

**DEVELOPER AGREEMENT BETWEEN  
THE TOWN OF ROCK AND COULEE FRAC SAND, LLC**

**RECITALS**

- A. This Mining Agreement (“**Agreement**”) is by and between Coulee Frac Sand, LLC (“**COULEE**”) and Carbo Ceramics, Inc. (“**CARBO**”) and the Town of Rock in Wood County, Wisconsin (“**Town**”), with an effective date of \_\_\_\_\_, 2019 (“**Effective Date**”). COULEE and the Town are sometimes referred to individually as a “**party**” and collectively as the “**parties.**”
- B. As used herein, the term “**Property**” or “**Mine Site**” refers to those certain parcels of land located in Wood County, Wisconsin and described in the Permit Application and approved for nonmetallic mining in the Reclamation Permit.
- C. COULEE represents that it owns, leases, or has contractual rights over all of the land comprising the Property, and is authorized by the landowner, CARBO, to engage in this Agreement and incur the obligations in this Agreement with respect to the Property.
- D. This Agreement is conditioned on COULEE’s compliance with Wis. Admin. Code ch. NR 135, Wis. Stat. ch. 295, Subch. I, and the Wood County Nonmetallic Mining Reclamation Ordinance, and, except where alternative requirements are provided in this Agreement, adherence to the plans, requirements, and obligations related to this project as described in the nonmetallic mining reclamation plan initially submitted by COULEE to Wood County in \_\_\_\_\_ of 2018, as approved by the County (the “**Reclamation Plan**”), and the nonmetallic mine conditional use permit application submitted to the Town on or about August 6, 2018, which includes any additional submittals (the “**Additional Submittals**”) from COULEE to the Town or its consultants after that date (the “**Permit Application**”).
- E. COULEE desires approval of its Permit Application under the Town’s Zoning Ordinance (the “**Zoning Ordinance**”) and Town acceptance of ownership of the Property following the completion of mining activities. By execution of this Agreement, the Town approves the Permit Application, pursuant to Sections 5.05 and 5.06 of the Zoning Ordinance, and agrees to the terms of the Option to Purchase Agreement attached as Exhibit C, under which, if exercised by the Town, the Town would accept ownership and ongoing management responsibility for all or part of the Property following cessation of mining activities (the “**Approval**”). This Approval authorizes COULEE to conduct nonmetallic mining operations on the Property under the terms set forth herein.
- F. The Town has reviewed the proposed COULEE operation as set forth in the Reclamation Plan and the Permit Application. The Town finds that nonmetallic mining is an allowable conditional use in the location proposed. The Town finds that the application requirements in the Zoning Ordinance, including under Sections 3.03 and 5.02, are satisfied.

The Town finds that the standards, requirements, levels of review, monitoring, and compliance mechanisms and measures to mitigate or compensate for potential impacts set forth in this Agreement are consistent with the purpose and intent of the Zoning Ordinance under Sections 1.02 and 1.03, that COULEE has demonstrated that its Permit Application includes substantial evidence that all requirements and conditions established by the Town relating to the proposed conditional use are or will be satisfied by adherence to the terms of this Agreement, and that the issuance of this Approval will provide adequate protections for the public health, safety, and welfare.

G. The Town and COULEE agree that the standards, requirements, levels of review, monitoring, and compliance mechanisms and measures to mitigate or compensate for impacts set forth in this Agreement are related to the purpose of the Zoning Ordinance, are based on substantial evidence, are reasonable, and are measurable to the extent practicable.

H. COULEE finds that the Town's decision to approve the Permit Application under the terms included in this Agreement is supported by substantial evidence.

I. Specifically, the Town finds the following with respect to Zoning Ordinance sections relevant to approval of nonmetallic mining as a conditional use:

1. Secondary Conservation Areas (§4.04 B. and C. 2.; §5.04 B. 1.) The Town has discretionary authority under these provisions to require a development to be designed to promote the preservation of natural features, including significant wildlife habitat, sensitive environmental lands, and scenic vistas. The Town, without deciding to exercise this authority, finds that the proposed mining activity is designed to promote these outcomes. Reasons for this conclusion include that only already-disturbed agricultural land is proposed to be excavated, the enhancement of wetlands and creation of a lake are expected to provide enhanced wildlife habitat, existing wetlands will be preserved, and the project is temporary in nature.

2. General Requirements, Non-metallic Mining Overlay District (§ 4.09 A.) The purpose of the Overlay District is to establish conditional regulations and performance standards for the extraction, processing, utilization and transport of non-metallic resources and products in such a manner as to ensure maximum protection to surrounding properties and the physical environment through siting of activities and structures, buffering, setbacks, visual screening, height limitations, access routing, and noise, vibration, air quality and water quality controls.

The Town finds that the requirements in this Agreement and the operations and construction restrictions contained in the Permit Application are designed to ensure maximum protection to surrounding properties and the physical environment through these listed methods. No land use can have zero impact on neighboring land uses. The Town recognizes that the inclusion of the non-metallic mining overlay district in the Town Zoning Ordinance indicates that this type of use must be approvable under appropriate conditions, and that the conditions applicable to this proposed mine will be appropriate.

