Agreement, Contractor shall keep and maintain (i) complete and accurate records, in accordance with Generally Accepted Accounting Principles (GAAP), books of account, reports and other data necessary for the proper administration of this Agreement and each Purchase Order, including all rebate programs and any other special pricing programs extended to Contractor by any subcontractor in connection with the Agreement or any Purchase Order and (ii) if Contractor is charging on a time and materials basis, complete and accurate records of the time Contractor's Personnel spent providing the Mining Services under such Purchase Order and the expenses Contractor incurs in connection therewith, including, without limitation, the identity of the Personnel providing the Mining Services, a description of the Mining Services performed, the date and time such services were performed, and the Facility where such services were performed (all on an individual basis). Contractor shall provide Company with periodic reports containing such information, if and when requested by Company. Contractor shall retain such records and all other written materials prepared by Contractor, during the Term and for three years after the expiration, termination or cancellation of this Agreement and for any additional time required by governmental authorities with jurisdiction over the parties.

(b) Audits. Company or its designee shall have the right, upon reasonable notice to Contractor, during the Term of this Agreement and for three years following the expiration, termination or cancellation hereof, to audit and inspect Contractor's books, records and other materials as described in Section 12(a) with respect to Mining Services and compensation. Contractor shall require its subcontractors to agree to allow Company to audit and inspect such subcontractors' books and records pertaining to Mining Services and compensation during the Term of this Agreement and for three years following the expiration, termination or cancellation of this Agreement or any agreement between Contractor and such subcontractor. If any audit or inspection reveals an error or irregularity in the compensation payable to Contractor hereunder or under any Purchase Order, an appropriate adjustment shall be made (i) by Contractor within thirty (30) days after the conclusion of the audit or inspection or (ii) at Company's option, by Company to amounts properly due Contractor hereunder. Company shall pay for any audit or inspection unless such audit or inspection is conducted subsequent to Contractor's default of this Agreement, in which case Contractor shall pay for all audit or inspection costs incurred by Company. Contractor shall pay all expenses incurred by Contractor in supporting the audit and inspection.

(c) Financials. Upon Company's request, Contractor shall provide Company with copies of Contractor's annual report and any quarterly financial statements prepared for Contractor as to its operations for each year during the Term.

13. Independent Contractor.

Contractor (including its agents, employees, subcontractors, and any others engaged by Contractor in connection with the Mining Services) is an independent contractor, and neither this Agreement nor any Purchase Order shall be construed to create an association, partnership, joint venture, agency, or employer and employee relationship between Company and Contractor (or its agents, employees, subcontractors, or such other engaged parties) within the meaning of any applicable law. This Agreement and each Purchase Order is a contract for the provision of services and is not intended to be one of hiring under the provisions of any workers' compensation or other laws and shall not be so construed. The employees Contractor hires to perform the Mining Services are Contractor's employees and shall not be deemed to be Company's employees for any purpose. Contractor is not authorized to enter into, and shall not enter into, any agreement, oral or written, on behalf of Company or otherwise obligate Company in any respect. Contractor shall be responsible for payment of all insurance, taxes, fringe benefits and other financial obligations or expenses (including workers' compensation) applicable to its personnel, agents or subcontractors.

14. Compliance with Laws.

(a) General. Contractor shall comply with all foreign and United States (federal, state and local) laws, rules, regulations and ordinances applicable to its performance under this Agreement and each Purchase Order, including, but not limited to, any laws or codes that are incorporated by reference herein. Contractor shall obtain and maintain in full force and effect during the performance of this Agreement and each Purchase Order all necessary governmental permits, licenses and approvals. Contractor further warrants that all materials and supplies furnished under this Agreement and each Purchase Order will comply with, and be manufactured, priced, sold and labeled in compliance with all applicable federal, state and local laws, codes, rules, regulations, orders and ordinances, and applicable industry codes and standards.

