

**AGREEMENT
(City/CSS Rail Improvements)**

This Agreement (“Agreement”) entered into as of the 10th day of April, 2012, by and between the CITY OF ROCHELLE, an Illinois municipal corporation (“City”), and COATED SAND SOLUTIONS, LLC, a Delaware limited liability company (“CSS”):

WITNESSETH

THAT WHEREAS, City is the owner of certain real estate located in the city limits of City, improved with railroad track and rail facilities for the operation of a railroad (the “City Track”); and

WHEREAS, City has been duly designated and authorized by the appropriate authorities of the United States Government and any and all other pertinent agencies to operate a railroad on the City Track for the purpose of providing common carrier rail service within the city limits of City; and

WHEREAS, City, through its operator, engages in switching of rail cars between applicable Class I common carriers’ main railroad tracks and certain industrial properties within the city limits of City; and

WHEREAS, City receives a monthly fee from the Class I common carriers based on the total number of filled rail cars switched by City’s operator in the previous calendar month as determined by rail cars that have been cleared by the Class I common carriers’ electronic switching data systems (“Switch Fees”); and

WHEREAS, City and CSS have entered into an Industrial Track Agreement regarding City’s obligation to provide rail switching services to CSS; and

WHEREAS, the parties anticipate that CSS will require switching of rail cars delivered to or shipped from CSS on the City Track by City or its operator and that City will receive Switch Fees from the Class I common carriers for switching all such filled rail cars; and

WHEREAS, City and CSS would benefit from the construction of system-wide improvements to the City Track; and

WHEREAS, CSS has agreed to pay a set amount for the construction of system wide improvements to the City Track and City has agreed to reimburse CSS for said contribution out of the Switch Fees received by City for filled rail cars delivered to or shipped from CSS;

NOW, THEREFORE, in consideration of the foregoing premises and the mutual agreements contained herein, the parties agree as follows:

1. Recitals. The recitals set forth above are a material part of this Agreement and are hereby incorporated in this Agreement by reference.

2. CSS Deposit. On or before May 1, 2012, CSS shall deposit with City \$750,000.00 (“Deposit Account”). City shall maintain the Deposit Account, separate from all other funds, in an interest bearing account. City shall construct system-wide improvements to the City Track and shall draw on the Deposit Account for payment of the construction costs, in accordance with the plans as shown in **Exhibit A** attached hereto.

3. Reimbursement Amount. City shall reimburse CSS an amount equal to \$750,000.00 plus two percent (2%) simple interest for three (3) years, commencing January 1, 2013, and without interest thereafter (“Reimbursement Amount”). Reimbursement amounts paid by City to CSS shall be first applied to the principal balance remaining, and then to accrued interest. The principal balance shall be calculated each month as of the date of City's reimbursement payment,

and interest for the following month shall be calculated based on the declining principal balance as so recalculated. In no event shall interest accrue after December 31, 2015.

4. Method of Payment. The parties acknowledge that City or its operator calculates the number of filled rail cars delivered to or shipped from each industry, switched on the City Track every month and advises each industry and the City of the number of filled rail cars switched in the previous month. The parties also acknowledge that payment of the Switch Fees from the Class I common carriers to the City or its operator customarily occurs approximately 60 days after the end of the month in which the rail cars were switched, and that payment occurs only for filled rail cars which are switched by the City or its operator, whether such rail cars are being delivered to or shipped from the industry, and that no switch fee is paid for empty rail cars which are switched by the City or its operator.

