

KENOSHA COUNTY

BOARD OF SUPERVISORS

RESOLUTION NO.

Subject: RESOLUTION APPROVING AN AGREEMENT BETWEEN KENOSHA COUNTY AND THELEN GRAVEL FOR GRAVEL MINING ON COUNTY PROPERTY	
Original X Corrected <input type="checkbox"/> 2nd Correction <input type="checkbox"/> Resubmitted <input type="checkbox"/>	
Date Submitted:	Date Resubmitted:
Submitted By: Planning and Development Education Extension Committee	
Fiscal Note Attached <input type="checkbox"/>	Legal Note Attached <input type="checkbox"/>
Prepared By: John F. Moyer Sr. Asst. Corporation Counsel	Signature:

WHEREAS, Kenosha County is a body corporate with many responsibilities, among which are the construction and maintenance of roads both as public highways as well as thruways in parks and other public lands, and

WHEREAS, Kenosha County acquired three (3) adjacent land parcels in the Town of Randall totaling approximately 58 acres between 1965 and 1969 for purposes of establishing a gravel mine for County road maintenance and construction purposes, and

WHEREAS, The 3 parcels were combined in 1969 to form a single County-owned parcel identified as #60-4-119-362-0100 (32303 116th St., Wilmot) and the required due diligence was performed to establish a gravel mining, processing and storage operation that has been in operation since 1969, and

WHEREAS, The property's gravel reserves that could be harvested with technologies available to the County were exhausted in 2014 and it has since operated as a gravel/aggregate processing and storage operation, and

WHEREAS, Thelen Gravel and Sand, a corporation with headquarters in Antioch, Illinois, owns land contiguous to the County Pit, is in the business of mining and processing gravel and possesses the gravel harvesting/processing technologies to economically pursue further gravel harvesting in the County Pit, and

WHEREAS, Thelen has expressed a desire to enter into a lease agreement with Kenosha County for purposes of mining gravel from the County Pit using state-of-the-art equipment, including conveyor transport to their Illinois facility for processing, and

Resolution Re: Approval of an Agreement between Thelen Gravel and Kenosha County for gravel mining on County property.
Page 2

WHEREAS, As outlined in the attached Lease and Royalty agreement, Kenosha County would be compensated for harvested materials and Thelen will restore the property as described in the agreement when the property's reserves are deemed spent, and

WHEREAS, Thelen Gravel is a reputable company with a track record of safely mining and processing gravel, collaborating with municipalities and other entities on similar projects and restoring properties in an environmentally responsible and community enhancing manner, and

WHEREAS, Further efficiencies include Thelen's existing property location contiguous to the County Gravel Pit which obviates the need for a buffer on the property line between their operations and ours (200 feet per Kenosha County Ordinance 12.29-8 (97a)q) and the minimized impact to the community by virtue of Thelen's existing conveyor system for gravel transport to an Illinois location for processing, and

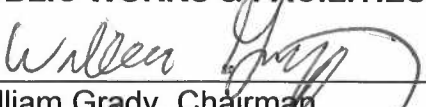
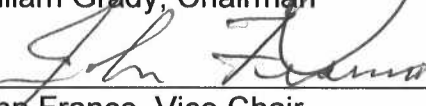

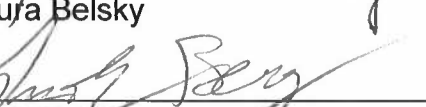

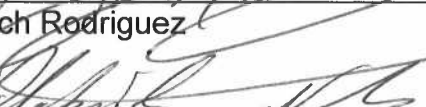
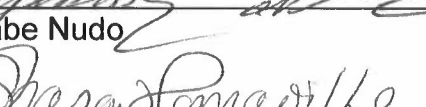
WHEREAS, This agreement would mutually benefit Kenosha County, Thelen Gravel and the community by recovering gravel from the County Pit that the County is not capable of economically harvesting, optimize the amount of gravel that can be harvested from both Thelen's and the County's property and provide the County with a partner in the required restoration of the County Pit when harvesting operations are complete.