(b) Non-discrimination. Without limiting the generality of Section 14(a), Contractor shall comply with all applicable provisions of Executive Order 11246, as amended, § 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, § 701 of the Drug-Free Workplace Act of 1988, as amended, the implementing regulations set forth in 41 C.F.R. Parts 60-1, 60-250 and 60-741 and 48 C.F.R. Part 23.5, and all applicable provisions of the Americans with Disabilities Act. The equal opportunity clause set forth in 41 C.F.R. § 60-1.4(a), the affirmative action clauses set forth in 41 C.F.R. § 60-250.5(a) and 41 C.F.R. § 60-741.5(a), and the drug-free workplace clause in 48 C.F.R. § 52.223-6 are incorporated by reference and made a part of this Agreement and each Purchase Order. Contractor certifies that it does not and will not maintain any facilities it provides for its employees in a segregated manner and that it does not and will not permit its employees to perform their services at any location under Contractor's control where segregated facilities are maintained (except that restrooms, dressing and sleeping areas may be separated by gender for privacy reasons). The provisions of this Section 14(b) shall apply to Contractor only to the extent that (a) such provisions are required under existing law, (b) Contractor

is not otherwise exempt from said provisions and (c) compliance with said provisions is consistent with and not violative of 42 U.S.C. § 2000e et seq., 42 U.S.C. § 1981 et seq., or other acts of Congress.

(c) Child Labor. Contractor shall not employ any person who is younger than 18 or the applicable minimum legal age for the specific type of work performed by the employee, whichever is higher. Contractor further represents and warrants that the weekly and daily working schedules of all Contractor employees shall be in compliance with all applicable laws and regulations, and that Contractor shall not compel any person to work involuntarily or under any threats or duress. Contractor further warrants that (a) all labor in Contractor's facilities complies with the minimum age of employment requirements prescribed by the International Labor Organization conventions or applicable law, whichever is higher, and (b) Contractor will neither employ forced labor nor impose similar working conditions. Company shall have the right (but not the obligation) to audit Contractor's compliance with the provisions of this Section 14(c).

(d) Fines and Penalties. Any fines, penalties or legal costs incurred by Contractor or its employees or subcontractors for noncompliance with any applicable laws, rules, regulations or ordinances shall not be reimbursed by Company, but shall be the sole responsibility of Contractor or its employees or subcontractors. If any fines, penalties or legal costs are assessed against Company by any government authority or court due to such noncompliance by Contractor or its employees or subcontractors, or if Contractor's performance is delayed or stopped by order of any government authority or court due to Contractor's or its employees' or subcontractors' noncompliance, Contractor shall indemnify and hold harmless Company against any and all fines, penalties or legal costs incurred by Company as a result of such noncompliance. This indemnity obligation is in addition to, and does not limit, the general indemnity in Section 9.

(e) No Collusion. Neither Contractor nor any person or entity acting or purporting to act on Contractor's behalf shall enter into any combination, conspiracy, agreement or other form of collusive arrangement with any person or entity that directly or indirectly lessens competition between potential subcontractors, vendors or suppliers from whom goods or services may be obtained that will be used by Contractor in performing its obligations under this Agreement and each Purchase Order. Furthermore, in performing its obligations hereunder, Contractor shall use its best efforts to prevent the occurrence of such collusion among or between potential subcontractors, vendors, suppliers or any other person.

(f) Standards of Conduct. This Agreement and each Purchase Order includes, and incorporates by reference, the Standards of Conduct, a copy of which is attached hereto as Attachment A, as the same may be amended and updated from time to time. Contractor agrees to abide by the provisions of the Standards of Conduct.

15. Force Majeure.

Neither party shall be responsible or liable, or deemed in breach hereof, to the extent their performance is prevented or delayed due solely to circumstances beyond the reasonable control and without the fault or negligence of the party experiencing such impediment to performance, including, but not limited to, acts of God; unusually severe weather; fire; war; riots; acts of terrorism, actions or failures to act on the part of governmental authorities preventing performance;

or the party's inability despite due diligence to obtain required permits or licenses (each, a "**Force Majeure**"). A delay or failure to perform caused by Contractor's subcontractors or suppliers is not an event of Force Majeure unless the subcontractor's or supplier's delay or failure to perform is due solely to an event of Force Majeure as defined above. In addition, strikes or other labor disputes impacting Contractor or its suppliers or subcontractors shall not be considered events of Force Majeure. The party experiencing the Force Majeure event shall promptly give written notification to the other party. This written notification shall include a full and complete explanation of the Force Majeure and its cause, the status of the Force Majeure, and the actions such party is taking and proposes to take to overcome the Force Majeure. The party experiencing the Force Majeure shall exercise due diligence in endeavoring to overcome the Force Majeure and shall undertake reasonable measures to make up for the time lost, without additional compensation. Contractor shall not be entitled to an increase in compensation as a result of a Force Majeure.

