

VCNA PRAIRIE AGGREGATE HOLDINGS IL INC.
ANNEXATION AGREEMENT

THIS AGREEMENT, made and entered into this _____ day of _____, 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 VCNA Prairie Aggregate Holdings IL Inc. ("VCNA Prairie") (herein the "Owner"). The City and Owner shall collectively be referred to as the "Parties" in this Agreement.

RECITALS

A. VCNA Prairie is the legal owner of record of real property, which is the subject of this Agreement, consisting of a parcel containing **approximately 253.16 acres**, more or less, located in an unincorporated portion of McHenry County, Illinois in Riley Township mostly between Blissdale Road and Pleasant Grove Road and north of Grange Road. The Property is legally described in **Exhibit A** attached hereto and made a part hereof, **Permanent Index Numbers: 16-14-100-013, 16-15-200-002, 16-15-200-001, 16-10-300-004, 16-15-100-002**; and also part of the land to be annexed is property for which VCNA Prairie holds an option to purchase, which property is owned by Chicago Title Land and Trust Company, Trust Number 116642-08, consisting of 80.1 acres more or less, and is legally described in **Exhibit B** attached hereto and made a part hereof, **Permanent Index Numbers: 16-10-400-003, 16-10-400-004**. Collectively, they shall be referred to as the "Property." For purposes of this Agreement, unless otherwise stated, "Property" shall refer to the combined 333.26 acres legally described in Exhibits A and B.

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, to operate a mining operation pursuant to a conditional 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 extension provided that such extension is pursued and completed prior to the expiration of this Agreement and that the City shall be able to impose conditions it deems appropriate and warranted in light of the southern sub-area development at the time of the extension request and subsequently, after the cessation of mining operations, to develop the Property as a mixed-use parcel consistent with the Development Plan dated December 2012 and prepared by HR Green; 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 – Exhibit A. The City shall also adopt an ordinance to zone the Property described in Exhibit A as set forth below:

- a) Subject to Sections 13.05 and 15.09 of the City's Zoning Ordinance, upon annexation of the Property, the City shall adopt an Ordinance amending the City's Zoning Map to classify the Property M, Manufacturing District, with a Special Use during the term of this Agreement plus an option, at Owner's sole discretion, to renew the Special Use for an additional twenty (20) year extension provided that such extension is pursued and completed prior to the expiration of this Agreement and that the City shall be able to impose conditions it deems appropriate and warranted in light of the

southern sub-area development at the time of the extension request for the extraction of gravel, sand, or other raw materials, and the operation of a ready-mix concrete plant ("Operations"); 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 hereunder.

3. Zoning and Special Use – Exhibit B. If Owner exercises its option to purchase the 80.1 acres in Exhibit B, the City shall adopt an ordinance to zone the Property described in Exhibit B as set forth below:

- a) Subject to Sections 13.05 and 15.09 of the City's Zoning Ordinance, upon annexation of the Property, the City shall adopt an Ordinance amending the City's Zoning Map to classify the Property M, Manufacturing District, with a Special Use for a period of twenty (20) years for the extraction of gravel, sand, or other raw materials, and the operation of a ready-mix concrete plant ("Operations"); 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 hereunder.
- b) The zoning and special use for the 80.1 acres in Exhibit B shall be contingent upon VCNA Prairie exercising its option to purchase said 80.1 acres as provided in said option, which VCNA Prairie represents expires on _____, 2013. Failure on the part of VCNA Prairie to exercise its option shall result in the rezoning of 80.1 acres to the most restrictive zoning in the City, namely Estate Residential.

4. Elimination of Special Use Permits. In addition to the above adopted ordinances, the City shall adopt a moratorium regarding additional mining operations within the City limits effective the 30th day of April 2013. Notwithstanding the aforementioned, this limitation shall not apply to existing operations qualifying under Section 13.05 and 15.09 and any potential expansions of such operations and provided that Owner shall indemnify the City as provided in Paragraph C(19) of this Agreement.

5. Stop Orders. The City shall have the right to require the owner to stop all Operations on the Property upon the City's determination that a life, health or safety violation is occurring. 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 life, health or safety violation 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 section of the City Ordinance 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 prepared on July 21, 2010. 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 annual aerial photographs taken by the Illinois Department of Mines and Minerals. [Does the IDM& M take aerial photographs that we have on file or within our procession? I am not familiar with this requirement; we would request that whenever you are required to provide aerial photos, you also provide for the City upon its request]

2. Permits. Prior to commencement of Operations, the Owner shall obtain from the State of Illinois Department of Mines and Minerals a surface mining permit. 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. Copies of existing permits will be provided to the City. If the City request that the permits be re-issued, then the cost for this work will be reimbursed to Prairie by the City.

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 **[need to be specifically identified even if they'll be available at time of annexation]** and with the relevant provisions of the City's Zoning Agreement, applicable engineering standards, and with the provisions set forth in this Ordinance. 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.

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 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. Copies of existing permits will be provided to the City. If the City request that the permits be re-issued, then the cost for this work will be reimbursed to Owner by the City;

b. Alternatively, the Owner shall comply with Section 15.09(I) 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.

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.

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.

9. Entrances. The entrances to Owner's Property shall remain unchanged from materials and configuration as of the date of execution of this Agreement. The entry and service roads should be regularly inspected by the Owner for dust, and if necessary, the Owner shall to wet down the apron on an as needed basis. .