NOW THEREFORE BE IT RESOLVED,



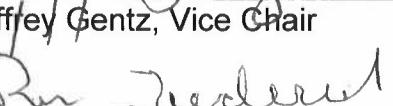
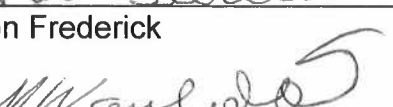
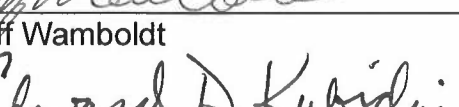
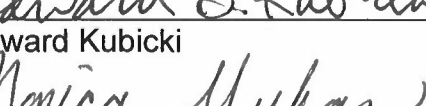

That the Kenosha County Board of Supervisors hereby agrees to approve the attached Lease and Royalty agreement and authorizes the Kenosha County Executive and County Clerk to sign and execute the appropriate documents to implement this agreement in accordance with State law.

Respectfully submitted by:

PUBLIC WORKS & FACILITIES COMMITTEE

	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
 William Grady, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 John Franco, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Laura Belsky	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Andy Berg	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Zach Rodriguez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Gabe Nudo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Sharon Pomaville	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

FINANCE COMMITTEE

	<u>Aye</u>	<u>No</u>	<u>Abstain</u>
 Terry Rose, Chairman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Jeffrey Gentz, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Ron Frederick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Jeff Wamboldt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Edward Kubicki	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 Monica Yuhas	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
 John Franco	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

LEASE AND ROYALTY AGREEMENT

THIS LEASE AND ROYALTY AGREEMENT ("Lease") is made and entered into this ____ day of _____, _____ by and between Kenosha County, an authorized body corporate under Wis. Stat. § 59.01 ("Landlord") and Thelen Sand & Gravel, Inc., a Delaware corporation ("Tenant").

RECITALS:

- A. The Landlord is the fee simple title holder of ± 58 acres of real property located in the Town of Randall, Kenosha County, Wisconsin ("Property") which is more particularly described on the attached **Exhibit A**; and
- B. The Landlord desires to grant to the Tenant, and the Tenant desires to receive from the Landlord, certain rights in the Property, including certain exclusive rights of use and occupancy to extract and remove gravel, sand, rimrock, and fill ("Material").

TERMS AND CONDITIONS:

NOW THEREFORE, in consideration of the payment of royalties by the Tenant, the covenants, agreements and conditions set forth in this Lease, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

- 1. **Leased Property.** The Landlord leases to the Tenant access to the Property, for the exclusive extraction, stockpiling, removal, conveyance via conveyor system, and sale of the Material (the "Contemplated Use").
- 2. **Term.** The term of this Lease shall be for 10 years. The "Commencement Date" shall be the later of the following: (i) the execution of the Lease, or (ii) the date the Landlord confirms that all necessary governmental approvals (for example, zoning, conditional use permit or any other necessary permits) required for the Contemplated Use of the Property. The Lease shall automatically renew for additional 1 year terms unless written notice is delivered by Landlord or Tenant to the other at least 90 days in advance of the termination of the Lease.
- 3. **Early Termination.** Parties may mutually agree in writing to terminate the Lease at any time. The reclamation language in the Lease shall apply at closure.
- 4. **Measure / Records of Materials Extracted.** The Tenant shall use its scale to estimate the volume of material extracted (the "Estimated Amount of Materials Extracted"), and shall maintain records of the weighed materials. On the January 30 of each year following the Commencement Date, the Tenant shall provide a schedule of the Estimated Amount of Materials Extracted to the Landlord summarizing the mining activity for the previous one-year period running from the prior January 1 to December 31. On the January 30 following every third anniversary of the Commencement Date, the Tenant shall use a topographical map to determine the actual volume of material extracted (the "Actual Amount of Materials Extracted") from the Property for the prior three year period, and shall provide to Landlord a schedule of the Actual Amount of Materials Extracted for that three year period. The records of the weighed materials, and the schedules of

the Estimated Amount of Materials Extracted and Actual Amount of Materials Extracted are referred to as the "Records."