16. Dispute Resolution.

(a) Intent. It is the intention of the parties to make a good faith effort to resolve, without resort to litigation or arbitration, any dispute, controversy or claim arising out of or relating to this Agreement or any Purchase Order (a "**Dispute**") according to the procedures set forth in this Section 16.

(b) Procedure. If a Dispute arises that cannot be resolved promptly by the parties' representatives, each party shall immediately designate a senior executive with authority to resolve the Dispute. These executives shall promptly begin discussions in an effort to resolve the Dispute. If these executives cannot resolve the Dispute within 20 days of the referral to them, either party shall have the right to pursue any and all remedies available under this Agreement or the applicable Purchase Order(s), at law or in equity in a court of competent jurisdiction in accordance with Section 17(a). Neither the giving of notice of a Dispute nor the pendency of any dispute resolution process as described in this Section shall extend any notice or cure period described in this Agreement or any Purchase Order or any period within which a party must act as described in this Agreement or any Purchase Order. Contractor shall continue to perform its obligations under this Agreement and each Purchase Order during the pendency of any Dispute, except as otherwise provided in Section 17(c) below.

(c) Performance. Notwithstanding the requirements of this Section 16, either party may cancel this Agreement as provided in Section 2(a) or 2(b) or pursuant to an action at equity. The issue of whether such cancellation is proper shall not be considered a Dispute hereunder. Nothing in this Section 16 shall prevent Company from seeking injunctive or other relief, including specific performance, if the Dispute involves (a) a threatened or actual breach by Contractor of its confidentiality obligations, or (b) risk to the safety or security of persons or property, if in Company's judgment such relief is necessary to prevent damage. Despite any such action by Company, the parties shall continue to proceed in good faith in the procedures outlined herein.

17. Miscellaneous.

(a) Governing Law and Venue. This Agreement and each Purchase Order will be governed by and construed in accordance with the laws of the State of Texas (exclusive of conflicts of law principles). Federal and state courts within Tarrant County,

Texas shall have jurisdiction over any and all Disputes between the parties hereto, whether in law or equity, arising out of or relating to this Agreement, each Purchase Order and any agreements, instruments or documents contemplated hereby or thereby. The parties consent to and agree to submit to the jurisdiction of such courts.

(b) Waiver of Liens. To the maximum extent permitted by law, Contractor waives, and shall require its suppliers of any tier to waive, all liens and claims, and the right to file and enforce or otherwise assert any liens and claims, against Company's Facilities or any other Company property (real or personal) in connection with the Mining Services performed hereunder.

(c) Minority Business. Contractor agrees to use its best efforts to include certified minority businesses as suppliers in the performance of Contractor's obligations under this Agreement and each Purchase Order, to the extent that such inclusion is commercially feasible.

(d) Headings. Captions and headings set forth herein are for reference only and do not constitute a part of the substance of this Agreement and are not intended to be used in the interpretation or construction of this Agreement.

(e) Notices. Except as otherwise specifically provided herein, any notice required to be given under this Agreement or any Purchase Order shall be in writing and sent by certified mail, return receipt requested, or by nationally recognized commercial courier by overnight delivery. Notices to Contractor will be sent to Contractor at the location of the principal office shown in the caption. Except as otherwise specifically provided herein, notices to Company will be sent to Company at the location of the office shown in the caption.

(f) Severability. If any of the provisions hereof are held to be unenforceable or invalid by any court of competent jurisdiction, the validity and enforceability of the remaining provisions shall not be affected thereby and the rights and obligations of the parties hereunder shall be reduced only so much as necessary to remove the illegality.

(g) Amendment; Assignment; Successors and Assigns; Waiver. This Agreement and each Purchase Order may only be amended in a writing signed by both parties. Contractor may not assign this Agreement or any Purchase Order or any of its rights hereunder or thereunder without Company's prior consent. Company may assign this Agreement and any Purchase Order to any of its affiliates without the consent of Contractor, and if it does, Company will so notify Contractor. This Agreement and each Purchase Order is binding upon successors and assignees of the parties. The failure of either party to demand strict performance of the terms of this Agreement or any Purchase Order or to exercise any right conferred hereby shall not be construed as a waiver or relinquishment of its right to assert or rely on any such term or right in the future.

