

RAILCAR TRANSLOAD AGREEMENT

This Railcar Transload Agreement ("Agreement") is entered into as of this __ day of _____, 2020 ("Effective Date") by and between Burlington Junction Railway ("Railroad") and Bruns Construction Inc. ("Customer")

WHEREAS, the City of Rochelle ("City") owns land and rail tracks at a site in Rochelle, IL known as Rochelle Transload Center ("Facility"); and

WHEREAS, the City of Rochelle Railroad ("CIR") has contracted with Railroad to perform rail switching and other rail administrative services as CIR's designated rail switching carrier on all City track and related property, including, but not limited to, the Facility; and

WHEREAS, Railroad, as part of its switching duties, may enter into agreements with customers for rail service at the Facility; and

WHEREAS, Customer desires to utilize the services of Railroad to switch and stage railcars at the Facility for loading and unloading, storing railcars, and loading of trucks (collectively referred to as "Transloading") for various bulk nonhazardous commodities ("Product");

NOW, THEREFORE, for good and valuable consideration. Railroad and Customer agree as follows:

1. **Tender of Railcars.** Customer shall tender railcars to Railroad and Railroad shall accept such railcars for transloading, subject to the terms and conditions of this Agreement.
2. **Term.** This Agreement shall be effective as of the Effective Date first above written and shall terminate one (1) year from the Effective Date ("Term"). This Agreement shall automatically renew for successive one (1) year Terms unless either party provides the other with written notice of nonrenewal not less than sixty (60) days prior to the end of the then current Term or unless either party is notified by the City that the Agreement must be terminated at the end of the then-current term. Notwithstanding the above, either party may cancel this Agreement for any reason upon sixty (60) days prior written notice to the other.
3. **General Conditions.** Railroad shall spot and store railcars as follows:
 - a. Customer's railcars shall be subject to applicable charges per CIR tariffs related to demurrage and storage.
 - b. Product or equipment relating to Transloading or handling of Product may be stored at the Facility upon prior written approval of Railroad.
 - c. Railroad shall spot the available railcars at the Facility to allow Customer to access up railcars at the Facility per Customer's orders or as capacity allows.
 - d. Customer shall have access to the Facility twenty-four (24) hours a day, seven (7) days a week during the Term.
4. **Railcar Handling Charges.** Customer shall be liable for the following railcar handling charges:
 - a. Revenue railcar movements originating or terminating at Rochelle, Illinois are subject to a switching charge as published in Railroad's switching tariff listed under Transload

Customers. BNSF Railway or Union Pacific Railroad may absorb all or a portion of the switching fee as set in their respective price publications.

- b. Railcars received empty by Railroad and released empty under nonrevenue waybills will be subject to a \$100.00 (one hundred USD) switching charge per railcar.
- c. Railcars spotted at Facility but then requested by Customer to be moved to a hold track will be subject to a per railcar charge of \$65.00.

- 5. **Transloading Charges.** Customer shall be liable for the following transloading charges: NONE
- 6. **Transloading.** Customer acknowledges that the Facility is not equipped with truck scales. Unless expressly provided herein, all Transloading and weighing of Product shall be the responsibility of Customer, its contractors or other representatives of Customer. Customer, its contractors, or its representatives shall utilize safe operating practices when transloading Product at the Facility. **Customer understands and agrees that the Facility shall not be used to for Transloading of Hazardous Materials as defined by federal, state or local statutes, rules, regulations or ordinances.**
- 7. **Maintenance of Facility.**
 - a. Railroad shall maintain the Facility in compliance with all local, state, and federal statutes, ordinances, regulations, and rules. If the Facility is rendered wholly or partially unusable by fire, flood, or other casualty, Railroad may, at its sole option, repair or replace the Facility or declare this Agreement terminated. Railroad shall grant Customer reasonable access during normal business hours to inspect the Facility and the Customer's railcars. Customer assumes no liability for damages to track serving the Facility, unless damages result from Customer's (or its contractors' or other representatives') acts or omissions and, then, only to the extent not caused by Railroad's acts, omissions, or negligence.
 - b. Customer, its contractors or other representatives shall maintain the Facility in a clean and neat condition. Pans or containment devices shall be utilized when Transloading small particles or liquid materials at the Facility.
- 8. **Insurance.** Customer, at its sole cost and expense, shall maintain, and require its contractors to maintain, throughout the Term of this Agreement or any extensions thereof, adequate insurance coverage for itself and all of its personnel to protect Railroad, including its affiliates, CIR and the City from any losses that arise out of the performance of the Transloading activities or other obligations under this Agreement, including insurance as further set forth herein. Customer, or any contractors, shall maintain: (a) comprehensive insurance coverage for all trucks, trailers, railcars, and other equipment while the same are in Customer's custody and control; (b) comprehensive general liability insurance for injury to person or property, including the Products, and pollution liability, with combined limits of at least \$2,000,000 million dollars for each occurrence; (c) workers' compensation insurance in accordance with Illinois law; and (d) comprehensive automobile liability covering all vehicles it owns, hires or leases in an amount not less than \$1,000,000. All policies, whether procured by Customer or its contractors, shall name Railroad as an "Additional Insured," contain no exclusions for doing business on or near railroad tracks or facilities, and require its insurers to waive any and all rights of subrogation against Railroad, CIR or the City. Customer hereby waives, and shall require its contractors to waive, any and all claims against Railroad to the extent the claims are covered by Customer's, or

