

MAIL TO:

ANNA LEYRER
DEPUTY CITY CLERK
CITY OF MARENGO
132 E. PRAIRIE STREET
MARENGO, IL 60152

FILED
MCHENRY COUNTY, ILL.

JUN 27 2013

Katherine G. Schultz
COUNTY CLERK

**CITY OF MARENGO
MCHENRY COUNTY
ILLINOIS**

ORDINANCE 13-5-7

AN ORDINANCE AUTHORIZING EXECUTION OF AN ANNEXATION
AGREEMENT CONCERNING 340 ACRES LOCATED WEST OF
ILLINOIS ROUTE 23 AND NORTH AND SOUTH OF GRANGE ROAD

ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF
MARENGO, MCHENRY COUNTY, ILLINOIS
THIS 28TH DAY OF MAY, 2013

PUBLISHED IN PAMPHLET FORM BY AUTHORITY
OF THE MAYOR AND CITY COUNCIL OF MARENGO,
MCHENRY COUNTY, ILLINOIS,
THIS 29TH DAY OF MAY, 2013

ORDINANCE 13-5-7

An Ordinance Authorizing Execution of an Annexation Agreement Concerning 340 Acres Located West of Illinois Route 23 and North and South of Grange Road

WHEREAS, A R Land Co. (“Owner”) is the owner of 340 acres, more or less, located in an unincorporated portion of McHenry County, Riley Township, west of Illinois Route 23 and north and south of Grange Road (“Property”); and

WHEREAS, the Property is not located within the corporate boundaries of any municipality, has not been annexed to any municipality, is presently contiguous and immediately adjacent to the corporate boundaries of the City of Marengo (“City”) and may be annexed to the City; and

WHEREAS, the City desires to enter into an Annexation Agreement with the Owner, attached hereto and incorporated herein as Exhibit A (the “Agreement”); and

WHEREAS, the Owner and the City are ready, willing and able to enter into the Agreement and perform the obligations as required therein; and

WHEREAS, pursuant to 65 ILCS 5/11-15.1-1, *et seq.*, a public hearing has been held pursuant to lawful notice and the Owner and the City have otherwise complied fully with all laws and ordinances applicable to the Agreement; and

WHEREAS, the Mayor and City Council have determined that it is in the best interest of the City to approve and execute the Agreement.

NOW, THEREFORE, BE IT ORDAINED by the City Council of the City of Marengo, McHenry County, Illinois, as follows:

SECTION 1: Upon receipt from the Owner of four executed copies of the Annexation Agreement, the Mayor is hereby authorized and directed to execute, and the City Clerk is authorized and directed to attest, such four duplicate original copies of the Annexation Agreement, a copy of which is attached hereto and made a part hereof as Exhibit A.

SECTION 2: If any section, paragraph, subdivision, clause, sentence or provision of this Ordinance shall be adjudged by any court of competent jurisdiction to be invalid, such judgment

shall not affect, impair, invalidate or nullify the remainder thereof, which remainder shall remain and continue in full force and effect.

SECTION 3: All ordinances or parts of ordinance in conflict herewith are hereby repealed to the extent of such conflict.

SECTION 4: This Ordinance shall be in full force and effect upon its passage, approval and publication in pamphlet form (which publication is hereby authorized) as provided by law.

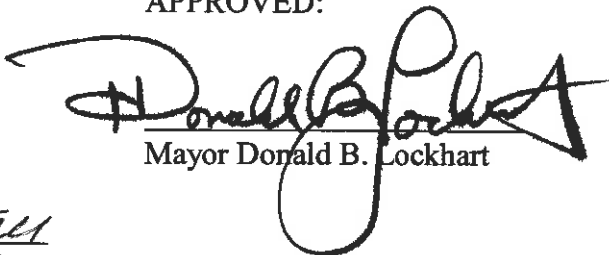
Voting Aye: Aldermen Carole Bartman, Nicole DeBoer, Matt Keenum, Steven G. Mortensen, Todd Hall, Gretchen Samuelson, Michael J. Smith, Mayor Donald Lockhart

Voting Nay: Alderman Dennis Hammortree

Absent: None

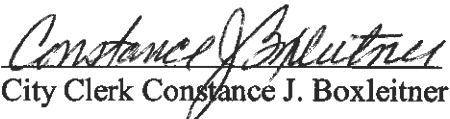
Abstain: None

APPROVED:



Mayor Donald B. Lockhart

(SEAL)

ATTEST: 
City Clerk Constance J. Boxleitner

Passed: May 28, 2013

Approved: May 28, 2013

Published: May 29, 2013

Prepared by:

Carlos S. Arévalo, City Attorney
Zukowski, Rogers, Flood & McArdle
50 North Virginia Street
Crystal Lake, IL 60014
815/459-2050
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CERTIFICATION

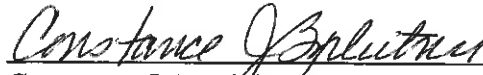
I, CONSTANCE J. BOXLEITNER, do hereby certify that I am the elected and qualified Clerk of the City of Marengo, McHenry County, Illinois, and that as such Clerk, I am the keeper of the records and minutes and proceedings of the Mayor and City Council of said City of Marengo.

I do hereby further certify that at a regular meeting of the Mayor and City Council of the City of Marengo held on the 28th day of May, 2013, the foregoing Ordinance entitled *An Ordinance Authorizing Execution of an Annexation Agreement Concerning 340 Acres Located West of Illinois Route 23 and North and South of Grange Road*, was duly passed by the Mayor and City Council of the City of Marengo.

The pamphlet form of Ordinance No. 13-5-7, including the Ordinance and a cover sheet thereof, was prepared, and a copy of such Ordinance was posted in the City Hall, commencing on the 29 day May, 2013, and will continue for at least 10 days thereafter. Copies of such Ordinance are also available for public inspection upon request in the office of the City Clerk.

I do further certify that the original, of which the attached is a true and correct copy, is entrusted to me as the Clerk of said City for safekeeping, and that I am the lawful custodian and keeper of the same.

Given under my hand and corporate seal of the City of Marengo on this 29 day of May, 2013.