City shall pay the Reimbursement Amount in monthly increments (the "Monthly Reimbursement Amount") for each month promptly upon receiving payment of the Switch Fees for said month from the Class I common carriers. The Monthly Reimbursement Amount shall be determined by multiplying \$72.00 times the total number of filled rail cars delivered to or shipped from CSS, and handled by the City or its operator on the City Track, that have been cleared by the Class I common carriers' electronic switching data systems for said calendar month. The Monthly Reimbursement Amount shall be payable only from Switch Fees received by the City for said calendar month for filled rail cars delivered to or shipped from CSS. Upon full payment of the Reimbursement Amount, City shall have no further obligation to pay the Monthly Reimbursement Amount. By way of example, if CSS ships or delivers 10 filled rail cars that are switched in Month 1, City will pay to CSS \$720.00 from the Switch Fees City receives

from the Class I common carriers for Month 1 upon receiving said Switch Fees approximately at the end of Month 3.

If, for any reason, the Switch Fees should be paid from industries direct to the City or its operator, rather than from the Class I common carriers, City's obligation for payment of the Reimbursement Amount shall continue in effect on the same terms as set forth herein.

5. City's Obligation Contingent. City's obligation to pay the Monthly Reimbursement Amount for any month is contingent upon City's receipt of the Switch Fees for that month for filled rail cars delivered to or shipped from CSS.

6. Limited Obligation of City. The City's obligation to pay the Reimbursement Amount constitutes a limited obligation of the City, payable solely from the Switch Fees received by the City for filled rail cars delivered to or shipped from CSS. Said obligation does not now and shall never constitute a general indebtedness of the City within the meaning of any State of Illinois constitutional or statutory provision, or give rise to any pecuniary liability of the City. Nothing contained herein, however, shall be deemed to exonerate or exculpate the City from liability in the event of willful or intentional failure to perform the duties assumed by it hereunder as to the completion of the system-wide improvements to the City Track and payment of the Reimbursement Amount from the Switch Fees for filled rail cars delivered to or shipped from CSS.

7. Availability of Grant Funds. The parties acknowledge that the City anticipates an award of grant funds from the Economic Development Administration, U.S. Department of Commerce, to fund the costs of constructing a railroad crossing from the current terminus of the City Track on the property west of CSS' property across Steward Road and onto the property north of CSS' property (Steward Road Crossing). In the event the City is not awarded this grant, the City shall

first use the Deposit Account to fund the costs of constructing the Steward Road Crossing, including without limitation engineering and design fees, and then may use any remaining funds in the Deposit Account for system-wide improvements to the City Track.

8. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal, unenforceable or in conflict with the law of any jurisdiction, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

9. Modifications. Any modification of this Agreement between the parties shall not be binding upon either party unless the same shall be in writing and signed by an authorized representative of each of the respective parties.

10. Assignment. This Agreement may not be assigned, in whole or in part, by CSS, without the prior written consent of City; provided, however, that CSS shall have the right to assign this Agreement to any future grantee of the CSS property located adjacent to Steward Road. CSS shall give prompt written notice of any such assignment to the City.

11. Time of Essence. Time is of the essence in the performance of each and every covenant and condition of this Agreement.

12. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Illinois applicable to contracts made and performed in Illinois. The exclusive venue for any litigation between the parties arising out of this Agreement shall be in the Fifteenth Judicial Circuit, Ogle County, Illinois.

13. Entire Agreement. This Agreement constitutes the entire agreement among the parties, and contains all the agreements among the parties with respect to the subject matter hereof. This Agreement supersedes any and all other prior oral or written, or contemporaneous oral, agreements among the parties hereto with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties have hereunto executed this Agreement as of the date first above written.

CITY OF ROCHELLE, an Illinois municipal corporation

COATED SAND SOLUTIONS, LLC, a Delaware limited liability company

By: _____
David S. Plyman, City Manager

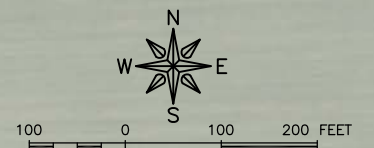
By: _____

Attest: _____
Bruce McKinney, City Clerk

Its: _____

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EXHIBIT A
(Rail Improvement Map and Estimates)