3. Conditional Use Standards (§ 5.03 A. through E.):

**Section 5.03 A.** This provision requires that “the establishment, maintenance, or operation of the conditional use will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare.” The Town finds that the requirements in this Agreement and the proposed operations and construction restrictions contained in the Permit Application are designed to avoid detriment to and the endangering of the public health, safety, morals, comfort, and general welfare. In support of this finding, the Town recognizes that the proposed end use of the property after this temporary mining activity will be beneficial to Town residents and visitors, sufficient buffering and other screening is proposed, the proposed trucking route will be appropriate for this use, noise restrictions in this Agreement will adequately protect neighbors, blasting, if any, will be very limited, sufficient state and federal air quality controls are in place and adopted herein, sufficient water quality and quantity restrictions are contained in this Agreement, and important natural features will be preserved.

**Section 5.03 B.** This provision requires that “the uses, values and enjoyment of other property in the neighborhood used for purposes already permitted shall be in no foreseeable manner substantially impaired or diminished by the establishment, maintenance or operation of the conditional use.” For the reasons stated above, in particular because of the temporary nature of the proposed use, the significant controls that will be in place during the use, the property value guaranty contained herein, and the beneficial proposed end use of the property, the Town finds that the use of other neighboring property will not be substantially diminished or impaired by this proposed use.

**Section 5.03 C.** This provision requires that “the establishment of the conditional use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.” The Town finds that all existing neighboring land uses can continue if the proposed use is authorized, there is not significant current pressure to change, redevelop, or expand existing land uses, the temporary nature of this proposed use allows for future development in the area should the proposed use hinder interest in development temporarily, and the beneficial proposed end use of the property may enhance future development interest.

**Section 5.03 D.** This provision requires that “adequate utilities, access roads, drainage, and other necessary site improvements have been or are being provided.” The Town finds that the stormwater management plan and related requirements in this Agreement will adequately manage drainage from this site, road access is adequate and managed by the County, and that adequate utilities will be provided in a manner that will not reduce reliability to other users.

**Section 5.03 D.** This provision requires that “adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion and traffic hazards in the public street.” The Town finds that the traffic into and out of the proposed site will use County Highway V, which will be upgraded to handle the proposed traffic, and that the amount of added traffic on this route should not create traffic congestion or hazards.

J. The Approval granted under this Agreement shall run for the term of this Agreement set forth in Section 2.2, and shall be subject to compliance by COULEE and CARBO with the terms of this Agreement.

K. The terms of this Agreement were designed by mutual efforts of the parties and are mutually agreed upon by the parties. The obligations of COULEE and CARBO and the Town's rights under this Agreement shall survive termination of the Agreement.

L. Terms used in this Agreement shall first be interpreted based on any definition contained in this Agreement. If not defined herein, terms shall be given the meaning as defined in the Zoning Ordinance. Terms not defined either in this Agreement or in the Zoning Ordinance shall be interpreted using their common meaning as appropriate for the context in which they are used.

## **AGREEMENT**

THEREFORE, COULEE, CARBO, and the Town agree as follows:

### **1. Additional Site Preparation and Reclamation Requirements**

1.1 COULEE shall manage its operations in a manner that results in the creation of a lake with a high level of water quality, including by employing a filter press system to separate water from waste material or other similarly effective method.

1.2 Within 12 months of the Effective Date of this Agreement, COULEE shall develop a Lake-Making Plan for Town approval, approval of which shall not be unreasonably withheld by the Town, that includes:

1.2.1 Groundwater and surface water quantity modelling to assess the project, phase by phase, with respect to shale layer assessment and management, any needed additions of low-permeability material to the lake bed, and surface water diversions or additions.

1.2.2 Periodic and seasonal water quality assessment and management during the Term of the mining project, including monitoring for phosphorus, and the development of a future water nutrient budget.

1.2.3 A required Shoreline Development Index (SDI) greater than 1.2.

1.2.4 A bathymetric map for the lake.

1.2.5 A requirement that at least 25% of the area of the lake be at least 20 feet deep at normal expected water levels.

1.2.6 A requirement that the plan include shallow in-water shoreline slopes of 5:1 to 6:1.

1.3 In addition to, or as the context requires, instead of requirements contained in the Reclamation Permit, COULEE shall provide for all of the following in good repair, if required to be provided under Section 1.c.i. and ii. of the Option To Purchase as provided under Section 24 of this Agreement. :

1.3.1 A lake designed and constructed with the objective of creating a usable water resource capable of supporting a fishery and aquatic plants, and providing wildlife habitat.

1.3.2 A driveway into the Mine Site with a blacktop or other similar hard surface.

1.3.3 A parking lot of approximately 350 feet by 150 feet in size, and, if constructed of gravel, with approximately 10 inches of gravel depth.

1.3.4 A picnic shelter to be used for public park purposes, with a concrete floor and a roof.

1.3.5 A sand beach appropriate for public use on the side of the lake nearest to the driveway and parking lot.

1.3.6 A boat landing on the side of the lake nearest to the driveway and parking lot.

1.3.7 A pier at least 40 feet in length in proximity to the boat landing and sand beach.

1.3.8 A gravel walking path around the lake.

1.3.9 A 100-foot by 50-foot heated building with a concrete floor.

## 2. **Term**

2.1 The term of this Agreement shall commence on the Effective Date.

2.2 Subject to Section 2.3, the term of this Agreement and the Approval shall end twenty (20) years after the Effective Date unless extended by the Town at the request of COULEE, as provided in Sections 2.4 to 2.6, or on the date COULEE has notified the Town that it has completed all nonmetallic mining operations at the Mine Site governed by this Agreement, including reclamation, and provides the Town with evidence that Wood County has determined that reclamation is complete, whichever is sooner.