Constance J. Boxleitner, Clerk
City of Marengo,
McHenry County, Illinois

(SEAL)

A R LAND CO.
ANNEXATION AGREEMENT

THIS AGREEMENT, made and entered into this 28 day of May, 2013, by and between the City of Marengo, a municipal corporation in the State of Illinois (hereinafter referred to as "City"), by and through its Mayor and City Council (herein the "Corporate Authorities"), and A R Land Co. (hereinafter referred to as the "Owner"). The City and Owner shall collectively be referred to as the "Parties" in this Agreement.

RECITALS

A. A R Land Co. is the legal owner of record of real property, which is the subject of this Agreement, consisting of a parcel containing **approximately 340 acres**, more or less, located in an unincorporated portion of McHenry County, Illinois in Riley Township. The Property is located on the west side of Route 23 and on the north and south sides of Grange Road. A portion of the Premises is commonly known as 8407 Route 23, Marengo, Riley Township, Illinois 60152, 21810 Grange Road, Marengo, Illinois 60152, and 21708 Grange Road, Marengo, Illinois 60152. The Property is legally described in **Exhibit A** attached hereto and made a part hereof, **Permanent Index Numbers: 16-15-200-003, 16-14-100-005, 16-15-400-021, 16-14-300-015, 16-14-300-011, 16-14-300-014, 16-23-100-014** (the "Property"); and

B. The Property constitutes land which is contiguous to and may be annexed to the City, as provided in 65 ILCS 5/7-1-1; and

C. The Owner desires that the Property be annexed to the City and developed under the terms and conditions of this Agreement: 1) to operate a mining operation for the sale and extraction of earth materials and asphalt and ready mix concrete plants for sale of asphalt and concrete pursuant to a special use with underlying M zoning for a period of twenty (20) years ("Term") plus an option, at Owner's sole discretion, to renew the Term for an additional twenty (20) year extensions periods provided that such extension is pursued and completed prior to the expiration of the previous 20 year term; 2) to develop the Property as a mixed-use parcel consistent with the Development Plan dated December 2012 and prepared by HR Green or said Plan as may be amended by the parties; 3) pursuant to an underlying special use, the Owner would operate a landscape waste, composting and mulching facility in a designated 40-acre site in the northwest portion of the Property and has the option to extend said use as set forth in Section C. 1) above; and 4) to pursue development of a future neighborhood commercial area in a parcel of the property lying south of the centerline of Grange Road; and

D. The Corporate Authorities have concluded that the annexation of the Property to the City, under the terms and conditions hereinafter set forth, would enable the City to control development of the area and serve the best interest of the City; and

E. Pursuant to the provisions of 65 ILCS 5/11-15.1-1, *et seq.*, a proposed annexation agreement was submitted to the Corporate Authorities, and all required public hearings were held thereon pursuant to proper notices, as required by law; and

F. Pursuant to the provisions of 65 ILCS 5/11-13-1, et seq., the zoning authorities of the City have held a public hearing on the proposed zoning of the Property; and

G. The Owner has filed with the City a Petition to Annex, executed by all owners and electors residing on the Property and has represented that he has the authority to move forward with his petition and annexation of the Property; and

H. The City and the Owner have or will perform and execute all acts required by law to effectuate such annexation; and

I. It is understood and agreed that this Agreement in its entirety, together with the Petition for Annexation, shall be null, void and of no force or effect unless the Property is validly annexed, zoned and classified by proper City ordinances, all as herein provided; and

J. This Agreement is made pursuant to and in accordance with the provisions of Sections 11-15.1-1, et seq., of the Illinois Municipal Code (65 ILCS 5/11-15.1-1, et seq.,); and

K. That the Owner has filed with the Clerk of the City a proper Petition for Annexation conditioned upon the terms of the provisions of this Agreement to annex the Property to the City.

NOW, THEREFORE, for and in consideration of the mutual promises contained herein, and other good and valuable consideration the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

A. OBLIGATIONS OF THE CITY.

1. Annexation. In accordance with the provisions of 65 ILCS 5/7-1-8, the Corporate Authorities of the City, contemporaneously with the execution of this Agreement, shall enact an ordinance annexing the Property and also any adjacent highways as required by law; said annexation to be on the terms and conditions set forth in this Agreement. An accurate plat of annexation prepared by the Owner shall be filed with McHenry County.

2. Zoning and Special Use. The City shall also adopt an ordinance to zone the Property as set forth below:

- a) In accordance with Sections 13.05 and 15.09 of the City's Zoning Ordinance, but subject to the conditions and provision of this Annexation Agreement, upon annexation of parcels in the Property identified by the following PINs: 16-14-100-005, 16-15-400-021, 16-14-300-015, 16-14-300-014 and that part of 16-14-300-011 lying north of Grange Road, the City shall adopt an Ordinance amending the City's Zoning Map to classify said parcels in the Property M, Manufacturing District, with a Special Use during the term of this Agreement plus options, at Owner's sole discretion which the City Council shall approve, to renew the Special Use for an additional twenty (20) year extensions provided that such extension is pursued and completed prior to the expiration of the previous twenty (20) year term for the sale

and extraction of earth materials, and the operation of asphalt and ready-mix concrete plants for the sale of concrete and asphalt (“Operations”). The Operations shall include outside storage of equipment used in the Operations and stockpiles generated from the Operations. This Agreement and the Special Use hereby granted are subject to compliance by the Owner with each of its obligations and conditions hereunder and pursuant to the ordinance adopted by the City. The extraction of gravel, sand, and other materials shall allow for the stockpiles generated on the property, the crushing screening, and recycling of concrete, asphalt, asphalt shingles, and the importation of topsoil, clay, and clean construction or demolition debris (CCDD).

- b) In accordance with Sections 13.05 and 15.12 of the City’s Zoning Ordinance, but subject to the conditions and provisions of this Annexation Agreement, upon annexation of the parcel in the Property identified by PIN 16-15-200-003, the City shall adopt an ordinance amending the City’s Zoning Map to classify this parcel of the Property M, Manufacturing District, with a special use for landscape waste composting and mulching facility for the duration of the Agreement for the production, storage and sale of composted and mulched landscape for the waste materials and a high capacity well for all operations.
- c) Upon annexation of the parcels in the Property identified as PIN 16-23-100-014 and that part of PIN 16-14-300-011 lying to the south of Grange Road, the City shall adopt an ordinance amending the City’s Zoning Map to classify these parcels of the Property as B-2 for neighborhood commercial development.