5. Royalty. The Tenant shall pay to the Landlord, as rental, the royalty (the "Royalty") under the set schedule in Exhibit B per harvested cubic yard for all Material extracted from the Property. The Royalty shall be paid at such address as the Landlord designates in writing and at such times as the parties mutually agree, but not less than semi-annually on July 30 for the period from January 1 through June 30, and January 15 for the period from July 1 through December 31 of each year of the Lease. The semi-annual payments will be based on the Records of the Estimated Amount of Materials Extracted. On the January 30 following every third anniversary of the Commencement Date, the Landlord and Tenant will use the schedule of the Actual Amount of Materials Extracted to true up the Royalty payments that were made over the previous three years that were based on the Estimated Amount of Materials Extracted.

6. Zoning and Permits. Except for an industrial storm water permit from the Wisconsin Department of Natural Resources, the Landlord represents and warrants that all necessary governmental approvals and permits for the Contemplated Use are in place to allow Tenant to commence extraction of the Materials. Tenant shall either obtain a new or add the portion of the Property to be mined to its existing industrial storm water permit prior to commencing the Contemplated Use. In the event that there needs to be any other additional governmental approvals or permits obtained or if any governmental approval or permit needs to be renewed during the term of this Lease, then the Landlord and Tenant shall cooperate to obtain and maintain all required zoning, storm water, conditional use, road access and use, and any other permits, licenses or approvals required for the Contemplated Use. If Landlord and Tenant are unable to obtain all necessary governmental approvals, permits, or licenses at commercially reasonable costs, then either party may terminate this Lease by providing the other party written notice.

7. Use of Property. The Tenant shall at all times conduct its business on the Property in compliance with all federal, state, and county laws. Tenant shall have the right to install, maintain, and operate per Exhibit A on the Property such equipment and improvements, including but not limited to fences, utilities, conveyors, access roads, and road crossings, as Tenant shall deem necessary in the operation of the Contemplated Use. Title to any equipment or buildings affixed to the Property by Tenant will remain with Tenant and the same may be removed from the Property by Tenant at the termination of this Lease. Exhibit A will delineate where mining activity is permitted by Tenant including, subject to ongoing discussions, where the main mining area lies and where potential mining may occur in the future, which can be amended from time to time with the mutual consent of the parties. At any point when the parties mutually agree that potential mining will be converted to actual mining area, Exhibit A will be amended to reflect in writing, and signed by both parties, the defined mining activity area.

8. Audit. Tenant shall allow the Landlord or any other party the Landlord may name, upon signing a mutually agreed upon non-disclosure agreement when and as they demand, to audit, examine and make copies of records in any form and format, meaning any medium on which written, drawn, printed, spoken, visual or electromagnetic information is recorded or preserved, regardless of physical form or characteristics, which has been created or is being kept by Tenant, including not limited to, handwritten, typed or printed pages, maps, charts, photographs, films, recordings, tapes (including computer tapes), computer files, computer printouts and optical disks, and excerpts or transcripts from any such records or other information directly relating to matters under this Lease. Tenant shall not charge Landlord for providing the information that Tenant has in its possession necessary to conduct the audit. Landlord shall be responsible for the costs it incurs in conducting an audit. . Any subcontracting by Tenant in performing the duties described under this Lease shall subject the subcontractor and/or associates to the same audit terms and conditions as the Tenant. The Landlord must approve annually any subcontracting undertaken by the

Tenant, which approval shall not be unreasonably withheld. Tenant (or any subcontractor) shall maintain and make available to Landlord the aforementioned audit information for no less than six (6) years after the conclusion of this Lease. Landlord agrees that it shall not copy or disseminate any of the documents or information it receives from Tenant or Tenant's subcontractors pursuant to the audit other than to Landlord's legal or accounting professionals. Landlord further agrees that: i) it shall return all information and documents it receives from Tenant or Tenant's subcontractors pursuant to any audit within sixty (60) days of Landlord's receipt of said documents and information or ii) it shall represent to Tenant and/or Tenant's subcontractors that the information and documents it received pursuant to the audit has been permanently destroyed.