2.3 The term of this Agreement and the Approval is subject to compliance by COULEE and CARBO with the requirements and conditions in this Agreement. Nothing in

this Agreement should be interpreted as a limitation of the authority of the Town to revoke the Approval for violations of this Agreement by COULEE or CARBO, subject to the enforcement procedures contained herein.

2.4 COULEE may first make written application to the Town requesting extension of the term of this Agreement and the Approval beginning 8 years prior to the scheduled end of the term under Section 2.2 or beginning 8 years prior to the end of a previously extended term, as applicable, and must request extension no later than October 1 of the year in which the Agreement and Approval will expire. The Town shall approve an extension for the applicable time period under Section 2.5, without a new review under Wis. Stat. § 60.62 (4e), if COULEE has been in substantial compliance under the Agreement and Approval and there has not been a pattern of multiple violations of the Agreement that are not cured under Section 22.2 or to which the right to cure under that Section does not apply.

2.5 An approved extension of the Agreement and the Approval under Section 2.4 shall be for a maximum of 5 years for an initial extension and a maximum of 2 years for any subsequent extensions.

2.6 The renewal application shall be accompanied by the payment of any applicable fee and providing funds, to be held in escrow, to cover the Town's costs of processing and reviewing the application, including costs related to the following:

2.6.1 Time spent by the Town Clerk and other Town staff in the review and processing of the application for renewal of the Approval, including time spent related to or negotiating any developer's agreement.

2.6.2 The cost of services of one or more retained experts retained by the Town for purposes of reviewing, processing and acting upon the application for a renewal of the Approval, including time spent negotiating any developer's agreement.

2.6.3 All other costs reasonably incurred by the Town relating to the proposed project or renewal, including for copying, mailing, posting, public notice, Town meeting costs, Town Board per diem payments for special meetings, or other related costs.

### **3. Hours of Operation**

3.1 Pursuant to Sections 4.09 C. 2. c. and 5.04 A. of the Zoning Ordinance, hours of operation of mining activities shall be limited to the times described in this Section.

3.2 In this Section 3, the term "General Excavation" means removal of material from an excavation site after topsoil and overburden have been removed and appropriate berms and other screening has been placed with respect to the excavation area. "General Excavation" does not include the operation of a single excavator or loader used to feed raw product into a slurry system that delivers the raw product to the wash plant, and does not apply to the trucking

of waste sand transported from the wash plant back to the excavation site, if such trucking occurs no more frequently than two truckloads in any one-hour period. Such waste sand transportation shall be considered to be subject to the allowable hours of operation applicable to the operation of the wash plant. "Excavation Preparation" means removal or movement of topsoil, overburden, or other material for the construction or placement of screening berms or other screening methods, the construction of stormwater infiltration ponds, grading, site preparation, and construction of the Driveway Entrance Area and the Processing Plant Area, and reclamation of these features. "Driveway Entrance Area" means the initial 280 feet of driveway from County Highway V and related area and stormwater management structures. "Processing Plant Area" means the area consisting of approximately 11 acres in the west-central area of the site upon which the material stockpiles, processing plant, parking area, and related structures will be located, as depicted as the "Plant" on the Site Plan attached as Exhibit B.

3.3 General Excavation activities may not be conducted other than during the hours of 6:00 AM to 8:00 PM on weekdays and 7 AM to noon on Saturdays. The Town may reevaluate the allowable weekday or Saturday General Excavation hours of operation from time to time after the mine is in operation, upon 30 days advanced notice to COULEE and after holding a public hearing. The Town may not reevaluate the allowable hours of weekday and Saturday General Excavation hours of operation sooner than one year after the wash plant begins operation, and not more frequently than once every three years. If the Town Board imposes alternative weekday or Saturday General Excavation hours of operation, it may not prohibit these operations during the hours of 7 AM to 8 PM on weekdays or 7 AM to noon on Saturdays.

3.4 Excavation Preparation activities may not be conducted other than during the hours of 9 AM to 6 PM on weekdays and 9 AM to noon on Saturdays.

3.5 Initial hours of operation for trucking material away from and back to the Mine Site are 24 hours per day on weekdays and no later than noon on Saturdays. The Town may reevaluate the allowable hours of operation for these trucking activities from time to time after the mine is in operation, upon 30 days advanced notice to COULEE and after holding a public hearing. The Town may not reevaluate these allowable hours of operation sooner than one year after the wash plant begins operation, and not more frequently than once every three years. If the Town Board imposes alternative hours of operation for these trucking activities, it may not limit these hours of operation to less than the hours of operation allowed for General Excavation activities under Section 3.3.

3.6 Notwithstanding the allowable hours of operation in this Section, no operations are allowed on Sundays or legal holidays.

**4. Dust Control**

Pursuant to Section 4.09 C. 3. B. of the Zoning Ordinance, COULEE shall comply with all applicable federal, state, and local air pollution control laws and regulations related to dust. At a minimum, COULEE shall manage potential dust emissions as provided in the Fugitive Dust Control Plan, attached as Exhibit E.

**5. Use of Town Highways**

5.1 Use of Town highways by vehicles with a gross vehicle weight rating of more than 48,000 pounds is prohibited under this Agreement, except that COULEE and its customers or contractors may use Town highways to deliver up to 20 truckloads of sand per week sold to customers located in the Town for purposes such as animal bedding.

5.2 COULEE will coordinate with school bussing services for the Marshfield School District to suspend trucking during times that school buses are picking up or dropping off students along the highway routes used by COULEE.