3. Stop Orders. The City shall have the right to require the owner to stop all Operations on the Property once the Illinois Environmental Protection Agency (IEPA) or the Federal Mine Safety and Health Act (MSHA) has determined that the Owner has violated IEPA or MSHA rules and regulations. In that case, a written notice of the violation shall be issued by the City to the Owner within twenty four (24) hours of the stop work order being issued, and the Owner shall show proof that the violation of an IEPA or MSHA regulation has been addressed before Operations may resume. In the event the City finds a non-life, health or safety violation occurred it shall provide written notice to the Owner setting forth the IEPA or MSHA regulation allegedly violated by the Owner and providing Owner thirty (30) days to cure or otherwise initiate good faith efforts to correct the violation. If, in the City’s opinion, the Owner has not cured, or made good faith efforts to cure, within that thirty (30) day period, the City may serve written notice to Owner that all Operations must stop until such time as the problem is corrected. The Owner may appeal such decision to the City Council or exercise any rights afforded to the Owner under the law.

B. OBLIGATIONS OF THE OWNER.

1. Reclamation Plan. The Operations shall consist of mining and reclamation in conformance with the Owner’s Site Improvement Plans. The Property and Owner’s Operations shall be subject to inspection by the City, at its discretion, to assure that the actual operations conform to the Engineering and Planning Documents referenced in this Agreement and throughout the annexation and zoning proceedings. Upon request, by the City, the Owner shall

provide copies of most recent aerial photographs taken by the Illinois Department of Mines and Minerals.

2. Permits. Prior to commencement of Operations, the Owner shall obtain a surface mining permit, as required from the State of Illinois Department of Mines and Minerals. A copy of the permit shall be filed with the City. Owner shall also secure all permits required from the Illinois Environmental Protection Agency, including Water and Air permits as well as an NPDES permit, as applicable, which shall also be filed with the City. Copies of all required permits shall be on file with the City before any site preparation work begins on the Property. The operation will not be encumbered with any delays in operation with this annexation.

3. Engineering and Planning Documents. The mining and extraction operation and reclamation activity of the Property shall be in general compliance with the Engineering and Planning Documents as submitted by Owner at the time of annexation, including those Plans prepared by InfraLand Engineering Consultants, LLC dated March 6, 2013 identified as an Operations Plan and a Reclamation Plan and with the relevant provisions of the City's Zoning Agreement, applicable engineering standards, and with the provisions set forth in this Annexation Agreement. Final engineering plans describing in detail the mining and extraction activity and all associated land disturbing activities and required improvements pertaining to the mining and extraction use, including but not limited to site grading, top soiling specifications, seeding, landscaping, and site access drive plans, shall be submitted to the City for review and approval by the City prior to commencement of building and site development activities. As may be applicable, Owner shall comply with the requirements of Section 15.09 of the City's Zoning Ordinance prior to the commencement of operations.

4. Surety/Letter of Credit.

a. If subject to State requirements, the Owner shall file with the State of Illinois all required Reclamation bonds as part of the Surface Mining Permit granted by the Illinois Department of Natural Resources Office of Mines and Minerals. Copies of the bonds shall be filed with the City. The operation will not be encumbered with any delays in operation with this annexation.

b. At Owner's option, the Owner may comply with Section 15.09(D) regarding sureties necessary for compliance of approved reclamation plans.

5. Reclamation. After the initial excavating and grading needed to create the required berming of the Property, the Owner shall sequentially perform their mining and extraction operations in general conformance to sequencing shown in the Engineering and Planning Documents and shall cause segments in which the mining and extraction is complete to be reclaimed. The Owner may amend its Mining and Reclamation Plan after complying with the Illinois Department of Natural Resources Office of Mining and Minerals regulations for doing so.

6. Chemical Storage. No chemicals, oils, fuels, or items or products of a similar nature not directly related to the permitted Operations shall be stored or kept on the Property.

7. Dumping. No stockpiling or dumping of any materials other than those generated from the Operations shall be permitted on the Property except that the Owner may import topsoil, clay, and clean construction or demotion debris (CCDD) for berm and reclamation activities and materials required for the asphalt and concrete operations as well as those items allowed for the landscape composting special use.

8. Days and Hours of Operation. The Operations shall be limited to the following days and hours: Monday through Friday, 5:00 a.m. to 10:00 p.m.; Saturday, 6:00 a.m. to 6:00 p.m. (excluding New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving, Christmas Day, and Sundays). In emergency situations, operations shall be permitted at times otherwise prohibited. (An emergency situation, for the purpose of this section, is any operation necessary to provide repairs to roadways or provide other materials and assistance which if delayed until normally permitted hours, would cause injury or loss of life or property.) Any operation or activity under this section shall immediately be reported to the City of Marengo Police Department and shall be reported to the Administrator the next business day. The picking up for off-site conveyance of aggregate materials and the depositing of recyclable materials may occur on a "demand basis" and is not restricted to the aforesaid days and hours. In the event the Owner has a contractual obligation to supply materials for an Illinois Tollway, IDOT or McHenry County road building project which require operations on Sundays or after 10:00 p.m., Owner may operate during said hours during the term of the project only.

9. Entrances. The entrances to Owner's Property as set forth in the attached Plan shall remain unchanged without permission from the City. The entry and service roads should be regularly inspected by the Owner for dust and swept on a daily basis, if needed.

10. Berms and Fencing. Owner shall cause the external boundaries of the Property to be enclosed by a fence in the same manner and configuration as of the date of execution of this Agreement. The Owner shall cause berms to be installed at the perimeter of that portion of the property which is being actively mined within a quarter mile of the Property's boundaries unless the adjoining property has a berm. Entrances and exits to the Property shall be secured with gates that shall be locked during nonoperating hours. Weeds shall be cut or trimmed as necessary so as to present a reasonably neat appearance. All active operations shall be contained by an earthen berm of not less than six (6) feet in height and/or a farm fence of not less than fifty-four (54) inches in height, of such a design so as to allow the free flow of wild animals, but to discourage trespassing by humans and farm animals. Berms that will remain in place for one (1) year or longer shall be planted with grass, shrubs and trees and maintained as a visual and acoustical screen. They shall be designed so that they do not erode into the road or highway right-of-way or onto the adjoining property. A gate shall be placed at the main entrance that will be kept locked whenever the Owner, Operator or their agent is not on site.

