

DEVELOPMENT AGREEMENT

This Developer's Agreement (this "Agreement") is made and entered into this ___ day of _____, 2018, by and between the Town of Cleveland, a Wisconsin governmental entity (the "Town"), and Fairchild Rail, LLC (the "Operator", or "Proposed Operator"), a Wisconsin limited liability company. Each of the Operator and the Town are sometimes referred to herein individually as a "Party" and collectively as the "Parties." The term "Operator's Representatives" shall include Operator's contractors, subcontractors, agents, employees, suppliers and designees.

Recitals

- A. WHEREAS, Proposed Operator desires to engage in trans-loading of frac sand on the Union Pacific Railroad, and is in the process of constructing, developing, operating and maintaining a railway siding and staging area (the "Project") in the Town of Cleveland, Jackson County, Wisconsin. Proposed Operator intends to use a Town road in the Town of Cleveland for access to and egress from the Project, in which a Town Road Maintenance and Upgrade Agreement will be executed. Proposed Operator has received a conditional use permit for the Project in the M-2 Industrial Extraction District according to Chapter 17 of the Jackson County Zoning Ordinance;
- B. WHEREAS, the Proposed Operator is not applying for a License to mine in the Town of Cleveland per the Town of Cleveland, Chapter 10, Nonmetallic Mine Operator's License (the "Operator License"). The Project of the Proposed Operator does include Trans-Loading of nonmetallic materials, finished products or waste materials to or from an extraction site that is originated outside the Project jurisdiction. This Agreement fulfills the special exceptions of the Proposed Operator License. This Agreement shall extend to haul trucks owned by the Proposed Operator, its employees and agents as well as to third party trucking services.
- C. The Town Board, through the execution of this Agreement, agrees that it shall work together with the Proposed Operator to help facilitate a successful and safe Facility and Project for the Town and the Proposed Operator.
- D. The Town Board determines with this Agreement, when fully complied with by the Proposed Operator, that the following conditions will be met:
 - (1) The intent and minimum conditions of this Agreement can be achieved through the use of alternative measures. Hours of operation do not exceed sixteen (16) hours per day.
 - (2) The Agreement provides for the protection of the public at least equal to those protections found under this Agreement, including remedies to damages to private water supply and Property value assurances for nearby landowners.
 - (3) The public health, safety, and welfare will not be adversely affected thereby.

AGREEMENT

THEREFORE, Proposed Operator and the Town agree as follows:

A. Term

A.1 This Agreement shall be executed upon signing by all parties.

A.2 This Agreement and License shall be in effect through July 10th, 2068, upon which Proposed Operator may renew under section L.3.4.

B. Operation

B.1 The Proposed Operator means any person who is engaged or has applied for a License from the Town to engage in Trans-Loading of nonmetallic materials, finished products, or waste materials at the Trans-loading Facility. (See Exhibit Map). Proposed Operator shall conduct a loading operation in the Town that will load sand hopper rail cars with the intent to deliver to market the frac sand by railway. No stockpiling of non-metallic materials, finished products, or waste materials to be allowed at the Facility without written consent of the Town Board. Proposed Operator shall be allowed to operate the Trans-Loading Facility at all times necessary to accommodate inbound and outbound rail service. Proposed Operator does not control railroad operational hours. Proposed Operator does agree to limit hauling of material hours to occur from Monday to Friday between 5:00 am to 9:00 pm, Saturday between 8:00 am to 4:00 pm, and no Sundays or federal Holidays (New Year's Day, Memorial Day, 4th of July, Labor Day, Thanksgiving and Christmas Day). No hauling of material during morning or afternoon school bus delivery/drop-off times pertaining to that portion of Town Road, actual prohibited hours will be coordinated with the Osseo-Fairchild school district.

B.2 The Proposed Operator shall use best management practices to keep the noise from the Trans-Loading Facility at or below sixty (60) decibels (dBA) from any Residential Dwelling. These practices include the use of Mining, Safety and Health Administration (MSHA) approved "white noise" back-up alarms and/or low-tone alarms, and properly maintained mufflers on any equipment. Earthen berms may be built to help provide a reduction of sound at the Facility boundary. Should the aforementioned measures fail to keep noise levels at or below sixty (60) decibels (dBA), Proposed Operator will plant small trees or shrubs along the top of the berm to further reduce noise levels. Exceptions to this section are haul trucks entering and leaving the site and work projects done on the screening berms, drainage ditches or Town and County road ditches. Noise created by the rail line or the switching of rail cars shall also be an exception to this section.

B.3 Within the Town, trucks hauling materials to or from the Trans-loading Facility Project; a Town Road Maintenance and Upgrade Agreement will be executed by the Proposed Operator and the Town.