9. Reclamation of Property. The Landlord and Tenant agree to cooperate with the reclamation of the Property. The Tenant agrees to grade at 3 to 1 slope, and seed the Property at Tenant's cost as part of the reclamation of the Property. Any further reclamation beyond grading and seeding will require a future agreement between the parties, and shall be at the Landlord's cost. Parties agree that a dialogue will occur regarding rough grading, minimum and maximum slope, and the evolving intent of Landlord for the land use post-mining. Parties will cooperate in constructive discussions as the end date of the mining operation approaches.

10. Insurance.

- A. Each party shall be responsible for the consequences of its own acts, errors or omissions and those of its employees, officers, officials, agents, boards and committees, commissions, agencies, and representatives and shall be responsible for any losses, claims and liabilities which are attributable to such acts, errors, or omissions including providing its own defense. In situations involving joint liability, each party shall be responsible for the consequences of its own acts, errors, or omissions and those of its employees, officers, officials, agents, boards, commissions, committees, agencies and representatives. It is not the intent of the parties to waive any statutory protections or impose liability beyond that imposed by state statutes. The insurance provisions of this Lease shall survive the termination of this Lease and shall remain operative until the time that all potential claims or potential civil actions by the parties or by third parties shall expire under existing law.
- B. Should Tenant hire/engage any subcontractor(s) to perform work on its behalf or in conjunction with Tenant's work, Tenant will require such subcontractor(s) to carry the same insurance as is outlined and required below of the Tenant.
- C. Tenant assumes all liability and risks, and agrees to waive all claims against Landlord, for damage to or loss of equipment, machinery, tools, supplies, material/product to be installed, and other tangible personal property owned or supplied by Tenant and utilized or intended to be utilized during the course of Tenant's Work except in so far as such damage or loss is caused by the willful or negligent conduct of the Landlord. Any insurance carried by Tenant covering such damage or loss shall be endorsed with a waiver of subrogation in favor of Landlord and shall name Landlord as Additional Insured. Any and all subcontractors agree to assume the same liabilities and risks as

Tenant, and agree to name Landlord as Additional Insured on any such similar policies of insurance maintained by each of them.

- D. Coverage afforded shall apply as primary with Landlord named as an additional insured on the commercial general, and excess/umbrella liability policies. Tenant shall give 30 days advance written notice of cancellation or non-renewal during the term of this Lease. An endorsement in favor of Landlord waiving the Tenant's and its insurer's rights of subrogation shall be issued with respect to the Commercial General Liability, Comprehensive Auto Liability, and Workers' Compensation and Employers Liability policies. Evidence of this endorsement must be noted on the certificate of insurance.
- E. Tenant and Landlord shall not discontinue or change any of their liability insurance policies in effect during any part of this Lease relating to the Property and the Contemplated Use without buying "tail end" insurance to cover potential claims that may have occurred during the term of this Lease. Completed Operations and Products liability insurance shall be maintained for a period of 2-years after completion and acceptance of the Project by Tenant.
- F. Upon execution of this Lease, the Tenant shall furnish Landlord with a certificate of insurance, showing evidence of the above requirements. Certificate must be submitted to Landlord within four (4) business days after receipt of purchase order, execution of contract or other written authorization. If certificate is not submitted within four (4) business days, Landlord, at its sole discretion, may void the Lease and award to the next low, responsive and responsible bidder.
- G. Liability Insurance. The Tenant, at its sole cost and expense, agrees at all times to carry liability coverage which would afford coverage on the Property in an amount not less than \$1,000,000 for any one person injured or killed and not less than \$1,000,000 for any accident and not less than \$500,000 for property damage per accident. Tenant will at all times during the terms of this Lease keep in force and effect the insurances listed below and such insurance policies must be issued by a company or companies rated A- VII or better by AM Best and authorized to do business in the State of Wisconsin with the following minimum limits of coverage;