11. Screening Maintenance. At all times during the term of this Agreement, Owner shall be obligated to maintain the berm or fence constructed pursuant to the terms of this Agreement. Owner's maintenance shall include its periodic inspections of Property for debris, damage and necessary improvements, as determined by the City.

12. Documentation. Within seven (7) days of receipt by Owner, the Owner shall provide to the City copies of documents issued by the Department of Mines and Minerals, Lands, Reclamation Division, of the State of Illinois, Illinois Environmental Protection Agency and any and all other regulatory agencies relating to the following:

- a. Notice of statutory or regulatory violations
- b. Notice of intent to revoke any bond inspection reports
- c. Reports regarding reclamation
- d. Annual aerial photography of the Property
- e. Stop work orders
- f. Complaints or other pleadings involving Department or Illinois Environmental Protection Agency actions or proceedings against Owner's operations.

13. Servicing of Vehicles. All vehicles to be serviced on the Property shall be serviced at a location similar to that used under the County jurisdiction. Any spill of fuel, oil, or other similar item shall be reported as required by law.

14. Compliance with Federal, State, County and City Regulations.

a. Owner shall comply with all applicable federal, state, and county regulatory requirements. Until such time as Owner pursues a renewal of its asphalt plant operation, Owner shall comply with the provisions of Ordinance O-201109-ZBA-037 adopted by the County on September 20, 2011.

b. Except as otherwise provided in this Agreement, Owner's mining operations shall comply with the provisions of Section 15.09 of the City's Zoning Ordinance.

c. The following conditions shall apply to the Owner's mining operations:

- i. Existing trees, shrubs and other types of woody vegetation along road frontages shall be protected and maintained. Weeds and other unsightly noxious vegetation shall be cut or trimmed as may be necessary to present a reasonably neat appearance, to prevent grass fires or the hazard of grass fires.
- ii. The owner/operator shall repair any section of road damaged as a result of hauling operations, but shall not be responsible for the normal wear and tear of the road. This provision shall not be construed to require the operator to purchase additional right-of-way.
- iii. All operations shall be conducted in a safe manner, especially with respect to hazards to persons, damage to adjacent lands or improvements and wells, and damage to any street by slides, sinking or collapse of supporting soil adjacent to an excavation.

- iv. The following apply to earth extraction and/or mining conditions only – not to reclamation conditions:
 - a. Earth extraction and/or mining operation(s) that remove and do not replace the lateral support shall not approach property lines, established right-of-way lines of any public roads, streets or highways closer than a distance equal to thirty (30) feet unless a lesser distance is mutually agreed to by the operator and adjacent property owner and submitted in writing.
 - b. The bottom of the slope of the excavated face shall not be closer to the point determined per 508.13.5.A of the 2000 McHenry County Zoning Ordinance, than a distance equal to one and one-half (1.5) times the depth of the excavation.
 - c. If consolidated materials occur in the excavated face, the slope of the face may be steeper than 1.5 to 1 slope per Article Five, Section 508.13.5.B of the 2000 McHenry County Zoning Ordinance for the depth(s) of those materials; however, all other excavated slopes of unconsolidated materials shall be no steeper than 3.3 to 1.
 - d. In the case that the right-of-way has not been recently surveyed by a registered land surveyor and clearly marked, the right-of-way line shall be assumed to be, for the purpose of this section, a minimum of forty (40) feet from the center line of the existing road.
- v. The processing and stockpiling of aggregate resources shall not be conducted within three hundred (300) feet of any adjoining residentially zoned property line.
- vi. Enough topsoil must be stockpiled to meet the finished conditions of Article Five, Section 508.13 OPERATION AND RECLAMATION REQUIREMENTS of the 2000 McHenry County Zoning Ordinance.
- vii. The owner or operator shall take adequate measures within the site to insure that trucks, exiting the site on roadways, shall not discharge earth materials or debris on the roadway.
- viii. All operations, reclamation and on-going uses shall comply with the terms and conditions of the 2000 McHenry County Zoning Ordinance and the McHenry County Stormwater Management Ordinance.

- ix. Decisions of the Administrator subsequent to the adoption of this Ordinance are subject to the normal appeals procedures set forth in the zoning ordinance and/or state statute.
- x. At all times the owner or operator shall take adequate measures to insure that contaminated surface water run-off shall not enter ponds or other areas of opens standing water.

15. Groundwater.

a. No earth extraction and/or Operations shall be conducted in such a manner that the groundwater table of surrounding properties is adversely impacted, as determined by the Illinois Environmental Protection Agency. In the case of the mining operations, water pumped from the site for the purpose of washing shall be retained in a pond until the silt and clay settles and then the water shall be recycled in the area affected.

b. Subject to reasonable notice and consistent with state, county and federal regulations, the Administrator, or a duly authorized representative, shall have the free right of access to the subject property for the purpose of inspections, making water level measurements, obtaining water or material samples and for gathering other information necessary for the property discharge of his/her responsibilities.

c. The groundwater monitoring devices shall be tested as required by the McHenry County Planning Department using the groundwater monitoring parameters established and updated by the McHenry County Health Department in its Ordinance for Groundwater Monitoring and Protection at Earth Material Extraction Sites. Results of the monitoring tests shall be given to the City Administrator within two (2) weeks of the testing. The groundwater monitoring devices shall be removed according to the McHenry County Groundwater regulations and may be removed by Owner once the groundwater monitoring regulations no longer require the wells to be in place for the Owner's operations.

d. The costs of the installation of the groundwater monitoring devices and the groundwater testing shall be paid for by the Owner.

e. Prior to the termination of the Special Use upon completion of extraction and reclamation and acceptance of the completion of these items by the Administrator, the Owner shall cause to be filed with the Recorder of Deeds, a temporary easement which will expire one year after the expiration of the conditional use permit approved by the Administrator after review by the City, which shall provide access to the Property for the purpose of monitoring and sampling of the wells.

f. The Owner shall provide groundwater level reports using data from monitoring wells and staff gauges upon forms and dates provided by the Administrator.

g. The Owner shall provide annual groundwater quality reports at times and on forms provided by the Code Enforcement Officer using samples from the monitoring wells. These reports will meet the requirements, if any, of the McHenry County Health Department.