B.3.1 Shall use pre-approved haul route; and

B.3.2 Shall not use compression release engine brakes, commonly known as Jake brakes; and

- B.3.3 Shall adhere to all posted speed limits; and
- B.3.4 Shall agree that Town road Property which is utilized shall be upgraded, built and maintained solely at the cost of the Proposed Operator. See Town road maintenance and upgrade Agreement for further details; and
- B.3.5 The Proposed Operator will adhere to all requirements under the Town Road Maintenance and Upgrade Agreement.

B.4 Any berms constructed by Proposed Operator at the Trans-loading Facility shall be maintained using best management practices for erosion control.

B.5 All Proposed Operator lights will have full cut-off shrouds so that no light is directed upward or at structures on the Trans-loading Facility Property. The Proposed Operator does not control Union Pacific Railroad drop and pull operations performed during twilight hours.

B.6 The Proposed Operator shall at all times have an agent, whose name, fax number, email address and telephone numbers are made known to the Town Clerk.

C. Storm Water Management

C.1 The Proposed Operator shall comply with any Storm Water Management and Erosion Control Plan set forth by the United States Army Corp of Engineers, the Wisconsin Department of Natural Resources and Jackson County.

D. Groundwater

D.1 The Proposed Operator does not require nor shall Proposed Operator use a high capacity well for or within this Trans-Loading Facility.

E. Environmental and Water Stewardship

E.1 To assist the Town in promoting environmental and water stewardship within the Town, Proposed Operator shall deposit into an account designated by the Town \$.01 per ton of non-metallic minerals that the Proposed Operator, its successors or assigns, trans-loads on the Trans-loading Facility Project. The funds in the account may be used by the Town to promote environmental and water stewardship within the Town, as deemed necessary and appropriate by the Town in its sole determination. Environmental and water stewardship shall be defined in its broadest sense so as to allow the Town to use the funds for any matter that relates to environmental and water stewardship.

F. Blasting

F.1 Since the Project is a Trans-Loading Facility, blasting by the Proposed Operator will not be utilized.

G. Property Value Assurance

G.1 The Proposed Operator hereby grants Town of Cleveland residential Property owners within ¼ mile of the Transloading Facility Project a Property Value Guarantee as set forth in the attached Exhibit A.

H. Restoration

H.1 The Proposed Operator plans on managing the Trans-Loading Facility into perpetuity; therefore, there is no Reclamation Plan requirement from Jackson County in this Agreement.

I. Laws to be Observed.

I.1 The Proposed Operator shall at all times comply with all federal, state, county, and local laws, regulations and ordinances applicable to the Proposed Operator's operations at the Trans-loading Facility.

I.2 The Proposed Operator shall provide the Town with copies of all such permits or Licenses and all related application materials and reports submitted by or on behalf of Proposed Operator upon request by such federal, state or local authorities.

J. Reimbursement and Enforcement

J.1 Reimbursement. The Proposed Operator shall reimburse the Town for all legal fees incurred in connection with the drafting of an executed Agreement at the pre-determined rate of One Hundred Twenty-Five Dollars (\$125.00) per hour. In addition, the fees in totality shall not exceed Five Thousand Dollars (\$5,000.00). Any amounts due under this Agreement which are not paid by the Proposed Operator within thirty (30) days of billing shall accrue interest at the rate of one percent (1%) per month.

J.2. Inspection and Right of Entry. The Proposed Operator shall, upon request by the Town, provide the Town's officers, agents, employees and contractors with access to the Trans-loading Facility Project for purposes of determining or enforcing compliance with this Agreement or as otherwise provided by law. In the event of Proposed Operator's failure or refusal to permit access to the Trans-loading Facility Project, the Town may obtain an inspection warrant, injunction or other relief from a court to enforce its right to access.

J.3 Notice of Default. In the event that Proposed Operator fails to perform any of its obligations under this Agreement, the Town shall provide a notice of default and the parties shall hold an initial meeting within ten (10) days following notice of such default for purposes of attempting to resolve the default on an amicable basis. If the parties cannot resolve the matter, the Town may elect to enforce the remedies provided for herein in this Agreement.

J.4 Disputes Concerning Agreement. Any dispute concerning any provision of this Agreement, other than a default under the aforementioned paragraph shall be resolved as follows: The party which asserts a dispute shall first give notice thereof to the other party, within thirty (30) days of the event giving rise to the dispute. Such notice shall set forth all reasons supporting the basis of the dispute. Within thirty (30) days following the date of the notice, a meeting between the Parties shall be held to attempt in good faith to negotiate a resolution of the dispute or controversy.

J.5 Remedies.

J.5.1 Corrective Orders. The Town Board may issue a notice of violation and order that specifies the action to be taken to remedy a default and the time period for curing the default.

