

TOWN ROAD MAINTENANCE AND UPGRADE AGREEMENT

This TOWN ROAD MAINTENANCE AND UPGRADE 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 "Proposed Operator"), a Wisconsin limited liability company. The Proposed Operator and the Town are sometimes referred to herein individually as a "Party" and collectively as the "Parties". The term "Proposed Operator's Representatives" shall include Proposed Operator's contractors, subcontractors, agents, employees, suppliers and designees.

RECITALS

WHEREAS, Proposed Operator desires to engage in trans-loading commodities (commodities shall not include hazardous waste and solid waste) 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. 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; and

WHEREAS, in connection with the construction, development, operation and maintenance of the Project, the Parties desire to address certain issues relating to the portion of the road owned, operated and maintained by the Town, as shown as the portion of Primus Road starting at the intersection of Hwy 10 up to approximately 800' South highlighted on Exhibit "A" hereto (the "Town Road") over which it will be necessary for Proposed Operator and Proposed Operator's Representatives to, among other things, transport heavy equipment and materials, including, but not limited to, silica sand, which may in certain cases be in excess of the design limits of the Town Road; and both parties acknowledge that the Town Road may not be constructed to withstand the frequency and weight of shipments necessary for the Proposed Operator to transport its products and equipment; and

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 Proposed Operator's License (the "Proposed Operator License"). The Project does include the transport of the extracted nonmetallic materials, finished products or waste materials to or from the extraction site that is originated outside the Town of Cleveland jurisdiction. This Agreement fulfills the special exceptions of the Proposed Operator License of entering into a Mining Agreement between the Town and Proposed Operator, which satisfies the Town that the intent of the Proposed Operator License has been achieved through this Agreement. This Agreement shall extend to haul trucks owned by the Proposed Operator, its employees and agents as well as to third party trucking services.

WHEREAS, Wis. Stat. §349.16(1)(c) authorizes the Town Chair on behalf of the Town Board to enter into an agreement on behalf of Town with any owner or Proposed Operator of any vehicle being operated on a highway maintained by Town that provides that the Town will be reimbursed for any damage done to the highway.

TERMS & CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises and covenants herein set forth, the Parties, intending to be legally bound; agree as follows:

Section 1. Term of Agreement.

This Agreement shall commence upon Effective Date and continue in full force until Proposed Operator has fully discontinued its construction, development, operation and maintenance of the Project and any and all transportation activities related thereto on the Town Road, whichever occurs later, along with a thirty (30) day notice by the Proposed Operator as being fully discontinued. Notwithstanding the foregoing, this Agreement shall not be effective until any and all permits deemed by the Proposed Operator to be necessary for Proposed Operator to effectuate the Project. All terms are agreed upon with execution of this agreement by the parties.

Section 2. Upgrades.

Proposed Operator acknowledges and agrees that the Project may require the Proposed Operator to undertake the following activities in order to upgrade the Town Road. The Proposed Operator agrees to obtain an inspection by a qualified civil engineer or person of similar qualifications to determine the length of Town Road to be used, estimated remaining life of Town Road and extent of upgrades needed to accommodate anticipated traffic volume. The Town Road shall be left in substantially similar and/or improved condition as the original inspection conducted prior to actual operation by the Proposed Operator. The Proposed Operator shall be financially responsible to reimburse the Town for the reasonable cost of said activities:

- A. Upgrading Pavement Sections on Town Road to a design standard as directed by the Wisconsin Department of Transportation (WIDOT), Facilities Development Manual, Section 11-40 (the "Manual"), to withstand the hauling of products and equipment that are necessary for the Project. Without limiting the generality of the foregoing, Proposed Operator agrees to be solely responsible for (i) obtaining an inspection, including without limitation boring samples.
- B. Upgrading the geometric design of the Town Road to a standard as directed by the WIDOT, Facilities Development Manual, Section 11-40, shall include any

improvements to Structures and Culverts that are necessary to accommodate the increased traffic from the Project.