16. Spillage. The Owner shall sweep and maintain its entrances as needed.

17. Safety. All mining and related operations on the Property shall be conducted in a safe manner and will follow U.S. Department of Labor Mine Safety and Health Administration Safety Regulations.

18. Site Maintenance. The site shall be maintained in a neat and orderly condition, free of all debris, junk, trash, waste products or materials, and abandoned equipment which are no longer used or unless capable of being used by the Owner in its Operations. Buildings, if any, shall be maintained in good repair and appearance. Berms and fences shall be maintained to present a neat appearance free from all litter.

19. Inspection. During the term of the Special Use granted herein and subject to reasonable notice and consistent with the state, county and federal regulations, the City shall have access to the Property to enable the staff to monitor compliance with this Agreement. No inspection fees will be required for the duration of this Agreement. For purposes of this paragraph, "inspection fees" does not mean "fines, fees, penalties and court costs" associated with any statutory, code, or ordinance enforcement action by the City.

20. Non-reimbursement of Fees. The Owner is not required to reimburse the City for any attorneys' fees, engineering fees, and such other costs or fees incurred by the City in connection with these annexation and zoning proceedings. This provision shall not apply to zoning proceedings of the Property or portion thereof for any mixed-used consistent with the Development Plan identified in Recital C of this Agreement or for the development of the parcels to be zoned B-2 Business District and any expansion of the Owner's operations as of the execution of this Agreement.

21. Fees Payable to the City.

a. The Owner shall pay an annexation fee of \$50.00 per acre at the time of annexation.

b. Operation Fees: The Owner shall pay the City the sum of \$.05 for each ton of the gross amount of sand, gravel and other products excavated or produced from the Operations on the Property including that which is excavated and then used in the Property's asphalt production. The quantity of excavated aggregate mined from or produced by the Property shall be documented by Owner's truck loading tickets, and intercompany tickets for aggregate used in Ready Mix hauled from the Property and tickets establishing aggregate used in asphalt materials hauled from the Property. Payment of this fee shall begin on the first quarter anniversary of the commencement of Operations on the Property and on the anniversary of each quarter thereafter. The Owner shall deliver to the City quarterly reports showing the quantity of aggregate material or mined from the Property during the preceding calendar quarter. The Owner shall keep an accurate record of the aggregate materials excavated or mined from the Property, and the City shall have the right, at reasonable times, to examine the mining procedures and the books and records of the Owner for the purpose of verifying the amounts payable to the

City. The Owner shall keep records on the Property for at least twelve (12) months after expiration of each year, conforming to generally accepted accounting practices showing all of the aggregate materials excavated or mined from the Property for such year, including all tax reports, loading slips, conveyor weighing records, sales checks, and other supporting data, which will facilitate verification of the calculations of the fees payable to the City. On or before April 15, July 15, October 15 and January 15 of each calendar year, Owner shall pay the City the royalty due from the previous quarter. The weight tickets substantiating said payments shall accompany said payments.

c. Intentionally Omitted.

d. The parties agree that City's real estate taxes as provided in Paragraph B(24) shall be waived until such time as any phase of construction of the Tollway/Interchange at State Route 23 is completed and access both east and west from State Route 23 onto I90 is possible, upon the sale of the Property, or 5 years from execution of this Agreement, whichever occurs first. To the extent permitted by the Illinois Department of Revenue, the point of sale of materials shall be deemed to originate in the City of Marengo.

e. The Owner shall deliver to the City quarterly reports showing the quantity of aggregate material excavated or mined from, and any material produced including asphalt, on the Property during the preceding calendar quarter.

f. The Owner shall keep an accurate record of materials sold from the Property. The Owner shall keep records on the Property for at least 12 months after expiration of each year, conforming to generally accepted accounting practices showing all of mined or produced materials for the year, including all tax reports, loading slips, conveyor weighing records, sale checks, and other supporting data which will facilitate verification of the calculation of fees payable to the City. The City shall have the right by its accountants or representatives to audit or examine all Owner's records (including all supporting data) regarding these materials and Owner shall make all such records available for such examination in the event owner fails to comply with the fees established in this Agreement. Owner's refusal to permit this audit or examination shall result in a stop order of all operations on the Property and revocation of the Special Use. If any such audit discloses that the actual amount of materials exceeded those reported, the Owner shall forthwith pay the additional fee due for the excess, in addition to the cost of such audit and examination. If such audit discloses that the amount of materials exceeded those reported by more than 10 percent at any one time, the City shall give notice of such discrepancy and the Owner shall have sixty (60) days to cure said discrepancy or place disputed sums in escrow. The parties will then appoint an independent auditor mutually acceptable to the parties to resolve the dispute whose fee shall be shared equally by the parties and whose decision shall be binding and final. If any such audit discloses that the actual amount of materials was less than those reported and, as a result thereof, the Owner paid more additional fees than were due hereunder, then the City shall promptly refund to the Owner the amount of the excess fee payment, less the cost to the City for the audit.

22. Sewer and Water Improvements. When the Property is reclaimed fully and the Owner requests to move forward with the mixed-use development, the Owner shall, at its sole

expense, extend the City's existing sanitary sewer lines and municipal water from their then location across the entire frontage of the Property at the discretion of the City and install any and all improvements pursuant to the requirement of the then applicable Subdivision Ordinance. The City agrees to submit the Property and other properties which need sewer and water for inclusion in a Special Service Area or areas ("SSA")_for the purpose of funding the extension of said utilities.

23. Easements and Access. The City shall, upon the request of Owner, grant to Owner and utility companies mutually satisfactory to the parties which may provide utilities to any part of the Property, such construction and maintenance utility easements over, under, across or through property owned or controlled by the City as are necessary or appropriate for the development of the Property in accordance with the provisions of this Agreement. The City further agrees that, in the event Owner is unable to obtain utility easements over, under, across or through property not owned by or under the City's control on conditions acceptable to Owner, the City will, upon Owner's request, in a timely manner, use its powers of condemnation to acquire such easements, provided that said easements are necessary or required by the City or a utility company for the provision of utility service to the Property. All reasonable costs and expenses incurred by the City in the securing of such easements on behalf of Owner shall be paid for by Owner. In the event said easement benefits owners of other property, then the cost of acquiring said easement shall be subject to recapture from said benefited property owners once the recapture agreement is prepared by Owner and is approved by the City pursuant to Section D 25 of this Agreement.