J.5.2 Remediation and Reimbursement. In the event the Proposed Operator fails to Perform any of its obligations under this Agreement, the Town Board may, but shall not be required to, perform such obligations at the Proposed Operator's expense. Before performing the Proposed Operator's obligations, the Town Board shall give Proposed Operator at least thirty (30) days written notice. Proposed Operator shall reimburse the Town for all expenses for materials, contractors, engineers, attorneys and other consultants in connection with performing Proposed Operator's obligations within (30) days of billing.

J.5.3 Legal Action. The Town, by the Town Board, retains the right to commence legal action to enforce the terms of this Agreement and seek remedies which include: termination of the action to enforce the terms of this Agreement and seek remedies which include: termination of the Agreement for a default, specific performance of the obligations under this Agreement, penalties and/or damages in an amount determined by the court, and/or injunctive relief. The Town, by its Town Board, shall maintain its power to protect the public health, safety and welfare, and, if necessary, to commence public nuisance actions to limit or negate action by the Proposed Operator, including the Fairchild Rail, LLC, its officers, employees, agents and independent contractors who may have created public nuisances in the Town, including in the Town Trans-loading Facility.

J.5.4 Preservation of Remedies. The remedies provided herein shall not be exclusive of other remedies. A failure by the Town to take action on any past violation(s) shall not constitute a waiver of the Town's right to take action on any subsequent violation(s).

J.5.5 Hold Harmless. The Proposed Operator will indemnify and hold harmless, during the term of this Agreement, and during the extended term of the long-term care operations on the Trans-loading Facility Property, the Town, its officers, employees, agents or independent contractors, from and against all claims, damages and expenses, including attorney fees arising out of or resulting from any performance by any person(s) during the construction, non-metallic mining operations and long-term care operations at the Trans-loading Facility provided then any such claim, damage, loss, or expense, A) is attributable to bodily injury, sickness, non-care, or death, or to injury to or destruction of tangible Property, including the loss of use therefrom, and B) is cause in whole or in part by any negligent act or omission of the Proposed Operator, its officers, employees, agents,

or independent contractors, or anyone directly or indirectly employed by any of them, or anyone for whom acts of any of them may be liable regardless of whether or not it is caused in part by the Town, or any other party, so indemnified except to the extent any of the foregoing arise from an intentional or willful misconduct act or the Town, or any of its officers, employees, agents and independent contractors.

- J.5.6 Insurance. Proposed Operator shall obtain, prior to construction and shall maintain during the trans-loading of the non-metallic materials, comprehensive general liability and Property damage insurance policies with a minimum amount of one (1) million dollars per occurrence and two (2) million dollars in total per year, that will, at minimum, cover any and all civil liability and losses to the Proposed Operating Trans-loading Facility Property, including Property loss to the Town, or third persons, or personal injury to third persons and to the Town, its officers, employees, or agents cause by the acts of commission or omissions of Fairchild Rail, LLC, its employees, its agents and its independent contractors. With these policies issued to Proposed Operator to have the Town, its officers, its employees and its agents listed as additional insured or loss payee. Proposed Operator will also carry and maintain worker's compensation and employee's liability insurance in accordance with Wisconsin law. Proposed Operator shall provide the Town Board copies of the Certificates of Insurance showing the additional insured prior to and during the construction and long-term care at the Trans-Loading Facility.

K. Miscellaneous Provisions

K.1 Royalty Payment. In exchange for supporting the county's position on the rezoning and conditional use permit of the Property, and executing a Development Agreement, the Proposed Operator shall pay a royalty directly to the Town for which the Town has complete discretion and control in terms of expenditures. The payment shall be made on a quarterly basis, payments shall be paid on or before the 30th day of the month following the end of the quarter for which frac sand was actually loaded and removed from the Trans-loading Facility. The commencement of this provision shall begin upon the shipping of sand on the railroad. The dollar amount paid shall be Ten Cents (.10) per ton of frac sand which is loaded and shipped from the Trans-loading Facility Project, shall not be capped and is illustrated as follows:

K.1.1 In year one if the Proposed Operator ships 1,000,000 tons of sand, the Proposed Operator shall make payment to the Town Board for an amount of One Hundred Thousand Dollars (\$100,000). Conversely, if the amount shipped is higher or lower, the payment shall increase or decrease accordingly.