5.3 Pursuant to Section 4.09 C. 3. D. of the Zoning Ordinance, COULEE will make reasonable efforts to keep all highways upon which it travels in the Town, including highways maintained by another jurisdiction, clean and clear of dust, sand, or other debris, and free from mud tracked onto these highway segments from operations areas.

**6. Mining Setbacks**

Pursuant to Section 4.09 C. 1. A. of the Zoning Ordinance, COULEE will provide setbacks from Mining Operations of 50 feet from any road right-of-way, 50 feet from any property line of property not owned, leased, or otherwise controlled by COULEE, and 100 feet from any residence not owned, leased, or otherwise controlled by COULEE.

**7. Visual Screening**

7.1 Pursuant to Sections 4.09 C. 2. B., 4.09 C. 3. A., and 5.04 A. of the Zoning Ordinance, adequate planting or existing trees and vegetation, berms, or fencing shall be provided to screen the operation from public view to the maximum extent practicable. Such screening may be placed along roadways, property boundaries, or internally on the mine site to provide sufficient screening. A preliminary screening plan has been provided to and accepted by the Town Board; the Town acknowledges that changes to the screening plan may be necessary or advisable over time.

7.2 Pursuant to Sections 4.09 C. 2. B., 4.09 C. 3. A., and 5.04 A. of the Zoning Ordinance, COULEE shall limit night lighting on site, and the illumination of the night sky and neighboring properties, to the maximum extent practicable while maintaining site security and the safety of people on site. Outdoor lighting shall use full cutoff shrouds, portable lighting shall be used only as necessary to illuminate temporary work areas, and the design and location of access roads shall minimize lights from traffic and operations cast onto neighboring residences.

## **8. Property Value Guarantee**

8.1 COULEE hereby grants certain residential property owners the property value guarantee set forth in the attached Exhibit A. To the extent any payment obligations arise under the property value guarantee prior to termination of this Agreement, such obligations shall survive this Agreement.

8.2 The property owners of property subject to the property value guarantee are third-party beneficiaries of this Agreement as it pertains to the property value guarantee.

## **9. Blasting**

9.1 COULEE has determined that blasting operations should be unnecessary at the Mine Site. If COULEE determines that blasting operations are required due to unknown subsurface site conditions, prior to the first time that COULEE conducts blasting activities, COULEE must offer to have a qualified third-party structural engineer conduct pre-blasting surveys of the physical condition of buildings and structures on properties within ¼ mile of the Mine Site, at COULEE'S expense. The results of each survey must be provided to the Town and the property owner. The Town acknowledges that such surveys may be used by COULEE or the property owner in any subsequent dispute regarding the effects of blasting on a structure.

9.2 COULEE shall provide 30 days advance written notice of its intent to blast to the Town Board, including a blasting plan. The blasting plan shall include a description of the blasting activities to be conducted, including the name and contact information of the licensed blaster to conduct the blasting and the expected blasting schedule.

9.3 All blasting shall comply with Wis. Admin. Code ch. SPS 307.

9.4 Blasting may only occur between the hours of 10:00 a.m. and 3:00 p.m., and only on weekdays except holidays, except if required due to an emergency that is beyond the reasonable control of COULEE and its contractors.

## **10. Water Quality**

10.1 Mining operations shall not cause an exceedance of groundwater quality standards in Wis. Admin. Code ch. NR 140.

10.2 Stormwater from each section of property in the excavation area, numbered 1-14 on the Site Plan attached as Exhibit B, shall be contained and fully, internally drained beginning on the date that excavation activities begin on the section of property.

10.3 Stormwater containment for the Processing Plant Area, as defined in Section 3.2 and depicted as the area labelled “Plant” on the Site Plan, shall be capable of storing twice the amount of precipitation of the 100-year/24 hour storm.

## 11. **Water Quantity**

11.1 Surface Water Base Flow. Mining operations shall not cause adverse effects to surface waters, including but not limited to, a reduction of water in streams and tributaries to or below base flows established prior to the beginning of mining operation.

11.2 Groundwater Quantity. Pursuant to Section 4.09 C. 3. c. of the Zoning Ordinance, the mining operation may not cause a reduction in the quantity of groundwater available for reasonable use by current users including rendering a well unable to provide water on a continuous basis.

## 12. **Well Testing**

12.1 Initial Monitoring Well Testing. Prior to the commencement of nonmetallic mining operations, COULEE shall install and test monitoring wells for potential contaminants, including chemicals to be used in mining operations, as well as for lead, arsenic, iron, and turbidity, and for nitrates and other contaminants associated with any activity other than mining that continues to be conducted on the Mine Site is located or on lands adjacent to the mining operation. A report of the analytical results of these tests shall be provided to the Town.

12.2 Periodic Monitoring Well Testing. Monitoring wells shall be tested twice per year for the potential contaminants listed in Section 12.1. An annual report of the analytical results of these tests shall be provided to the Town.

12.3 Private Well Testing. COULEE shall seek permission to sample all private wells which are within ½ mile of the Mine Site, and shall sample those for which permission is provided prior to commencement of mining operations. If a new well is constructed during mining operations, COULEE will sample that well upon request of the well owner. The wells shall be sampled for the potential contaminants listed in Section 12.1. The wells shall also be evaluated to determine the depth to the water table and the water withdrawal potential of the well.

12.4 Periodic Private Well Testing. Subsequent testing for water quality and quantity as provided in Section 12.3 shall be conducted every 3 years at private wells, for which permission for testing has been provided, that are within ¼ mile of the Mine Site and are down gradient from the Mine Site. A report of the analytical results of these tests shall be provided to the Town following testing.