24. Real Estate Tax Abatements. The parties agree that all taxes shall be waived until such time as any phase of construction of the Tollway/Interchange at State Route 23 is completed and access both east and west from State Route 23 onto I90 is possible, upon the sale of the Property, or five (5) years from the execution of this Agreement, whichever occurs first.

25. Recapture. If Owner pays for the extension or public improvement, the Owner shall be entitled to recapture from other benefited property owners. The City agrees to adopt recapture ordinances requiring benefited properties to pay their pro rata fair share. The recapture agreement shall be consistent with the requirements of 65 ILCS 5/9-5-1 et. seq. and in a form agreeable to the Owner and City. The City further agrees that it will not approve building permits, annexations, preliminary plats, or grant the service connection approvals to owners and/or developers of the property to be benefited by such improvements until such time as said other owners pay their pro rata costs of recapture as shall be appropriate under such circumstances. In no way shall the City be considered an agent of Developer in administering the recapture. The benefited properties shall pay their fair share whether or not the users of the benefited properties hook up to the utilities the Owner has extended.

C. MISCELLANEOUS

1. General Application of Ordinances. Except as otherwise specified herein, all City ordinances of general applicability shall apply to the Property, the Owner and all successors and assigns in title.

2. Less Restrictive Ordinances or Codes. If, during the term of this Agreement, except as otherwise specifically agreed upon in this Agreement, namely the Owner's operation of a mining operation, any existing, amended, modified or new ordinances, codes or regulations affecting the zoning, subdivision, development, construction of improvements, buildings or appurtenances, or any other development of any kind or character upon the Property are amended or modified in a manner to impose less restrictive requirements on development of, or construction upon, properties in similarly zoned and developed parcels within the City not subject to annexation agreements, then at Owner's election the less restrictive requirements shall be binding upon the Owner, its successors and assigns.

3. "Grandfathering". During the Term of this Agreement, and for any subsequent renewal period as provided in Paragraph A(2)(a) of this Agreement, Owner's operations as applicable shall be grandfathered and Owner shall be allowed to maintain the following on the Property:

a. Noise and light provisions shall remain at levels consistent with the County Ordinance now in effect and no higher standards will be imposed through the Agreement, except as may otherwise be established by State of Illinois statutes and regulations.

b. Farming and grazing; and

c. "Mining operations" will continue to be classified under the M1 zoning classification and any amendment to the M1 zoning classification standards and permitted and special uses shall not apply to the Property.

These grandfathered provisions shall remain in place as provided in this Paragraph C(3) except in the event that the United States and/or State of Illinois impose mandatory or more restrictive standards that the City cannot waive, in which case such federal and/or state standards shall apply.

4. Covenants Running with the Land. The covenants and agreements contained in this Agreement shall inure to the benefit of and be binding upon the successors in title and assigns of the Owner and each of them, and upon the successor Corporate Authorities and each of them, and upon the successor municipalities of the City, and shall constitute covenants running with the land.

5. Regulations of Other Governmental Units. During the term hereof, the Owner shall conduct its Operations in compliance with the statutes, rules and regulations of the State of Illinois, its departments, agencies and bureaus, including the Department of Mines and Minerals, the Environmental Protection Agency and specifically including the statutory requirements of the Surface-Mined Land Conservation and Reclamation Act (225 ILCS 715-1, *et seq.*) and Title 35, Subtitle D, Chapter 1: Mine Related Water Pollution Rules and Regulations (35 Ill. Adm. Code 401.101, *et seq.*).

6. Term. This Agreement shall be valid and binding upon the Parties hereto, their respective successors and assigns, for a term of twenty (20) years commencing as of the date hereof, as provided by statute. As applicable, conditions of Owner's potential twenty-year

special use extensions for a mining and asphalt, concrete, and composting operations pursuant to Paragraph A(2) shall survive the term of this Agreement.

7. **Severability.** If any provision of this Agreement, other than the provisions relating to the requested zoning changes and the ordinances adopted in connection therewith, is held invalid by any court of competent jurisdiction, such provision shall be deemed to be excised here from and the invalidity thereof shall not affect any of the other provisions contained herein.

8. **Prior Agreements.** This Agreement supersedes all prior agreements, negotiations and exhibits which conflict herewith, and is a full integration of the entire agreement of the Parties.

9. **Amendment.** This Agreement may be amended only by the mutual consent of the Parties, by adoption of an ordinance by the City approving said amendment as provided by law, and by the execution of said amendment by the parties or their successors in interest. The Parties acknowledge that certain future amendments may affect only a portion of the Property. In such event, this Agreement may be amended by written agreement between the City and the legal Owner of fee title to that portion of the Property which is subject to and affected by such amendment as provided by law; provided, that such amendment, if not executed by the then Owner of other portions of the Property, shall in no manner alter, amend, or modify any of the rights, duties or obligations as set forth in this Agreement as they pertain to such other portions of the Property.

10. **Enforceability.** In the event that either party to the Agreement files suit to enforce the terms hereof, the prevailing party shall be entitled to recover, as part of the costs otherwise allowed, its reasonable attorney's fees incurred therein.

11. **Waiver.** The failure of the City to insist, in any one or more instances, upon performance of any terms or conditions of this Agreement, shall not be construed as a waiver of future strict performance of any such term, covenant or condition and the obligations of the Owner shall continue in full force and effect.

12. **Notice.** Unless notified in writing, all notices, requests and demands shall be in writing and shall be delivered to or mailed by certified mail, return receipt requested, postage prepaid, as follows:

To the City: City of Marengo
 132 E. Prairie Street
 Marengo, Illinois 60033
 Attention: Administrator

City's Attorney: Carlos S. Arévalo
 Zukowski, Rogers, Flood & McArdle
 50 Virginia Street
 Crystal Lake, Illinois 60014

To the Owner: A R Land Co.
1349 Rockland Road, Box 187
Lake Bluff, Illinois 60044
Attention: Rob Baker

Owner's Attorney: Thomas C. Zanck
Zanck, Coen, Wright & Saladin, P.C.
40 Brink Street
Crystal Lake, IL 60014

The signed return receipt or an affidavit of mailing or proof of service shall be sufficient proof of delivery for all purposes.