K.1.2 Hours of Operation. The restrictions on hours of operation at the Trans-loading Facility under Section 10.07(2)(e) of the Mining Ordinance are amended as follows:

- (1) During the Trans-loading Facility Operation, the Proposed Operator shall be permitted to maintain a standard operating schedule of 5:00 a.m. to 9:00 p.m. Monday through Friday and 8:00 a.m. to 4:00 p.m. on Saturday. There will be no Sunday hauling at the Trans-loading Facility Operation, and there will be no hauling on the Property during the following holidays: 1) New Year Day; 2) Memorial Day; 3) 4th of July; 4) Labor Day; 5) Thanksgiving, or 6) Christmas Day. Proposed Operator does not control railroad operational hours of inbound and outbound switching, drop and pull operations.
- (2) All trucks operating in the Town for or on behalf of the Proposed Operator, including those agents, employees, truckers and independent contractors operating for the Proposed Operator, where such trucks are to be used for the transport of nonmetallic minerals during construction and long-term care shall be completely covered to prevent emissions of fugitive dust.
- (3) All trucks operating for or on behalf of the Proposed Operator, including the agents, employees, truckers and independent contractors operating for the Proposed Operator, where such trucks are used for the transport of nonmetallic minerals during construction and any long-term care shall obey posted speed limits and other applicable traffic laws and regulations. During this timeframe the Proposed Operator, its employees, agents, truck drivers, and independent contractors will adhere to all posted weight limits on Town and County roads, except as agreed upon in the Town Road Maintenance and Upgrade Agreement. The Proposed Operator shall, upon notice, timely inform the Town Clerk in writing of any cited violations within the Town of traffic laws and regulations and by whom the citation was issued.
- (4) All trucks operating for or on behalf of the Proposed Operator during construction, maintenance and long-term care shall not use compression release engine brakes, commonly known as "Jake brakes", except in case of emergency.
- (5) Endangered Species. The Proposed Operator shall conduct an assessment of the impacts of the proposed Trans-Loading Facility Operations on Endangered Species on the Property and will make those necessary changes to its operation to protect those Endangered Species as directed by U.S. Fish and Wildlife and/or WDNR. The Town Clerk will be timely notified of any endangered species found by the Proposed Operator at the Property.
- (6) Notifications. The Proposed Operator shall at all times during construction, maintenance and long-term care operations have a company representative, whose name, fax number, email address and telephone numbers are made known to the Town Clerk, available to respond to

complaints and problems. The initial company representative is identified on K.4. This representative will have available a list of all agents and contractors working for the Proposed Operator in the Town. The list of persons with contract telephones, email and addresses shall be shared with the Town Clerk.

- K.2 All parties have participated in negotiating the terms of this Agreement. No party shall benefit from not having drafted this Agreement. If any term, section or other portion of this Agreement is reviewed by an administrative agency, court, mediator, arbitrator or other judicial or quasi-judicial entity, such entity shall treat this Agreement as having been jointly drafted by the parties.
- K.3 No waiver of any provision of this Agreement shall be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and the Proposed Operator, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default or defaults of the same type. The Town's failure to exercise any right under this Agreement shall not constitute approval of any breach or wrongful act by the Proposed Operator.
- K.4 Any notice required or permitted by this Agreement, except the notice required under the Property Value Guaranty, shall be deemed effective when personally delivered in writing, or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, and addressed as follows:

If to the Proposed Operator: Fairchild Rail, LLC

Attn: Matthew Segerstrom
 24511 S. 211th Pl
 Queen Creek, AZ 85142
 Phone: 602-295-4358
 Email: matt@paramountsand.com

If to the Town: Town of Cleveland
 W14427 Old Hwy 10
 Fairchild, WI 54741

Any party may change the address to which notices must be sent by giving notices as provided herein.

- K.5 This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. All disputes arising under this Agreement shall be venued in a Wisconsin Court of competent jurisdiction.
- K.6 No changes, amendments, alterations, or modifications to this Agreement shall be effective unless in writing and signed by both parties and, if required, upon approval by competent governing authorities of each Party.

K.7 This Agreement is entered into with the Proposed Operator for the Project for the purposes of engaging in Trans-Loading Facility activities. The Proposed Operator may assign or transfer its rights and obligations under this Agreement to any entity with the prior written consent of the Town Board, which shall not be unreasonably withheld, providing the Project will continue to be used for Trans-Loading activities. The assignee assumes in writing the obligations of the Proposed Operator, pursuant to the Agreement and provides a copy of such Agreement to the Town prior to the transfer. In the event the Proposed Operator transfers its rights and obligations for a purpose other than Trans-Loading, the Agreement shall be terminated.

L.1 Procedures for Applying a License for a Trans-Loading Facility.

1. Application Submittal.

(a) The payment of the application fee of one hundred fifty dollars (\$150) shall be made payable to "Treasurer, Town of Cleveland." The Application shall be signed by the Proposed Operator and by the landowner, provided the landowner is a person other than the Proposed Operator. Electronic versions of all application information shall also be provided to the Town Clerk in a commonly used digital format on a CD-ROM, DVD, or other commonly used computer storage media that is compatible with a Windows-based home computer operating system. The Town shall not be held responsible for any costs incurred by the Proposed Operator in the preparation and submittal of an application.