APRIL 2, 2012



CRESTON ROAD

BNSF RAILROAD

CARON ROAD

PROPOSED RAIL IMPROVEMENTS



FEHR-GRAHAM & ASSOCIATES, LLC
 ENGINEERING AND SCIENCE CONSULTANTS
 FREEPORT, IL ROCKFORD, IL ROCHELLE, IL SPRINGFIELD, IL MONROE, WI
 ILLINOIS DESIGN FIRM NO. 184-003525

© 2011 FEHR-GRAHAM & ASSOCIATES

OWNER/DEVELOPER:
 CITY OF ROCHELLE
 420 N 6TH STREET
 ROCHELLE ILLINOIS 61068

DRAWING:
 PROPOSED RAILROAD IMPROVEMENTS
 COATED SAND SOLUTIONS AGREEMENT

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JOB NUMBER:
 11-213

SHEET NUMBER:
 1 of 1

CITY OF ROCHELLE - CSS RAIL AGREEMENT

2-Apr-12

No.	ITEM	UNIT	CONTRACT QUANTITY	MATERIAL		LABOR		EQUIPMENT/OTHER		TOTALS	
				UNIT PRICE	EXTENDED COST	UNIT PRICE	EXTENDED COST	UNIT PRICE	EXTENDED COST		
1	Erosion/Sediment Control (Including Permitting)	Lump Sum	1			\$ 20,000.00	\$ 20,000.00			\$ 20,000.00	
2	Grading (Excavation, Clearing & Grubbing)	Lump Sum	1			\$ 125,000.00	\$ 125,000.00			\$ 125,000.00	
3	Seeding and Mulching	Lump Sum	1	\$ 2,000.00	\$ 2,000.00	\$ 5,000.00	\$ 5,000.00			\$ 7,000.00	
4	12" Perforated PVC Underdrain	Lineal Foot	2,810	\$ 8.00	\$ 22,480.00	\$ 2.00	\$ 5,620.00			\$ 28,100.00	
5	Catch Basin, 2' DIA w/ FR and GR	Each	3	\$ 1,200.00	\$ 3,600.00	\$ 500.00	\$ 1,500.00			\$ 5,100.00	
6	Storm Sewer, 12" RCP	Lineal Foot	200	\$ 40.00	\$ 8,000.00	\$ 15.00	\$ 3,000.00			\$ 11,000.00	
7	Flared End Section, 12" RCP	Each	1	\$ 600.00	\$ 600.00	\$ 200.00	\$ 200.00			\$ 800.00	
8	Furnish and Install Subballast (6")	Net Ton	2,670	\$ 10.00	\$ 26,695.00	\$ 3.50	\$ 9,343.25			\$ 36,038.25	
9	Track Construction	Track Foot	2,810			\$ 21.00	\$ 59,010.00			\$ 59,010.00	
10	NARSTCO Steel Ties	Each	1,405	\$ 100.00	\$ 140,500.00					\$ 140,500.00	
11	Rail 115# AREMA New or No. 1 Relay	Track Foot	2,810	\$ 47.50	\$ 133,475.00					\$ 133,475.00	
12	Furnish & Install Ballast (8")	Net Ton	1,967	\$ 12.50	\$ 24,587.50	\$ 4.00	\$ 7,868.00			\$ 32,455.50	
13	Furnish & Install Walkway Ballast	Net Ton	150	\$ 12.50	\$ 1,875.00	\$ 5.00	\$ 750.00			\$ 2,625.00	
14	Surface, Align and Dress	Track Foot	3,341			\$ 8.00	\$ 26,728.00			\$ 26,728.00	
15	Remove and Reinstall No. 9 Turnout	Turnout	3			\$ 17,500.00	\$ 52,500.00			\$ 52,500.00	
16	Track Removal	Track Foot	107			\$ 12.00	\$ 1,284.00			\$ 1,284.00	
17	Contingencies	Percent	10							\$ 68,161.58	
										PROJECT TOTAL	\$ 749,777.33