Providing Engineering Plans for all improvements needed under Sections 2.A. and 2.B. above, including any Right-of-Way needed.

Proposed Operator and Town agree to cooperate in good faith in determining what upgrades are necessary and to keep the costs of the same to a reasonable minimum.

The cost of upgrades carried out hereunder shall be invoiced to Proposed Operator. All such invoices shall be payable by the Proposed Operator in full within thirty (30) days of the date of the applicable invoice. If the invoice is not paid within thirty (30) days of the date of the applicable invoice, then this agreement shall be suspended and no further hauling by Proposed Operator or one acting on Proposed Operator's behalf shall occur until said invoice is paid in full.

None of the foregoing upgrades shall be commenced until Proposed Operator provides the Town with a written notice of commencement of operations.

Section 3. Maintenance.

Proposed Operator shall also be responsible for all maintenance costs, above normal maintenance requirements, that are directly attributable to damage to the Town Road from the hauling of products and equipment related to the Project.

Town shall provide written notice to Proposed Operator of any maintenance costs that are above normal maintenance requirements which it reasonably believes are necessary and shall provide a good faith estimate of cost to the Proposed Operator prior to commencing work. The cost of maintenance carried out hereunder shall be invoiced to Proposed Operator. All such invoices shall be payable in full within thirty (30) days of the date of the applicable by the Proposed Operator. If the invoice is not paid within thirty (30) days of the date of the applicable invoice, then this agreement shall be suspended and no further hauling by Proposed Operator or one acting on Proposed Operator's behalf shall occur until said invoice is paid in full.

Section 4. Bonding.

Proposed Operator agrees to provide bonding in the amount of \$50,000.00 to insure to the Town the performance and payment of all of Proposed Operator's financial and other obligations in this Agreement. This bond shall be payable to the Town of Cleveland to reimburse or pay to the Town obligations of the Proposed Operator in this Agreement and shall be delivered to the Town prior to operating the project. The Town and Proposed Operator shall review the amount of the bond beginning three (3) years after Effective Date.

Section 5. Town Responsibilities.

Town, in accordance with the terms of this Agreement, agrees to:

- A. Review for approval all access points to the Town Road system by giving consideration to sight distances, drainage and proximity to other entrances, in a reasonable manner, and in accordance with accepted engineering practices;
- B. Review for approval permits for all utility encroachments on Town rights-of-way in a reasonable manner, and in accordance with accepted engineering practices;
- C. Keep the Town Road listed open to Proposed Operator to haul products and equipment related to the Project for the entire term of this Agreement without further restrictions, other than those indicated in this Agreement or those that may arise for emergency reasons.

Section 6. Routing, Access Approval, & Operations

- A. Proposed Operator shall be restricted to hauling on the Town Road as shown on the attached Exhibit "A" of this Agreement. The Town Road shall be accessed from State Highway 10 or the driveway to the Project. If conditions or circumstances change and Proposed Operator requests to change haul routes, it must first request prior written authorization from the Town. All such additional haul routes are not part of this Agreement; a separate addendum shall be executed by the Proposed Operator in the event any changes are approved.
- B. Notwithstanding anything contained herein to the contrary, and notwithstanding the terms and conditions of any permits issued to Proposed Operator, Proposed Operator shall follow all Wisconsin Department of Transportation Traffic Impact Analysis recommendations. Proposed Operator does agree to limit hauling of material hours to occur from Monday to Friday between 5:00 am to 9:00 pm, and 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. Within the Town, trucks shall not, except in case of emergency, employ the use of compression release (Jake) brakes. All trucks entering project and hauling non-metallic minerals shall be covered or tarped. Any haul trucks operated by persons other than the Proposed Operator shall be given a tutorial on the conditions of this agreement and held to same standards as employees and agents of the Proposed Operator.
- C. The Proposed Operator anticipates 700,000-1,000,000 tons of non-metallic minerals to be trans-loaded per calendar year. Proposed trucks are to be belly dump or grain hopper semis with each fully loaded truck hauling approximately 25 tons, but not limited to.