(h) Attachments. Each Attachment hereto is hereby incorporated herein by reference and made a part hereof.

(i) Counterparts. This Agreement and each Purchase Order may be executed in counterparts, each of which shall constitute an agreement binding on the parties.

(j) Entire Agreement; Conflicts. This Agreement and the Purchase Orders entered into in connection herewith constitute the complete agreement between the parties as to the Mining Services and supersede any prior or contemporaneous oral or written agreement or understanding concerning such Mining Services. No course of dealing, no usage of trade and no course of performance shall be used to supplement or explain any term, condition or instruction in this Agreement and the applicable Purchase Order, nor be deemed to amend any term hereof or thereof. In the event of a conflict between the terms of this Agreement and any Purchase Order, the terms of the Purchase Order shall govern solely with respect to the Mining Services provided thereunder.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

COMPANY:

SUPERIOR SILICA SANDS LLC,
a Texas limited liability company

By: _____

Name: Richard J. Shearer
Title: President & CEO

CONTRACTOR:

A-1 Excavating, Inc.

a Wisconsin Corporation

By:  _____

Name: Todd A. Pecha
Title: Vice president

ATTACHMENT A

COMPANY STANDARDS OF CONDUCT

Each operator utilized by Contractor to provide Mining Services must provide Company with a copy of their complete and up-to-date Part 46 CFR training plan.

Each operator must have completed the necessary MSHA training that allows access to mining facilities. Proof of training and annual updates must be provided to Company in writing.

All personnel representing Contractor must review, sign, and comply with the Site-Specific Hazard Awareness Training (as amended from time to time, the “**Training**”) for each Company Facility. Such Training includes sections addressing general safety, emergency procedures, personal protection and requirements for parties performing Mining Services. Copies of the Training are available at each Company Facility upon request. The Training must be renewed and re-signed by all personnel each year.

Aged Receivable Report

Aging Date: 7/1/2019

Age Based On Invoice Date

Sort by Customer No

Invoice No	Invoice Description	Inv Date	0 - 30 days	31 - 60 days	61 - 90 days	91 + days	Retainage	Age	Due Date
79900	SUPERIOR SILICA SAND								
7154	SITE WORK TH 05181	05/18/19		4,638.00				44	06/17/19
7155	MINING FLS 051819	05/18/19		158,243.40				44	06/17/19
7156	RENT LOADER 2166	05/16/19		5,275.00				46	06/15/19
7157	LEASE LOADER 2161	05/16/19		3,718.88				46	06/15/19
7192	INSTALL EDGE	05/29/19		171.44				33	06/28/19
7193	MATS	05/29/19		5,486.00				33	06/28/19
7199	MINING FLS 052519	05/25/19		153,321.00				37	06/24/19
7200	SITE WORK 052519	05/25/19		1,710.00				37	06/24/19
7237	MINING FLS 053119	05/31/19		150,390.80				31	06/30/19
7238	SITE WORK TH 06011	05/31/19		800.00				31	06/30/19
7314	MINING OPS FLS 060819	06/08/19	118,336.20					23	07/08/19
7315	MINING TH 060819	06/08/19	65,694.90					23	07/08/19
7335	RENT UNIT 2166	06/14/19	7,820.72					17	07/14/19
7340	MINING FLS 061519	06/15/19	102,171.75					16	07/15/19
7341	MINING TH 061519	06/15/19	59,915.50					16	07/15/19
7358	MINING FLS 062219	06/22/19	101,892.00					9	07/22/19
7359	MINING TH 062219	06/22/19	79,255.95					9	07/22/19
7398	CREDIT ON RENTAL	06/28/19	-664.65					3	07/28/19
7399	MINING FLS 062919	06/29/19	101,499.10					2	07/29/19
7400	MINING TH 062919	06/29/19	70,433.40					2	07/29/19
7406	RENT CAT MINI	06/30/19	5,802.50					1	07/30/19
	Customer Total	1,195,911.89	712,157.37	483,754.52	0.00	0.00	0.00		
	Grand Total	1,195,911.89	712,157.37	483,754.52	.00	.00	.00		