13. Indulgences Not Waivers. The City's failure, at any time or times hereafter, to require strict performance by the Owner of any provision of this Agreement, shall not waive, affect, or diminish any right of the City thereafter to demand strict compliance and performance therewith.

14. Venue. Each proceeding pursuant to or in connection with this Agreement or amendment thereto shall be brought in the 22nd Judicial Circuit, McHenry County, Illinois, and the City and the Owner hereby consent to jurisdiction and venue in that Court. This Agreement has been negotiated, executed and delivered at and shall be deemed to have been made in the City of Marengo, McHenry County, Illinois. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois, regardless of any present or future domicile or principal place of business of the Owner. The Owner and the City hereby consent and agrees that the Circuit Court of McHenry County, Illinois, shall have exclusive jurisdiction to hear and determine any claims or disputes between the City and the Owner pertaining to this Agreement or to any matter arising out of or related to this Agreement. The Owner and the City expressly submit and consent in advance to such jurisdiction in any action or suit commenced in such court, and the Owner and the City hereby waive any objection which the Owner and the City may have based upon lack of personal jurisdiction, improper venue or *forum non conveniens*.

15. Sale of Property. It is expressly understood and agreed that the Owner may sell or convey all or any part of the Property for the purposes of development, and upon each sale or conveyance, the purchaser shall be bound by the obligations and entitled to the benefits of this Agreement with respect to the part of the Property sold or conveyed. The Owner shall notify the City of such purchase or agreement or assumption of responsibilities. A selling owner of all or any portion of the Property, however, shall only be released where:

a. Provision has been made that all such public improvements to be installed by the time of the sale and as required by this Agreement or City ordinance for the development of the portion of the Property being sold will be installed and guaranteed in accordance with this Agreement and the ordinances of the City; and

b. The City has remaining in place assurances of performance to assure the City that any development responsibilities started but not yet satisfactorily completed by the Owner anywhere on or offsite of the Property will be completed; and

c. Any outstanding monetary obligations of the Owner due and payable to the City as of the time of conveyance have been satisfied in full including the Extraction Fees in this Agreement; and

d. There is no uncured or existing violation of the City's ordinances or this Agreement; and

16. Consent of Lender. The Owner shall provide the City with written approval satisfactory to the City of any mortgagee, lien holder or holder of any security interest, affecting title to the Property or any part thereof so that this Agreement shall be superior to any such mortgage, lien or other security interest and Owner shall provide same to the City prior to execution and recording of this Agreement.

17. Owner's Agreement Not to Disconnect the Property. Notwithstanding any rights that the Owner may have to disconnect the Property from the City pursuant to the Illinois Municipal Code (the "Code"), including but not limited to Section 7-3-6 of the Code, the Owner agrees to i) waive any and all rights to disconnect the Property from the City in exchange for the benefits conferred upon the Property by this Agreement and ii) not to, at any time, disconnect the Property from the City.

18. Time of Essence. It is understood and agreed by the Parties that time is of the essence to this Agreement, and that the Parties will make every reasonable effort, including the calling of special meetings, to expedite the matter. It is further understood and agreed by the Parties that the successful consummation of this Agreement requires their continued cooperation.

19. Indemnity. The Owner shall defend, indemnify and hold harmless the City, its past, present and future officers, employees and agents (hereinafter "City Indemnitees") from and against all claims, liabilities, losses, taxes, judgments, costs, fees, including expenses and reasonable attorneys' fees, arising out of and in connection with this Agreement and the annexation and development of the Property.

20. Future Development and or Expansion. Owner's future development of the Property shall be pursuant to the Subdivision and Zoning Ordinances of the City of Marengo then in effect. In the event, Owner purchases additional property for the purposes of expansion of its operations, Owner agrees to comply with the development requirements of the Subdivision and Zoning Ordinances of the City of Marengo in effect at the time of such expansion.

21. Code Variations. The Petitioner is granted a variation to the Municipal Code waiving the requirement that the Owner hook up to City sewer and water for the sole purpose of allowing Owner to install a well and septic systems to provide potable water and washroom facilities for its employees, agents and guests in the concrete plant and in the scale house. This waiver is limited in duration to the period of during which the Owner conducts activities in accordance with the Special Use Permit for aggregate mining operations.

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

23. Notwithstanding Sections 13.02 and 13.04 of the City's Zoning Ordinance, the special uses granted to the Owner and Owner's successors, lessees and assigns for earth material extraction, asphalt production, concrete production, and composting shall include the ability to stockpile and sell their materials from the property and the mining operation shall be allowed to import CCDD for its operations and reclamations.

24. Entrances and Uses. In addition to the entrances set forth in Paragraph B. 9. above, Owner shall be able to continue to use all existing entrances and exits to the property which currently exist. All uses which currently exist on the property may continue unless and until they are abandoned by the owner.

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

OWNER:

By: Robert J. Babu

Signed before me on this 24th day of May, 2012, by

OFFICIAL SEAL
VICTORIA A MEYER
Notary Public - State of Illinois
My Commission Expires 12/01/16

Victoria A. Meyer

CITY:

CITY OF MARENGO

[SEAL]
ATTEST:

By: Constance J. Boxleitner
Constance J. Boxleitner, City Clerk

By: Donald B. Lockhart
Donald B. Lockhart, Mayor

Z:\MMarengo\Annexation.r1 23.Tollway\Peter Baker\Annex Agrment.Feb 20 Draft.doc

Exhibit A
Legal Description

PARCEL 1:

The East Half of the Southwest Quarter of Section 14 (excepting the North 170.0 feet of the East 954.30 feet thereof); and the Northeast Quarter of the Northwest Quarter of Section 23 (excepting therefrom that part described as follows: Commencing at the South Quarter corner of said Section 23; thence on an assumed bearing of North 00 degrees 14 minutes 54 seconds West, 4,539.48 feet along the North-South center of said Section for the Place of Beginning; thence continuing North 00 degrees 14 minutes 54 seconds West along said center of Section, 132.00 feet; thence South, 89 degrees 42 minutes 37 seconds West 33.95 feet; thence South 00 degrees 17 minutes 23 seconds East, 37.00 feet Westerly of and parallel with the centerline of Illinois Route 23, a distance of 132.00 feet; thence North 89 degrees 42 minutes 37 seconds East, 33.86 feet to the Place of Beginning) in Township 43 North, Range 5, East of the Third Principal Meridian, in McHenry County, Illinois.