Commercial General Liability *	
Each Occurrence	\$1,000,000
General Aggregate	\$2,000,000
Automobile Liability – Combined Single Limit *	\$1,000,000
Excess/Umbrella Liability – Each Occurrence and Aggregate Limits *	\$1,000,000
Workers Compensation	Statutory Limits

Employer's Liability – Each Accident / Disease Each Employee / Disease Policy Limit *	\$500,000 Each
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*Or such higher limits sufficient for these insurance policies to be scheduled under the Umbrella policy.

11. Landlord's Warranties. The Landlord warrants and represents as follows:

- A. The Landlord is the owner of the Property and has full authority to lease the Property for the full term of the Lease. The Landlord agrees that the Property will be kept free and clear of all other liens, encumbrances, and interests during the term of this Lease.
- B. The Landlord has no knowledge of any pending or threatened proceedings against the Landlord or the Property by any local municipality, the Wisconsin Department of Natural Resources, the U.S. Environmental Protection Agency, or any other governmental agency, and the Landlord knows no basis for any such action or proceeding.
- C. The Landlord has no notice or knowledge of any underground or buried storage tanks of any kind being located on the Property or any hazardous waste having ever been stored or disposed of on the Property.
- D. Except for the industrial storm water permit, which shall be Tenant's responsibility to obtain, the Landlord has obtained all the necessary governmental approvals and permits to allow Tenant to conduct the Contemplated Use on the Property without the Tenant having to obtain any additional governmental approval or permit.
- E. Landlord shall be responsible for all real estate taxes relating to the Property that may result because of this Lease.

12. Recordable Memorandum. The parties shall cooperate in executing a recordable memorandum of the Lease granted herein upon request of either party.

13. General Provisions. The following provisions shall apply to this Lease:

14. Entire Agreement. This Lease constitutes the entire agreement pertaining to the subject matter herein and supersedes all prior and contemporaneous agreements of the parties in connection therewith.

15. Non-Waiver. Waiver by either party of any breach of any term, covenant, or condition herein contained, shall not be considered a waiver of any subsequent breach of such term, covenant or condition. Nothing in this Lease shall waive any statutory defenses, immunities or limits of liability or damages including but not limited to those set forth in Wisconsin Statutes Section 893.80.

16. Termination For Default or Breach By Tenant.

- A. Failure of the Tenant to perform any of the provisions of this Lease shall constitute a breach of the Lease, in which case, the County may require the Tenant to commence corrective action within ten days (10) from date of receipt of written notice citing the exact nature of such breach, and completion of corrective action in a commercial

reasonable time frame. Failure to take corrective action or failure to provide a written reply within the prescribed 10 days shall constitute a default of the Lease.

- B. Failure to pay the required amount on time will result in an interest charge of 8% per annum on the balance due.
- C. Landlord reserves the right to enforce the performance of this Lease in any manner prescribed by law or equity in the event of breach or default of this Lease subject to its duty to mitigate its damages, and may in its sole discretion, contract with another party with or without solicitation of proposals, bids or further negotiations. Tenant must compensate for any and all loss to the County should it become necessary to contract with another person because of such default. If Tenant fails to pay damages as set forth herein on a timely basis, Tenant will be liable for costs and expenses of the County for litigation to enforce this Lease, including reasonable administrative costs, reasonable attorney's fees and court costs.
- D. It is mutually agreed the breach of this Lease on Tenant's part will result in irreparable and continuing damage to the County for which money damages may not provide adequate relief. Therefore, the breach of this Lease on Tenant's part shall entitle the County to both preliminary and permanent injunctive relief and money damages insofar as they can be determined under the circumstances.