Section 7. Incidental Use

If traffic related directly or indirectly to the Project, through mistake, uses Town roads other than the Town Road as shown on Exhibit "A" of this Agreement; repairs for damage caused during such mistaken use shall be handled in the same manner as set forth in Section 3.

Section 8. Cooperation.

Town agrees that it will consult with Proposed Operator prior to undertaking any upgrades or maintenance hereunder. Furthermore, Town shall only undertake upgrades and maintenance to the extent reasonably necessary to effectuate the purposes of this Agreement.

During the term of this Agreement, Town and Proposed Operator shall meet as needed or at the request of the Town, to discuss Town Road construction and maintenance schedules. Town agrees to keep the Town Road specified in Exhibit "A" open to Project traffic to the extent possible during any construction and maintenance activities. If closure is necessary, Town may provide a temporary alternate route if available.

Reimbursement. 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 Two Thousand Dollars (\$2,000.00). Any amounts due under this Agreement which are not paid within thirty (30) days of billing shall accrue interest at the rate of one percent (1%) per month.

The Parties agree to cooperate with each other in addressing any unforeseen or extraordinary events caused by Proposed Operator's activity that would result in significant impacts to the Town Road. The parties further agree to cooperate with each other in addressing any unforeseen impact to Proposed Operator's ability to utilize the haul route provided for in this Agreement.

Section 9. Required Insurance.

Proposed Operator shall procure and maintain throughout the Term of this Agreement, Commercial General Liability insurance including bodily injury, property, damage and personal injury in an amount not less than One Million Dollars (\$1,000,000.00) per occurrence and not less than Two Million Dollars (\$2,000,000.00) aggregate. The policy shall also provide contractual liability in the same amount. Proposed Operator's coverage shall to the extent of the liability and indemnity obligations assumed by Proposed Operator under this Agreement: (1) be primary and (2) list the Town of Cleveland, its officers, officials, agents and employees as additional insured parties. Proposed Operator shall, at the time

this Agreement becoming effective, provide Town with certificate(s) of insurance showing the type, amount, class of operations covered, effective and expiration dates of the policy.

Section 10. Remedies and Enforcement.

Each of the Parties hereto covenant and agree in the event of default of any of the terms, provisions or conditions of this Agreement by any party (the "Defaulting Party"), which default is not caused by the party seeking to enforce said provisions (the "Non-Defaulting Party") and after notice and reasonable opportunity to cure has been provided to the Defaulting Party, then in such an event, the Non-Defaulting Party shall have the right of specific performance and injunctive relief. The remedy of specific performance and injunctive relief shall not be exclusive of any other remedy available at law or in equity.

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 caused 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 whose 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 of the Town, or any of its officers, employees, agents and independent contractors.

Section 11. Due Authorization.

Proposed Operator hereby represents and warrants this Agreement has been duly authorized, executed and delivered on behalf of Proposed Operator. Town hereby represents and warrants that this Agreement has been duly authorized, executed and delivered on behalf of Town.

Section 12. Savings/Severability.

It is mutually agreed by the Parties that in the event any provision of this Agreement is determined by any court of law of competent jurisdiction to be unconstitutional, invalid, illegal or unenforceable in any respect, it is the intention

of the parties that such unconstitutionally, invalidity, illegality or unenforceability shall not affect the other provisions, and the Agreement shall be construed as if such unconstitutional, invalid, illegal or unenforceable provision had never been contained in this Agreement.

Section 13. Entire Agreement.

This Agreement, and the recitals and the exhibit attached hereto, constitute the entire agreement among the Parties hereto with respect to the subject matter hereof, and supersedes any prior understandings or written or oral agreements between the parties with respect to the subject matter of this Agreement.

Section 14. Designated Representative.

Proposed Operator designates Mr. Matthew Segerstrom as agent (Agent) with primary responsibility for the performance of this Agreement. In the event this Agent is replaced by another for any reason, Proposed Operator will designate another Agent within seven (7) calendar days and provide notice to Town of replacement pursuant to the procedure set forth in Section 15 below.