any contractors', insurance. If requested, Customer will promptly provide Railroad with certificates of insurance evidencing its insurance coverage and shall provide Railroad with at least thirty (30) days' prior written notice of any cancellation, expiration, non-renewal or reduction in coverage of any such policy.

9. **Indemnification.** Customer shall be responsible for, and shall indemnify, defend and save harmless Railroad and its parents, subsidiaries, and affiliates, and each of their respective officers, directors, agents, employees and representatives of each as well as the City of Rochelle and CIR and their respective employees and elected or appointed officials (collectively, "Indemnified Parties"), from and against any and all liability, suits, losses, demands, actions, causes of action, fines, penalties, damages and claims of any kind or nature, including, without limitation, reasonable attorney's fees and costs (collectively, "Claims"), which any of the Indemnified Parties may hereafter incur, pay or become responsible for, to the extent arising out of (i) the death or bodily injury to any person (including employees of Customer, its contractors or other representatives), (ii) the destruction or damage to property (iii) any violation or alleged violation of any applicable laws (iv) Customer's negligent acts, omissions and/or willful misconduct in performing its obligations under this Agreement, or (v) any breach of this Agreement by Customer. For the purposes of this indemnification, Customer shall mean Customer, its employees, contractors or other representatives.
10. **Force Majeure.** Neither party shall be responsible to the other for a failure to perform hereunder caused by any cause beyond its reasonable control, including, without limitation, acts of God; pandemics or similar public health menaces, actions of flood; fire; explosion; strike or labor disputes; riots or civil commotion; terrorism; or compliance with any law, rule, order, regulation or restriction of any governmental body or agency thereof which imposes a new duty upon the party that could not have reasonably been anticipated as of the Effective Date of this Agreement.
11. **Notices.** All notices sent hereunder shall be sent to the following addresses or at such other address as a party shall direct in writing.

Customer:

Bruns Construction Inc.
15890 Lind Road P. O. Box 400
Rochelle, IL
61608
Attn: Tim Burns
Phone:
Fax:

Railroad:

Burlington Junction Railway
1510 Bluff Road P.O. Box 37
Burlington, IA
52601
Attn: Jon Wingate
Phone: 319-753-6157
Fax: 319-753-9811

12. **Other Terms.**

- a. This Agreement supersedes and terminates as of the Effective Date any other Railcar Storage and/or Transload agreements between the parties relating to the Facility. This Agreement constitutes the entire agreement between the parties relating to the subject

matter hereof. This Agreement is binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

- b. Customer shall pay any ad valorem, personal property and sales tax which may be levied on the railcars and Product.
- c. This Agreement shall not be assigned by either party without the express written consent of the other, which shall not be unreasonably withheld. No assignment shall relieve the assigning party of its obligations hereunder.
- d. Whenever, in this Agreement, reference is made to either party, such reference shall include all agents, employees, officers, subcontractors, and assigns of such party.
- e. Railroad is an independent contractor and nothing herein shall be construed in a manner to create any agency, partnership, joint venture or employer relationship between Railroad and Customer or any of Customer's employees, subcontractors or other representatives.
- f. This Agreement shall be construed, and the respective rights of the parties shall be determined, in accordance with the laws of the State of Illinois. Any litigation related to this Agreement shall take place in a court of competent jurisdiction in the State of Illinois and the parties hereby waive any rights to object to the jurisdiction, venue or forum thereof. This Agreement's terms and conditions may not be varied by prior, contemporaneous, or subsequent oral agreement. The waiver by either party of any breach of this Agreement by the other party shall not be deemed a waiver of any successive breach of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as written on the Effective Date.

BURLINGTON JUNCTION RAILWAY

BRUNS CONSTRUCTION INC

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____