2. Reimbursement of Fees and Costs.

(a) Reimbursable Costs. The Town Clerk and other Town staff may expend time in the review and processing of the application by the Proposed Operator. The Town Board may also retain the services of a Retained Expert for purposes of reviewing, processing and acting upon any applications for a Trans-Loading Facility.

Preliminary Cost Reimbursement Agreement. At the time an application for approval of a Trans-Loading Facility is filed with the Town, the Proposed Operator shall execute for the benefit of the Town an Agreement agreeing to pay and providing adequate security guaranteeing payment of the cost of the investigation, water and air monitoring, review and processing of the application, including any Retained Experts and staff administrative costs.

3. Preliminary Review and Decision.

(a) Preliminary Review. The Town Clerk shall forward the application to the Town Board for initial review to determine if additional information

or expertise is necessary to Property evaluate the application. If no additional information or expertise is deemed necessary, the Town Board shall issue a public notice and schedule a hearing under sub (4).

- (b) Additional Information. The Town Board may request the Proposed Operator to submit additional information if the Town Board determines that application is incomplete. The Town Board may also retain the services of a retained expert to review the application and report to the Town Board whether additional information is required for review of the application and to determine whether the application meets the standards of this Agreement.
- (c) Additional Fees. If the Town Board determines a Retained Expert is warranted it shall give written notice to the Proposed Operator of the additional administrative fee to be charged beyond the base administrative fee to cover the cost of the services of any such retained expert. The additional fee shall be paid by the Proposed Operator, or landowner, before the additional review is undertaken.
- (d) Preliminary Decision. Upon completion of its review and that of any Retained Experts, the Town Board shall issue a preliminary decision whether to grant a License to the Proposed Operator to operate a Trans-Loading Facility Project, with or without restrictive conditions on use, or to deny the application for a License.

4. Decision by the Town Board.

- (a) Notice of Hearing. The Town Clerk shall place the preliminary decision of the Town Board on the agenda for the next regular meeting of the Town Board. The Town Board shall set a date for a public hearing and give a Class III public notice, plus post at the designated posting places at least fifteen (15) days prior to the date scheduled for the hearing, with the notice mailed to all neighboring landowners. At the public hearing the Town Board shall take public comment on the proposed Trans-Loading Facility License and Agreement.
- (b) Town Board Decision. Following the public hearing, the Town Board may take immediate action or set a date for the meeting at which time they shall make a final decision on the License and Agreement. The Town Board shall review the application any Retained Experts' reports, and public comments made and information provided at the public hearing. In the case of an application for a License and an Agreement, the Town Board shall grant the Agreement and License if it determines that the operation of the Trans-Loading Facility will be consistent with the minimum standards and the purposes of this Agreement and License. If the Town Board denies the License and Agreement, the applicant may request a hearing under the provisions of Section 10.09(3) of the Town Nonmetallic Mine Operator's License Ordinance.

L.2 – License Application Required Information. All Proposed Operators for a License and an Agreement shall submit the information required in this section. The Proposed Operator may provide this information by reference to other documents submitted to other governmental agencies, but in such cases shall provide a copy of the referenced document and a specific cross reference identifying where the information required by this section is located in any referenced material.

1. Ownership Information.

- (a) The name, addresses, phone number(s), and email address of the Proposed Operator of the Tans-Loading Facility Operation.
- (b) The name, address, phone number(s) and email address of all owners or lessors of the land on which the Trans-Loading Facility Operation will occur.
- (c) If the Proposed Operator does not own the Trans-Loading Facility, a copy of a fully executed lease and/or Agreement between the landowner and the Proposed Operator who will engage in operations on the proposed Trans-Loading Facility.

2. Site Information and Maps.

- (a) Parcel identification numbers of all contiguous parcels owned by the same landowner/lessor on which the Trans-loading Facility Operation will be located. Survey maps shall be provided of any of those parcels as may be available at the time of application.
- (b) An actual photo of the Trans-Loading Facility site at a scale of not less than one (1) inch equal to six hundred sixty (660) feet.
- (c) A topographic map of the proposed Trans-Loading Facility extending one (1) mile beyond the site boundaries at contour intervals no wider than ten (10) feet showing the boundaries of the site, the location and total acreage of the site, and any likely proposed expansion area for the Trans-Loading Facility, or the rail line, and the name of all roads within one (1) mile of the site.
- (d) A site plan for the proposed Trans-Loading Facility, including a map showing the location within the site of all existing and proposed building and other structures, equipment, stockpiles, storage and parking areas. Topographical elevations and maximum heights of all buildings, structures, equipment, and stockpiles. Road access points and buffer areas along bordering properties and public roads.
- (e) A plan for staking or marking the border of the entire Trans-Loading Facility, and for securing the site by appropriate measures, which may include fencing or alternative measures consistent with mine safety and security.