Section 15. Notices.

All notices to be given under the terms of this Agreement shall be in writing and shall be sent via registered or certified mail, return receipt requested, postage prepaid, or hand delivered to the addresses of the parties listed below. Notice shall be deemed to have been received on the date of receipt as shown on the return receipt or other written evidence of receipt.

FOR TOWN: Town of Cleveland
 W14427 Old Hwy 10
 Fairchild, WI 54741

FOR PROPOSED OPERATOR: Fairchild Rail, LLC
 Attn: Matt Segerstrom
 24511 S 211th Pl
 Queen Creek, AZ 85142
 Phone: 602-295-4358
 Email: matt@paramountsand.com

Section 16. Assignability/Consent.

This Agreement shall be binding on the Parties hereto, their respective heirs, devisees, successors, and assigns. Except as otherwise provided herein, Proposed Operator shall not sell, assign or transfer its interest in this Agreement, or any of its rights, duties or obligations hereunder, without the prior written consent of

Town. Whenever the consent or the approval of Town is required herein, Town shall not unreasonably withhold, delay or deny such consent or approval.

Section 17. Force Majeure.

The performance of this Agreement shall be subject to events of force majeure. Events of force majeure shall mean any contingency or cause beyond the reasonable control of a Party including, without limitation, acts of God or the public enemy, war, riot, civil commotion, insurrection, government or de facto government action (unless caused by acts or omissions of the party), fires, explosions, rain or other weather delays, floods, strikes, slowdowns or work stoppages.

Section 18. Modifications.

No modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by both Parties. No evidence of any modification shall be offered or received in evidence in any proceeding arising between the Parties hereto out of or affecting this Agreement, or the rights or obligations of the Parties hereunder, unless such modification is in writing and duly executed. The parties further agree that the provisions of this Section 18 will not be waived unless set forth in writing and signed by the Party waiving.

Section 19. Counterparts.

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or email shall be as effective as delivery of a manually signed counterpart to this Agreement.

Section 20. Choice of Law and Forum Selection.

This Agreement shall be governed by, and construed, interpreted and enforced exclusively in accordance with the laws of the State of Wisconsin. The Parties agree, for any claim or suit or other dispute relating to this Agreement that cannot be mutually resolved, the venue shall be in the Circuit Court of Jackson County, State of Wisconsin, and the parties further agree to submit themselves to the jurisdiction of said court, to the exclusion of any other judicial district that may have jurisdiction over such a dispute according to any law.

Section 21. Default Termination.

In the event Proposed Operator shall default in any of the covenants, agreements, commitments, conditions or obligations herein contained, and any such default shall continue unremedied for a period of ten (10) calendar days after written

notice thereof to Proposed Operator, Town may, at its option and in addition to all other rights and remedies which it may have at law or in equity against Proposed Operator, including expressly the specific enforcement hereof, forthwith have the cumulative right to immediately terminate this Agreement and all rights of Proposed Operator under this Agreement.

Section 22. Waiver of Terms and Conditions.

The failure of Town to enforce or insist upon compliance with any of the terms or conditions of this Agreement shall not constitute a general waiver or relinquishment of any such terms or conditions, but the same shall be and remain at all times in full force and effect.

Section 23. Compliance with Applicable Laws.

Proposed Operator shall at all times comply with and observe all federal, state and local laws, ordinances and regulations which in any manner affect the use of the Town Road and the conduct or performance of Proposed Operator and its agents and employees of the terms and obligations under this Agreement.

Section 24. Captions.

The captions contained in this Agreement are for informational purposes only and shall not in any way affect the substantive terms or conditions of this Agreement.