PARCEL 2:

All that part of the West Half of the Southwest Quarter of Section 14, Township 43 North, Range 5 East of the Third Principal Meridian, which lies Northerly of the center line of Grange Road (excepting therefrom Document No. 949539, Document No. 910148 and also excepting therefrom that part thereof described as follows: Commencing at the intersection of the center line of Grange Road with the West line of said West Half of the Southwest Quarter and running thence Easterly along said center line 544.66 feet to the place of beginning; thence Northerly along a line forming an angle of 83 degrees, 41 minutes left, with a prolongation of the last described course, 852.36 feet; thence Easterly at right angles to the last described course, 260.82 feet; thence Southerly at right angles to the last described course, 822.48 feet to the center line of Grange Road; thence Westerly along said center line, 262.41 feet to the place of beginning), in McHenry County, Illinois.

PARCEL 3:

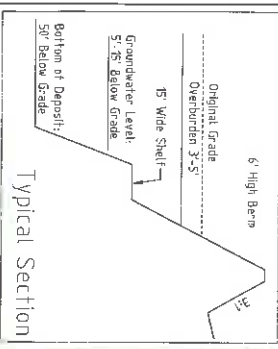
Part of the Southeast Quarter of Section 15, Township 43 North, Range 5 East of the Third Principal Meridian being described as follows: Commencing at the Southwest corner thereof; thence North 00 degrees 03 minutes 31 seconds East along the West line thereof, 782.10 feet to the centerline of Grange Road; thence South 64 degrees 19 minutes 33 seconds East along said centerline, 621.61 feet; thence South 79 degrees 13 minutes 50 seconds East along said centerline, 383.52 feet; thence North 00 degrees 00 minutes 37 seconds West, 816.05 feet to the point of beginning; thence continuing North 00 degrees 00 minutes 37 seconds West, 1398.44 feet to the North line of the said Southeast Quarter; thence South 89 degrees 53 minutes 31 seconds East along the North line thereof, 1686.96 feet to the Northeast corner of the said Southeast Quarter; thence South 00 degrees 00 minutes 37 seconds East along the East line thereof, 1749.00 feet to the Northeast corner of the property described in Book 42 of Deeds, page 211; thence North 89 degrees 53 minutes 31 seconds West along the North line of said property

described in Book 42 of Deeds, page 211, a distance of 516.00 feet; thence North 00 degrees 00 minutes 37 seconds West, 542.00 feet; thence North 89 degrees 53 minutes 31 seconds West, 643.00 feet; thence South 00 degrees 00 minutes 37 seconds East, 190.35 feet; thence South 89 degrees 59 minutes 23 seconds West, 527.96 feet to the point of beginning in McHenry County, Illinois.

PARCEL 4:

The South Half of the Northwest Quarter of Section 14 and the Southeast Quarter of the Northeast Quarter of Section 15, all in Township 43 North, Range 5, East of the Third Principal Meridian (except the East 1317.69 feet of the South 330.59 feet of the Northwest Quarter of Section 14, Township 43 North, Range 5, East of the Third Principal Meridian), in McHenry County, Illinois.

PINS: 16-15-200-003, 16-14-100-005, 16-15-400-021, 16-14-300-015, 16-14-300-011, 16-14-300-014, 16-23-100-014



- Notes:
1. The Kirtley Unit shall be a minimum of 30 feet from a Property Line and a minimum of 200 feet from a Residential Well.
 2. Berms to have 3:1 side slopes, 4 foot top, 6 feet high. Berms shall be 10 feet from Right of Way of Route 23 (40' ROW) and Toe of Berm to be a minimum of 10 feet from Property Lines.



LEGEND

- Existing Structure
- Proposed Structure
- Existing Right of Way
- Proposed Right of Way
- Proposed Access Road
- Proposed Utility
- Proposed Stormwater
- Proposed Erosion Control
- Proposed Landmark

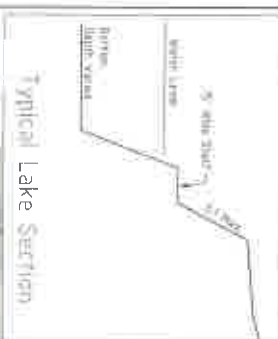
SCALE: AS SHOWN
DATE: 01/15/2024
PROJECT: ARLAND PROPERTY
MARENGO, ILLINOIS

SPECIAL USE FOR NON METALLIC MINING AND COMPOSTING FACILITY

OPERATIONS PLAN

NO.	DATE	DESCRIPTION
1	01/15/2024	ISSUED FOR PERMITTING
2	01/15/2024	ISSUED FOR PERMITTING
3	01/15/2024	ISSUED FOR PERMITTING
4	01/15/2024	ISSUED FOR PERMITTING
5	01/15/2024	ISSUED FOR PERMITTING
6	01/15/2024	ISSUED FOR PERMITTING
7	01/15/2024	ISSUED FOR PERMITTING
8	01/15/2024	ISSUED FOR PERMITTING
9	01/15/2024	ISSUED FOR PERMITTING
10	01/15/2024	ISSUED FOR PERMITTING

PROJECT NO: 24-001
DATE: 01/15/2024
SCALE: AS SHOWN
PROJECT: ARLAND PROPERTY
MARENGO, ILLINOIS



The reclaimed area outside of the lake shall have a minimum of 6-inches of arable topsoil and be planted to avoid erosion. The reclaimed area outside of the lake can be utilized for agriculture.



Hydra and Consulting

201 N. W. 5th St.
 Fort Lauderdale, FL 33301
 Phone: 954.574.1111
 Website: www.hydra.com

SPECIAL USE FOR NON METALLIC MINING AND COMPOSTING FACILITY

RECLAMATION PLAN

DATE	DESCRIPTION

SCALE: 1" = 50'
 NORTH

RI
 RI