- (f) A map of which all residential, agricultural and municipal wells within one quarter (1/4) mile of the boundaries of the Trans-Loading Facility in all directions are marked and given a numerical identification of the location.
- (g) The location and name of all surface waters ,including lakes, private or public ponds, streams, including intermittent streams and headwaters), drainage ditches, wetlands, drainage patterns, and other water features on the site and within one-half (1/2) mile of the Trans-Loading Facility shall be determined at the time of application.
- (h) A map identifying the location of all other non-contiguous mine sites within the Town of Cleveland and adjacent Towns, if any, that will contribute extracted material to the same Trans-Loading Facility for which the Proposed Operator seeks a License and an Agreement.
- (i) A letter from the Wisconsin Department of Natural Resources concerning any threatened or endangered species at the Trans-Loading Facility.

3. Operation Plan.

- (a) Dates of the planned commencement and cessation of the Trans-loading Facility Operation.
- (b) Descriptions of hours of operation of the Trans-Loading Facility, including all times when vehicles will enter or leave the Trans-Loading Facility.
- (c) Estimated volume of material to be delivered during the timeframe of the Trans-Loading Facility extracted over the life of the Facility and for the next calendar year.
- (d) Identification of all proposed off-site trucking routes, together with the frequency of traffic and the common schedule of travel to be used for transporting extracted materials or products to or from the Trans-Loading Facility, an assessment of the adequacy of roads within proposed off-site trucking routes and a description of any proposed alterations or improvements to such roads, and a description of any traffic control or other measures needed to protect public safety.
- (e) A listing of any hazardous materials, including chemicals, or flocculants used in the Trans-loading Facility Operation, or in controlling dust, fuel supplies that will be stored at the Trans-Loading Facility and a description of measures to be used for securing and storing these materials. A detailed description of expected released and final disposal of each. The operation plan shall include a written plan for responding to spills of these materials and fuels at the Trans-Loading Facility site and the frequency of regular drills for responding to spills on the site.

- (f) A landscaping and site plan, including any plantings, schedule of plantings, proposed buffer areas, fencing/gating, and areas not to be disturbed.
- (g) Copies of all storm water management, grading, and erosion control plans, as required by the Wisconsin Department of Natural Resources.
- (h) A letter from the Wisconsin Department of Natural Resources concerning any threatened or endangered species/plants at the Trans-Loading Facility.

L.3 Reporting, Annual Report, Inspection and License Renewal

1. On-going Reporting Requirements.

- (a) The Proposed Operator shall provide notice to the Town of any notices of violations, citations, or other enforcement actions taken by any other governmental authority against the Trans-loading Facility Operation or the Proposed Operators. The Proposed Operator shall provide notice to the Town of such actions within fifteen (15) days after receiving such notice from the governmental authority.
- (b) All monitoring data, sampling results and any other test results required by this Agreement shall be undertaken at the Proposed Operator's expense and provided to the Town Clerk. Unless otherwise specified in this Agreement, all monitoring data sampling results and any other test results shall be provided to the Town Clerk within thirty (30) days of receipt of the results by the Proposed Operator.

2. Annual Report.

- (a) No later than October 1 of each calendar year, the Proposed Operator shall submit an Annual Report to the Town Board for the Trans-Loading Facility for which the Proposed Operator has a License in the Town of Cleveland. The reporting period shall be from the date of the issuance of the first Proposed Operator's License to August 31, and thereafter from September 1 to August 31.
- (b) The Annual Report shall include the following information:
 - 1. An identification of the Proposed Operator and location of the Trans-Loading Facility.
 - 2. A summary of all areas of non-compliance, and a plan for bringing non-compliant areas into compliance.