10. Berms and Fencing. Owner shall cause the external boundaries of the Property to be fully bermed, landscaped and enclosed by a fence in in the same manner and configuration as of the date of execution of this Agreement and consistent with Ordinance O-201012-ZBA-062. 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.

11. Screening Maintenance. At all times during the term of this Agreement, Owner shall be obligated to maintain the berm and 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. Written reports to the City, on a quarterly basis, shall be submitted by the Owner, detailing its inspections and efforts to comply with this Agreement.

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 mining operation's permit, Owner shall comply with the provisions of Ordinance O-201012-ZBA-062 adopted by the County on December 21, 2010.

b. If Owner exercises its option on the 80.1 acres in Exhibit B, and whenever during the term of this Agreement Owner opts to "mine" the 80.1 acres, Owner shall submit plans and documentation required by all applicable jurisdictions with respect to any mining operations thereon, whether or not such plans and documentation constitute newly created plans and documentation or amendments to existing plans and documentation. Owner shall then meet all Federal, State, County and City regulations.

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 City. 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. Water may be pumped from the site for irrigation uses provided irrigation is for agricultural and operation purposes on the Property.

b. The Owner shall abide by the monitoring requirements of Ordinance O-201012-ZBA-062, Paragraph 3.

c. The groundwater monitoring devices shall be tested quarterly 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.

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

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. Existing 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, the City staff shall have access to the Property to enable the staff to monitor compliance with this Agreement with a forty-eight (48) hour notice. 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.

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. 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. **[Still looking for verification of tonnage]**

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 on, the Property during the preceding calendar quarter.

f. The Owner shall keep an accurate record of aggregate materials excavated, mined or produced pursuant to its Operations. The Owners 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. Owners' 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 have, in addition to all other available rights and remedies, the right to declare the Owner to be in default of this Agreement. 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. **[Need verification of tonnage proposal; this provision can be fully replaced to address how we would deal with verification of tonnage. As I have indicated before, we do not need to see your revenue, merely your tonnage.]**

22. Sewer and Water Improvements. When the Property is reclaimed fully and a request is made 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 present 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.

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.

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 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. Port-a-johns, on-site sanitary facilities, above ground fuel storage and site trailers shall be permitted on the Property in the same manner as they exist as of the date of this Agreement;

c. Earthen berms as provided by the current County Ordinance;

d. The use of water for irrigation as provided in Paragraph B(15)(a);

e. Farming and grazing; and

f. “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 extension for a mining operation 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
201 West Front Street
Marengo, Illinois 60033
Attention: Administrator

To the Owner: VCNA Prairie Aggregate Holdings IL Inc.
7601 W. 79th Street
Bridgeview, IL 60455
Attention: _____

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 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 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, including but not limited to the constructions, operation or maintenance of any on-site or off-site improvements required under this Agreement or any City ordinance, rule or regulations, and further including matters pertaining to the hazardous substances and other environmental matters.

20. Future Development and or Expansion. The Owner agrees that once each cell has been mined and reclaimed, it will pursue development consistent with uses identified in the Development Plan dated December 2012 and prepared by HR Green. Notwithstanding, 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.

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

OWNER:

By: _____

CITY:

CITY OF MARENGO

[SEAL]
ATTEST:

By: _____
Constance J. Boxleitner, City Clerk

By: _____
Donald B. Lockhart, Mayor

Z:\M\Marengo\Annexation.rt 23.Tollway\Prairie Material\VCNA PrairieAAgrment.Feb 20.13.doc

Exhibit A

Legal Description (Owned 253.16 Acres)

THE SOUTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 10, ALSO THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 14, ALSO THE SOUTHWEST QUARTER OF THE NORTHEAST QUARTER OF SECTION 15, TOWNSHIP 43 NORTH RANGE 5 EAST, ALSO THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 15, ALSO THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 15 (EXCEPTING THEREFROM THAT PART THEREOF DESCRIBED AS FOLLOWS: COMMENCING AT A POINT ON THE NORTH AND SOUTH QUARTER SECTION LINE, 80 RODS NORTH OF THE CENTER OF SAID SECTION AND RUNNING THENCE WEST ALONG THE SOUTH LINE OF THE SAID NORTHEAST QUARTER OF THE NORTHWEST QUARTER 80 RODS TO THE SOUTHWEST CORNER THEREOF; THENCE NORTH ALONG THE WEST LINE THEREOF, 60 RODS; THENCE SOUTHEASTERLY TO A POINT ON THE EAST LINE THEREOF, 60 RODS SOUTH OF THE NORTHEAST CORNER THEREOF AND 20 RODS NORTH OF THE PLACE OF BEGINNING; THENCE SOUTH 20 RODS TO THE PLACE OF BEGINNING, ALSO EXCEPTING THE SOUTH 510.00 FEET OF THE EAST 433.00 FEET OF THE NORTH HALF OF THE NORTHWEST QUARTER OF SECTION 14), ALL IN TOWNSHIP 43 NORTH RANGE 5 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY, ILLINOIS.

PINS: 16-10-300-004, 16-14-100-013, 16-15-100-002; 16-15-200-001, 16-15-200-002

Exhibit B

Legal Description of Option Property (80.1 Acres)

THE SOUTH 1/2 OF THE SOUTHEAST 1/4 OF SECTION 10, IN TOWNSHIP 43 NORTH,
RANGE 5 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN MCHENRY COUNTY,
ILLINOIS.

PINS: 16-10-400-003, 16-10-400-004