12.5 If testing under Sections 12.2 or 12.4 shows an exceedance of a groundwater quality standard or preventive action limit under state law that may be due to the mining operation, COULEE shall immediately report this information to the Town.

### 13. **Alternative Water Supply**

13.1 A property owner with a private water supply that is within ½ mile of the Mine Site and that was tested under Section 12.3 may seek the provision of an interim water supply if any of the following occur:

13.1.1 A preventative action limit or enforcement standard under state law is exceeded in a private well.

13.1.2 There is a substantial adverse impact to the quantity of water from a private well, such as the inability of the private well to provide water on a continuous basis.

13.1.3 Surface waters which serve as a source of water for personal or agricultural purposes are reduced to levels below base flow levels for more than five days.

13.2 A property owner under Section 13.1 who would like the provision of an interim water supply shall file a notice with the Town and COULEE explaining the nature and extent of the problem.

13.3 Within 24 hours of receipt of such notice under sub (2), the Town may use funds provided under Section 14.1 to provide an adequate interim water supply. The Town shall also use funds under Section 14.1 to indemnify the Town for any claims filed under Wis. Stat. § 281.77(4). An interim water supply shall continue to be provided until the Town has approved the report or plan under Section 13.4.

13.4 The property owner must provide COULEE with access to the well to assess the cause of the impact under Section 13.1. to be eligible for benefits under this Section 13. Within 30 days of receipt of notice under Section 13.2, COULEE shall provide a report to the property owner and to the Town that either demonstrates that the impact to the property owner was not attributable to the mining operation, that provides a plan for providing a permanent alternative water supply for the property owner, at COULEE'S expense, or that explains that access was not provided to COULEE to assess the cause of the impact.

13.5 The Town shall, in consultation with the property owner and COULEE, review and approve or deny the report or plan. If the Town determines that COULEE was not the cause of damage to the private water supply, COULEE may elect to seek reimbursement directly from the property owner for the costs of supplying the interim water supply.

13.6 A property owner with a private water supply that is more than ½ mile from the Mine Site may be provided an interim water supply and a permanent alternative water supply under Sections 13.1 to 13.5 if the property owner can demonstrate to the Town that the damage to the private water supply was caused by the mine operations.

#### **14. Financial Assurance**

14.1 Pursuant to Section 5.04 A. of the Zoning Ordinance, COULEE will provide, and thereafter maintain, financial assurance in a form acceptable to the Town in an amount sufficient to cover the cost of providing an alternative water supply to those qualified under Section 13, prior to commencing nonmetallic mining operations. The amount of this financial assurance will initially be \$15,000. The amount of this financial assurance may change over the life of the mining operation, at the Town's discretion, and the amount of this financial assurance must be modified by COULEE upon notification from the Town that modification is necessary.

14.2 Pursuant to Section 5.04 A. of the Zoning Ordinance, COULEE shall maintain commercial general liability insurance in the amount of no less than \$5,000,000 in aggregate during the entire term of this Agreement and shall name the Town as an additional insured. The amount of commercial general liability insurance required to be maintained by COULEE may be increased from time to time due to inflation, upon notice to COULEE from the Town.

#### **15. Offsite Waste; Stockpiling; Soils Reclamation**

15.1 No waste or reclamation material from an off-site location may be brought to the Mine Site or used in reclamation of the site except the waste product from material that originated on the Mine Site and which is returned to the Mine Site following processing at the Carbo Ceramics processing facility in Marshfield.

15.2 COULEE asserts that it does not plan to use small mesh (140-350 mesh) sand at the time of the drafting of this Agreement. If a market for this sand arises during the Term of this Agreement, and COULEE stockpiles small mesh sand on the Mine Site, it shall do so in a manner under which all stockpiled small mesh material and any runoff from or sloughing of material from the small mesh stockpile is fully, internally contained at an elevation below the stormwater management system intake, to fully isolate water or other runoff from such a stockpile from the stormwater management system.

15.3 COULEE shall use best management practices to preserve and minimize compaction of topsoil for use in reclamation.

## 16. Noise

16.1 COULEE shall control off-site noise levels to the maximum extent practicable to avoid adverse impacts on neighboring properties. The noise levels at the boundaries of the mining or processing site, excluding off-site vehicle traffic, blasting activities, and Excavation Preparation activities under Section 3.2, shall not exceed 62.5 dBA L<sub>10</sub> (1 hour) during the allowable hours of operation for General Excavation under Section 3.3, and shall not exceed 60 dBA L<sub>10</sub> (1 hour) during hours of operation in which General Excavation is not allowed. Noise level based on dbA is the unit of sound level expressed in decibels (db) and A- weighted as described in ANSI § 1.4. 1983 and shall be measured in accordance with accepted protocols. The L<sub>10</sub>(1 hour) standard means that the specified decibel level may not be exceeded for more than 10% of the time over a 1-hour testing period.

16.2 Noise levels shall be monitored at the Mine Site boundary by COULEE at least twice per year, and by an independent testing company if the Town receives a written complaint questioning the results of COULEE's monitoring. The tests shall occur continuously for a 10-day period. The results shall be reported to the Town within 30 days of each test result. If testing shows that the noise limits in Section 16.1 are exceeded, COULEE must continue to monitor noise until testing shows that noise is at permissible levels. Testing shall be conducted by COULEE at least once per quarter for the year following any exceedance of noise limits.

16.3 The use and regulation of compression release engine brakes, commonly known as jake-brakes, is prohibited. If reversing alarms are used on vehicles and equipment, only white noise alarms are allowed.