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

Fairchild Rail, LLC (Proposed Operator)

By: _____

Mathew Segerstrom, Managing Member

Town of Cleveland
Jackson County, Wisconsin

By: _____

Randy Julien, Town of Cleveland Chairman

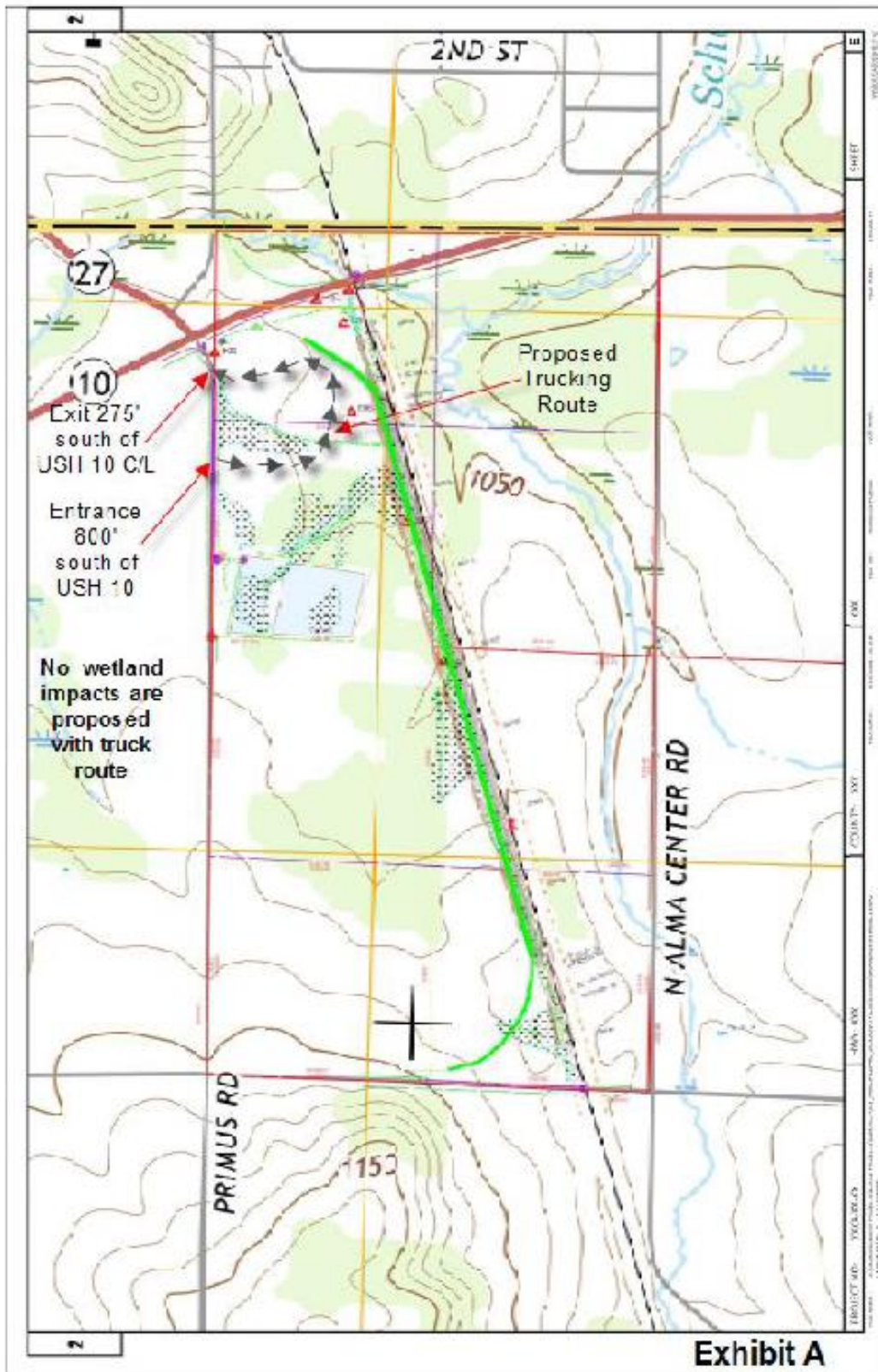


Exhibit A