17. No Partnership. Nothing contained in this Lease shall be deemed or construed by the parties hereto or by any third party to create the relationship of principal and agent or of partnership or of joint venture or of any association whatsoever between Landlord and Tenant, it being expressly understood and agreed that neither the method of computation of rent or any other provisions contained in this Lease nor any acts of the parties hereto shall be deemed to create any relationship between the parties hereto other than the relationship of Landlord and Tenant.

18. Amendment. This Lease shall be amended only by a written agreement signed by both parties.

19. Authority. The person signing on behalf of the Landlord and Tenant represent that he/she has the authority to execute this document on behalf of the party.

20. Recitals. The Recitals are incorporated into and made part of these Terms and Conditions.

21. Choice of Law and Venue. Wisconsin law will apply and venue will lie in Kenosha County for any disputes arising out of the Lease.

22. Exhibits. The following Exhibits are incorporated into and made a part of this Lease.

Exhibit A: Map of the Property and Area To Be Mined

Exhibit B: Royalty Terms

The parties have executed this Lease as of the date first above written.

KENOSHA COUNTY

THELEN SAND & GRAVEL, INC.

Sign:

Print
Name:

Title:

Date:

Sign:

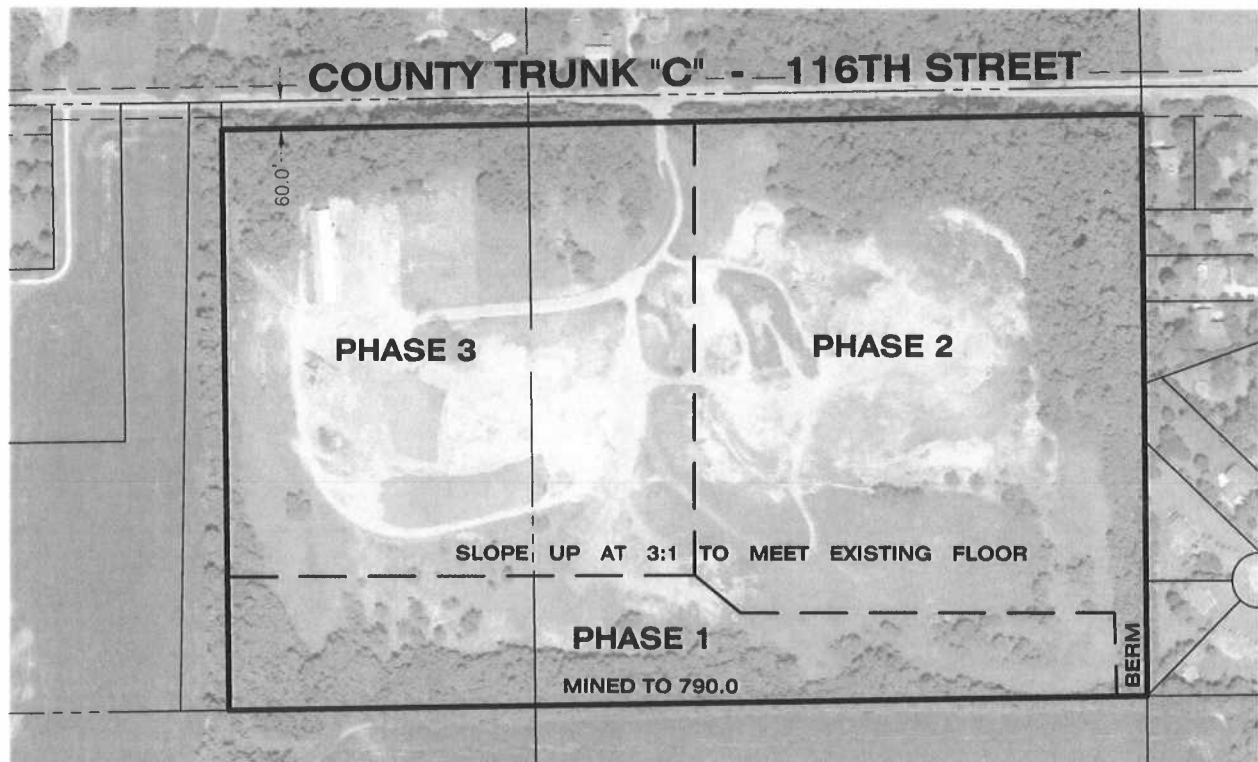
Print
Name:

Title:

Date:

KENOSHA COUNTY LEASE AND ROYALTY AGREEMENT EXHIBIT A

The East Half of the Northwest Quarter of the Northwest Quarter (excepting therefrom the North 60 feet thereof) and the Northeast Quarter of the Northwest Quarter (excepting therefrom the North 60 feet thereof), all in Section 36, Township 1 North, Range 19 East of the Fourth Principal Meridian in Kenosha County, Wisconsin.



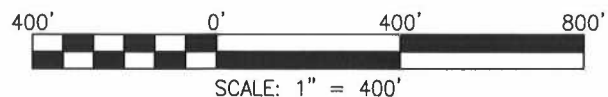
PREPARED BY:



Vanderstappen
Land Surveying, Inc.

www.vandersinc.com
1316 N. Madison St.
Woodstock, Illinois 60098
ph. 815-337-8310 fax 815-337-8314
"Always faithful to the property line"

JOB #200335



SCALE: 1" = 400'

Kenosha County Lease and Royalty Agreement Exhibit B

Annual Royalty Fee per gross cubic yard

Year	Fee
1	\$ 0.40
2	\$ 0.40
3	\$ 0.41
4	\$ 0.42
5	\$ 0.43
6	\$ 0.44
7	\$ 0.45
8	\$ 0.46
9	\$ 0.47
10	\$ 0.48

Example	
Cubic Yards	Royalty
75,000	\$ 30,000
100,000	\$ 40,000
100,000	\$ 41,000
100,000	\$ 42,000
100,000	\$ 43,000
100,000	\$ 44,000
100,000	\$ 45,000
100,000	\$ 46,000
85,000	\$ 39,950
-	\$ -
860,000	\$ 370,950

Year would conclude on December 31 of each year included a partial year.

Kenosha County
Administrative Proposal Form

1. Proposal Overview

Division: Highways Department: Public Works

Proposal Summary (attach explanation and required documents):

A resolution authorizing the County to enter into a Lease & Royalty Agreement with Thelen Sand & Gravel, Inc. to continue mining operations in the County's gravel pit located at 32303 116th St., Wilmot, WI and assist in the mine's restoration.

Dept./Division Head Signature: _____



Date: 5-21-20

2. Department Head Review

Comments:

Recommendation: Approval ☐ Non-Approval ☐

Department Head Signature: _____

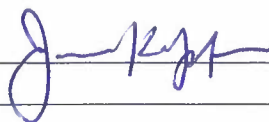
Date: _____

3. Finance Division Review

Comments:

Recommendation: Approval ☒ Non-Approval ☐

Finance Signature: _____



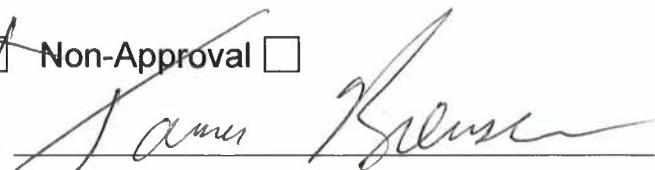
Date: 5-27-20

4. County Executive Review

Comments:

Action: Approval ☒ Non-Approval ☐

Executive Signature: _____



Date: 5/28/20