16.4 All haul trucks shall be equipped with appropriately functioning noise control equipment as required under federal and state standards. If more effective equipment that would further reduce truck noise becomes available at a commercially reasonable price, COULEE agrees to evaluate its use.

## 17. Sanitary Permit

Pursuant to Section 3.06 of the Zoning Ordinance, COULEE shall obtain a county sanitary permit prior to commencement of mining operations if required under state law or Wood County Ordinances.

## 18. Parking

Pursuant to Section 4.09 C. 2. a. of the Zoning Ordinance, sufficient off-street parking shall be provided at the Mine Site.

**19. Local Hiring Practices**

COULEE shall post all job openings at the Town Hall and other suitable locations within the Township and shall make reasonable efforts, not inconsistent with state and federal law, to hire employees from the area to fill job openings.

**20. Compliance and Reporting**

20.1 COULEE shall at all times comply with all federal, state, county, and local laws, regulations, and ordinances applicable to COULEE's operations on the Property which are in effect or which may become effective in the future.

20.2 COULEE shall submit to the Town copies of its annual reclamation report submitted to Wood County, reports provided to the Wisconsin Department of Natural Resources (DNR), and reports submitted to the U.S. Mine Safety and Health Administration.

20.3 COULEE shall provide the Town with copies of all permits and approvals, and related application materials, for permits or approvals required under county, state, or federal law for COULEE'S operations at the Mine Site, and documents and other materials provided to COULEE by county, state, or federal authorities related to those permits and approval, except for routine communications not related to compliance or enforcement.

**21. Indemnification**

COULEE will indemnify the Town against any claims that arise from the activities of COULEE under this Agreement or which are conducted by the Town or Town officials on behalf of COULEE under this Agreement. COULEE is not required to indemnify the Town for claims related to activities conducted by the Town or its officials that are not consistent with public official ethics requirements under Wis. Stat. ch. 19. COULEE will indemnify the Town for costs not covered by insurance that are associated with challenges brought by third parties related to the Town's decision to enter into this Agreement and issue the Approval to COULEE. The Town shall at all times during the term of the Agreement maintain insurance covering the Town for costs related to challenges to the Town's legislative decisions in amounts and under terms generally maintained by municipalities.

**22. Inspection, Enforcement, Procedures, and Penalties**

22.1 Inspection. The Town Board, a retained expert, or another authorized representative of the Town, may make inspections or undertake other investigations to determine the condition of the Mine Site in order to safeguard the health and safety of the public and determine compliance with this Agreement, upon reasonable notice.

22.2 Right to Cure. If the Town determines that a violation of this Agreement has occurred or is occurring, the Town shall provide COULEE with notice of the violation. Unless the violation creates an immediate and substantial risk to public health, safety, or welfare, or to the rights of another property owner, COULEE shall have 10 business days following such notice to cure the violation.

22.3 Remedies. If a notice has been provided under Section 22.2 and any applicable time period to cure has passed, the Town Board may take any of the following actions

22.3.1 Issue an order that specifies the action(s) to be taken to remedy the violation.

22.3.2 Issue a stop work order.

22.3.3 Issue a citation. A person who violates this Agreement may be cited as provided in Section 10.01 of the Zoning Ordinance (\$200). A separate citation may be issued for each day a violation exists.

22.3.4 Commence legal action seeking injunctive or other relief.

22.3.5 Issue an order suspending or revoking the Approval under Section 22.4.

22.4 Approval Suspension or Revocation. Except as provided in Section 22.5, and subject to the right of CARBO to take over operations under Section 28.7, the Approval may be suspended or revoked if there is a pattern of multiple violations of the Agreement that are not cured under Section 22.2 or to which the right to cure under that Section does not apply; suspension and revocation are extreme remedies that may only be exercised in these circumstances. Suspension or revocation may only occur following a hearing held as provided under Section 22.6.

22.5 Subject to the option of CARBO to take over operations under Section 28.7, the Approval may be revoked if the Town finds that mining operations have been abandoned by COULEE. The operation may be considered abandoned if COULEE does not conduct some nonmetallic mining operations at the Mine Site for at least 8 hours per day each work day consecutively for 2 months (excluding Saturdays, Sundays, holidays, and days for which weather conditions prevent reasonable or safe operation) in any 3-year period. The Town may issue an extension to COULEE upon request. Revocation under this Section may only occur following a hearing held as provided under Section 22.6, with prior notice provided to COULEE and CARBO. Upon a finding of abandonment, the Town shall inform Wood County of the abandonment and request that the County order reclamation to begin.

## 22.6 Hearings.

22.6.1 Any person affected by an order or citation issued in connection with the enforcement of this Agreement under Section 22.3 may file with the Town Clerk a written petition, within thirty days of the date the notice and order are issued, requesting a hearing and setting forth his or her name, address, telephone number, and a brief statement describing the reasons for requesting the hearing. Upon receipt of the petition, the Town Clerk shall set a time and place for a hearing before the Town Board and shall give the petitioner written notice thereof.

22.6.2 After the hearing, the Town Board, by a majority vote of the members present, shall sustain, modify, or withdraw the order or notice based on its findings as to whether the provisions of this Agreement have been violated.

22.6.3 The proceedings of the hearing, including the findings and decision of the Town Board and the reasons therefore shall be summarized in writing and entered as a matter of public record in the office of the Town Clerk. Such record shall also include a copy of every order or citation issued in connection with the case. The petitioner shall be provided a copy of the record within ten days of the decision.