3. Annual Inspection. The Town Board, or other authorized representative who has the authority, will perform an annual inspection in order to inspect all operations to ensure compliance by the Proposed Operator with the minimum standards under this Agreement and License upon showing proper identification, and upon a thirty (30) day notice.
4. License Renewal.
 - (a) The Proposed Operator shall make written request to the Town Clerk for a renewal of the License to operate the Trans-Loading Facility no later than October 1 of the year in which the License will expire. The application shall be accompanied by payment of a fee in an amount in accordance with the reimbursement provisions set forth in Section 10.05 (2) of the Town Nonmetallic Mine Operator's License Ordinance.
 - (b) The written request for renewal shall incorporate by reference the Annual Report from the previous calendar years in accordance with the provisions of sub. 2 (b).
 - (c) The Town Clerk shall review the renewal application within sixty (60) days of receipt to determine whether the application is complete and upon a determination that it is complete, shall forward it to the Town Board.
 - (d) The Town Board shall review the application to determine if additional information or expertise is necessary to properly evaluate the application. The Town shall utilize a Retained Expert to inspect the Trans-Loading Facility unless the site is reported as being inactive during the past year, in which case a member of the Town Board may be assigned to inspect the site. If no additional information or expertise is deemed necessary, the Town Board shall schedule the application for a decision under par. (g)
 - (e) If the Town Board determines that additional expertise is required, the Town Board shall authorize hiring a Retained Expert to advise the Town and shall give written notice to the applicant of the additional administrative fees to be charged beyond the base administrative fee to cover the cost of additional review by the Retained Expert and any administrative staff. The additional fee shall be paid before additional review is undertaken.
 - (f) Once the applicant has submitted any additional information and has paid the fee in the amount charged, the Retained Expert shall report to the Town Board on whether the renewal application meets the requirements of this Agreement. The Town Clerk shall place the request on the agenda of the next regular meeting or a special meeting of the Town Board prior to the expiration of the License.

- (g) The Town Board shall grant the request for renewal if it finds:
1. There have been no material violations of this Agreement or the License which have not been appropriately remedied, and
 2. The Proposed Operator has not received multiple or recurring citations or orders for violations of the Proposed Operator's License or this Agreement.
 3. All applicable fees have been paid and financial responsibility requirements have been met.
- (h) If the Town Board denies the request for renewal, the Town Board shall notify the Proposed Operator and provide the Proposed Operator with an opportunity for a hearing under Section 10.09(3) of the Town Nonmetallic Mine Operator's License Ordinance.

L.4 Severability, Interpretation, and Abrogation.

1. Severability.

- (a) Should any section, clause, provision or portion of this Agreement be adjudged unconstitutional or invalid, unlawful, or unenforceable by a final order of a Court of competent jurisdiction, including all applicable appeals, the remainder of this Agreement shall remain in full force and effect.
- (b) If any application of this Agreement to a particular parcel of land is adjudged unconstitutional or invalid by a final order or a Court of competent jurisdiction, including all applicable appeals, such judgment shall not be applicable to any other parcel of land not specifically included in said judgment.
2. The provisions of this Agreement shall be considered the minimum requirements for the protection of the public health, safety, and general welfare of the Town of Cleveland and shall be liberally construed in favor of the Town of Cleveland and shall not be construed to be a limitation or a repeal of any other power now possessed or granted to the Town of Cleveland.
 3. This Agreement is not intended to repeal, or annul any easements, covenants, deed restrictions or Agreements created prior to the effective date of this Agreement.

L.5 Material Change of Circumstances. In the event of any change of circumstances resulting from administrative, legislative or judicial action by federal, state or local authorities after the date of this Agreement that has the

effect of materially altering the carefully structured balance of benefits and burdens that the parties have extensively negotiated and accepted in this Agreement (a "Material Change"), the parties shall use their best efforts to negotiate appropriate amendments to this Agreement, in good faith, as may be necessary to maintain, as closely as possible, the original terms, intent and balance of benefits and burdens of this Agreement. Whenever any party believes that a Material Change has occurred, such party shall promptly notify the other party in writing what the Material Change is and how it affects the Agreement or the rights of any party. Such party may seek dispute resolution under Section J.4 of this Agreement, including mediation and arbitration.

- L.6 Conflicting Provisions. In the event of any conflict between the terms of this Agreement and any other applicable law, rule, regulation or any permit or approval subsequently granted by any other governmental authority, the more restrictive shall control.

(Signature pages follow)

Dated: _____

FAIRCHILD RAIL, LLC

By: _____
Name/Title: _____

STATE OF ARIZONA
COUNTY OF _____

Personally came before me this _____ day of _____, 2018 the above-named Matt Segerstrom, to me known to be the _____ of Fairchild Rail, LLC, and the person who executed the foregoing instrument and acknowledge the same.

Print Name: _____
Notary Public, State of Arizona
My Commission expires _____

(SEAL)

Dated: _____

TOWN OF CLEVELAND

By: _____
Name/Title: _____

STATE OF WISCONSIN
COUNTY OF JACKSON

Personally came before me this _____ day of _____, 2018 the above-named _____, to me known to be the _____ of the Town of Cleveland, and the person who executed the foregoing instrument and acknowledge the same.

Print Name: _____
Notary Public, State of Wisconsin
My Commission expires _____

(SEAL)

EXHIBIT A

PROPERTY VALUE
GUARANTY

This Property Value Guaranty (“Agreement”) is made and entered into as of this _____ day of _____, 2018 (the “Effective Date”) by and between Fairchild Rail, LLC (“Operator”) and _____ (“Owner”) with an address of _____.