## 23. **Warranties**

23.1 COULEE warrants that the owners of the Property have authorized COULEE to engage in nonmetallic mining on the Property and to enter into this Agreement.

23.2 COULEE warrants that COULEE has full right and authority to enter into this Agreement.

23.3 The obligations of COULEE under this Agreement shall be binding on COULEE and its successors and assigns.

## 24. **Town Acceptance of Ownership of the Property; Future Management Obligations; Issuance of Recreational Easements**

24.1 This Agreement and the Approval are made contingent upon the execution of the Option to Purchase Agreement, attached as Exhibit C, governing the terms under which the Town may take ownership of all or part of the Mine Site for public purposes.

24.2 This Agreement and the Approval are made contingent upon CARBO issuing recreational easements to the Town as provided in this subsection. A recreational easement shall be issued to the Town for each portion of the Property that would be subject to Section 1.c.iv. of the Option to Purchase Agreement, if the Option to Purchase were exercised

(“**Subject Property**”). A recreational easement shall be issued for each Subject Property within 60 days of it becoming a Subject Property. A recreational easement issued under this subsection shall provide for all of the following, to begin at the end of the Term of this Agreement, in a manner and pursuant to terms agreeable to the Town and CARBO:

24.2.1 Public access to the Subject Property for recreational purposes, as determined to be appropriate by the Town, and other purposes as determined by the Town.

24.2.2 Sole authority provided to the Town to manage public access and to manage any development of the Subject Property.

## 25. **Dredging**

COULEE may not engage in wet dredging activities to excavate raw materials. For purposes of this Section, wet dredging means the removal of earthen material by means of suction dredge, and does not include transportation of material from an excavation site to the wet plant by slurry system.

## 26. **Payments for Town Costs**

26.1 COULEE will provide funding to the Town in the amount specified under Section 26.2, to be used only for the following purposes:

26.1.1 Long term management and maintenance of the Mine Site as a public park, if ownership of the Property is accepted by the Town under Section 24.

26.1.2 The Town’s costs during the term of this Agreement, for reasonable costs of retained experts to perform engineering and consulting services or legal services including to review reports submitted by COULEE, assess issues that arise relating to the project, inspect the Property, evaluate compliance by COULEE and enforce the terms of this Agreement and the applicable provisions of the Town ordinances, and report from time to time to the Town Board regarding these matters.

26.1.3 Court costs and reasonable attorney's fees associated with any citation issued under Section 22.3.3 or for any legal action for injunctive or other relief pursued by the Town.

26.1.4 If the Town declines to exercise its option to take ownership of the Property under Section 24, for general Town purposes.

26.2 Payments from COULEE to the Town for the purposes in Section 26.1 are to be made at a rate of \$0.05 per ton of material transported away from the Mine Site in the Town of

Rock, and are to be paid quarterly, within 30 days of the end of the particular calendar quarter. The parties agree that this funding is not severable from this Agreement and agree to engage in good-faith negotiations to determine other means by which this funding will be provided by COULEE to the Town if this method of funding is invalidated by legislative act or a court of competent jurisdiction.

**27. Snowmobile Trail**

If requested, COULEE will provide snowmobile trail access across its Property during the life of the mine, and shall fence and post areas of the Mine Site that could be dangerous to snowmobilers.

**28. Miscellaneous Provisions**

28.1 All parties participated in negotiating the terms of this Agreement. Neither 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.

28.2 No waiver of any provision of this Agreement shall be deemed to constitute a waiver of any other provision, nor will it be deemed to constitute a continuing waiver unless expressly provided for by a written amendment to this Agreement signed by both the Town and COULEE, 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 of this Agreement or wrongful act by COULEE.

28.3 Any notice required or permitted by this Agreement 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 COULEE: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to CARBO: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

If to the Town: Town Chairperson  
Town of Rock  
10970 County Road N  
Marshfield, WI 54449-9790

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

28.4 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.

28.5 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 following notice and opportunity for hearing.

28.6 COULEE may not voluntarily assign or transfer its rights and obligations under this Agreement, or a majority ownership share in COULEE, to any entity that succeeds, in whole or in part, to COULEE's interest in the Property, without the prior written consent of the Town, which shall not be unreasonably withheld, and provided: (i) the Property will continue to be used for mining activities, (ii) that the assignee assumes in writing the obligations of COULEE pursuant to this Agreement, and (iii) the assignee provides reasonable proof that the assignee has the ability to discharge its obligations under this Agreement. In the event COULEE transfers its rights and obligations for a purpose other than nonmetallic mining, or if a transfer is made without Town approval or involuntarily, this Agreement and the Approval are terminated.

28.7 In certain circumstances, CARBO may notify the Town that CARBO will take over the operations of the mine ("**Operations Transfer**"). An Operations Transfer is subject to the prior written consent of the Town, which shall not be unreasonably withheld. By exercising an Operations Transfer, CARBO agrees to be subject to all of the terms and conditions in this Agreement that are applicable to COULEE, and CARBO further agrees that any outstanding responsibilities of COULEE under this AGREEMENT are the responsibilities of CARBO, including any outstanding payments for Town costs under Section 26. The circumstances in which CARBO may execute an Operations Transfer include any of the following:

28.7.1 An uncured default by COULEE resulting in a pending suspension or revocation of the Approval by the Town under Section 22.4, or another action taken by the Town or other regulatory authority that is likely to result in COULEE being unable to continue

to operate under the approval. If an Operations Transfer is exercised under this provision, the Town shall provide reasonable time for CARBO to cure a violation of this Agreement.