Operator shall provide a property value guaranty, as set forth below, to Owner who owns a parcel of land identified on Exhibit A attached hereto (the “Property”).

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions contained herein, and as hereinafter set forth, the parties agree as follows:

- A. **Affected Parcel Owners.** Livable single family residences identified on Exhibit B located within one quarter mile the Property.
- B. **Determination of Fair Market Value.**
- 1) Owner shall notify Operator of its intent of listing the Property sixty (60) days prior to the actual listing;
 - 2) Prior to listing, Owner and Operator shall agree on a licensed real estate appraiser in Wisconsin who shall determine the listing price for the Property. The listing price for the Property shall be considered the fair market value determination by the appraiser assuming Operator did not exist at the time of the appraisal (“Fair Market Value”);
 - 3) In the event Operator and the Owner cannot agree on an appraiser, the Owner and Operator shall mutually select a bank or credit union located in Jackson County, with whom neither party has conducted business, to provide the name of an appraiser; and
 - 4) The appraisal shall be at the sole cost and expense of the Operator.
- C. **Sale of Property.**
- 1) Following the parties’ determination of Fair Market Value for the Property, Owner shall enter into a residential listing contract with a Wisconsin licensed real estate broker. The listing contract shall exclude Operator as a potential buyer. As a result, if Operator purchases the property, no commission shall be due,
 - 2) Listing Price. Owner shall list the property for ninety (90) days at or above the Fair Market Value established by the appraisal.

- 3) If Owner sells the Property for Fair Market Value, Operator shall not owe any additional amounts to the other party.
- 4) Prior to accepting any bona fide offer of less than the Fair Market Value, the Owner shall give Operator three (3) business days' notice by facsimile, email or personal delivery with a copy of the residential offer to purchase to Operator. If notice is by facsimile or email, it shall also require written confirmed receipt by Operator that the notice has been received within the three (3) business days. Thereafter, Operator shall have two (2) business days to provide Owner written notice of its objection to the bona fide offer. For purposes of the Agreement, all notices shall be sent to Operator as follows:

Fairchild Rail, LLC
 Attn: Matt Segerstrom
 24511 S 211th Pl
 Queen Creek, AZ 85142
 Email: matt@paramountsand.com

- 5) In the event Operator does not object and the Property is sold for less than Fair Market Value, Operator shall pay the Owner an amount which is the difference between the selling price and the Fair Market Value less the realtor's commission. In no event shall Operator pay more than \$25,000.00. Operator shall make the payment within thirty (30) days of the recording of the conveyance of the Property.
- 6) If the Property is not sold within one hundred eighty (180) days of the date of the residential listing contract, Operator shall purchase the property within forty-five (45) days for the Fair Market Value less the realtor's commission that would have been paid had Owner sold the Property to a third party.

D. **Applicability.**

- 1) This Agreement shall only apply to Owner's one-time listing and sale of the Property identified in Exhibit A as of the Effective Date.
- 2) This Agreement is solely for the benefit of Owner as of the Effective Date. Owner may not assign this Agreement or any rights or obligations under it.
- 3) This Agreement shall not apply if the Property is listed for sale as of the Effective Date.
- 4) This Agreement shall not apply to a sale by Owner not considered an arm's-length transaction (such a sale or gift to a relative).
- 5) This Agreement applies solely to single family residences and associated acreage and does not apply to agricultural, recreational or vacant land or any commercial enterprises.
- 6) This Agreement shall only be effective as long as Operator is an active trans-load facility.

E. **Non-Participation Waiver.** In the event Owner declines to execute this Agreement, this Agreement shall immediately be null and void to Owner. Owner shall be required to memorialize its decision not to participate in this Agreement by executing the waiver attached hereto as Exhibit C.

IN WITNESS WHEREOF, Operator and Owner have executed the foregoing instrument as of the Effective Date hereof.

Fairchild Rail, LLC

OWNER:

By: _____

By: _____

Name: _____

Name: _____

Date: _____

Date: _____

EXHIBIT B

PROPERTY VALUE GUARANTY
The “Property”

Site Address:

Parcel #

EXHIBIT C

PROPERTY VALUE GUARANTY WAIVER

Decline to Participate

This will confirm and certify that I do not wish to participate in the Property Value Guaranty provided by the Operator on _____, 2018. I acknowledge and agree that by waiving my participation, I will not be afforded another opportunity to participate in the Property Value Guaranty. I have read this waiver, understand it, and voluntarily agree to its provisions.

IN WHITNESS WHEREOF, Operator and Owner have executed the foregoing instrument as of the Effective Date hereof.

Fairchild Rail, LLC

By: _____

Name: _____

Date: _____

OWNER:

By: _____

Name: _____

Date: _____