28.7.2 A pending revocation of the Approval for abandonment under Section 22.5. If an Operations Transfer is exercised under this provision, the 3-year time period in which activities are measured for purposes of abandonment is extended by one (1) year.

28.7.3 Agreement between CARBO and COULEE that CARBO will take over operations of the mine.

28.8 COULEE shall at all times have a designated agent, whose name, email address, and telephone numbers are made known to the Town Clerk, and who is available to respond to questions.

28.9 Future changes to the Town's Zoning Ordinance that are inconsistent with this Agreement, and that render COULEE's operation nonconforming with respect to the Zoning Ordinance, are inapplicable to COULEE during the term of this Agreement unless COULEE loses its nonconforming status. For purposes of this Agreement, COULEE may not lose its nonconforming status unless its operations have been abandoned under Section 22.5 or operations have otherwise ceased at the site for a period of at least 4 years. Future adoption of other ordinances, other than zoning ordinances, that are not consistent with the underlying intent of this Agreement are also inapplicable to COULEE's operation during the term of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement on the dates indicated below.

TOWN OF ROCK

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

COULEE FRAC SAND, LLC

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

CARBO CERAMICS, INC.

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## EXHIBIT A

### Property Value Guarantee

COULEE will provide a property value guarantee (“**PVG**”) to owners of all land parcels located at least in part within ¼ mile of the Mine Site, on which is located a residence, subject to the following terms:

1. Property owners who have sold or leased land to COULEE are not eligible under this PVG.
2. Eligibility will begin 6 months following the issuance of the Approval to COULEE by the Town, or 6 months after the issuance of the last permit required for the commencement of mining activities, whichever is later. Eligibility ceases with completion of reclamation as determined by Wood County.
3. Owners desiring to avail themselves of this PVG shall notify COULEE of that fact (“**Intent to Sell Notice**”) during the eligibility period under this PVG program. An Intent to Sell Notice shall be provided to COULEE as follows:

Mr. Douglas Schmidt  
Coulee Frac Sand, LLC  
1612 Nakomis Ave.  
La Crosse, WI 54603

4. Prior to commencement of mining activities at the Mine Site, and thereafter as necessary, the Town and COULEE will mutually agree on a list of licensed appraisal firms that are qualified to perform appraisals under this PVG. Appraisal firms included in this list must have demonstrated experience in appraising properties impacted by their proximity to industrial activities such as frac sand mining. An owner desiring to avail himself or herself of this PVG shall choose an appraiser from this list to conduct an appraisal on the property.
5. Appraiser shall provide the owner and COULEE with an appraisal of the fair market value of the parcel, assuming COULEE's development did not exist (“**FMV**”). Appraiser's fee will be paid by COULEE.
6. After the FMV is determined, the owner shall enter into listing contract with a real estate broker licensed in the State of Wisconsin (“**Broker**”). The listing contract shall provide that if COULEE is the eventual buyer of the property, no more than 3% of the sales price will be paid to the Broker as commission.
7. To be eligible for a PVG payment, the property must be listed for sale at the FMV identified by the appraiser above, or a different price by agreement of COULEE and the property owner, for at least 270 consecutive days (the “**Sale Period**”) unless a shorter listing timeline results because COULEE directs the owner to accept an offer as provided below. The

real estate broker must market the property in a manner at least consistent with standard industry practices during the Sale Period. If the Sale Period does not begin within 90 days of the appraisal, the eligibility of the owner under this PVG for the property in question will be treated the same as if the owner elected to take the property off the real estate market during the Sale Period, as provided in Section 14.

8. The listing contract shall provide that any offer to purchase must provide at least 5 calendar days within which the offer may be accepted.

9. The owner or the Broker shall provide COULEE with a copy of each offer submitted on the property, and shall do so within time to allow COULEE at least 4 days to make a decision on whether to direct the owner to accept the offer. COULEE shall have the option to require the owner to accept any offer submitted during the Sale Period, and if so required, the owner must accept the offer.

10. If an offer required by COULEE to be accepted by an owner as provided above also is contingent upon the transfer of specified personal property or fixtures that typically do not transfer as part of real estate sales, the value of the property or fixtures shall be included along with the FMV identified above for purposes of determining any payment made by COULEE to the owner, if the owner consents to the inclusion of the property or fixtures in the sale contract.

11. An owner is not eligible for a PVG payment if the owner accepts any offer during the Sale Period other than an offer the owner is directed to accept by COULEE or if the accepted offer equals or exceeds the FMV for the parcel.

12. Subject to the exception in the following Section, if COULEE does not direct the owner to accept an offer during the Sale Period, or if sale under an offer accepted at the direction of COULEE does not close, regardless of reason, within 90 days of the end of the Sale Period, COULEE must purchase the parcel at FMV.

13. If COULEE directs the owner to accept an offer during the Sale Period, the sale of the property closes, and the selling price is less than FMV, COULEE shall pay to the owner the difference between the selling price and FMV. COULEE shall make payment within 30 days of the closing.

14. If the owner elects to take the property off of the real estate market during the Sale Period, the owner's eligibility for a PVG payment related to that Sale Period ends and the owner may not submit a subsequent Notice of Intent to Sell to COULEE for 3 years following the date that the property was taken off of the market.

15. If COULEE elects or is required to purchase the property, it may hold the parcel for mine buffer, develop the parcel for mine expansion subject to approval of a revised reclamation plan by Wood County and approval by the Town, or otherwise liquidate.

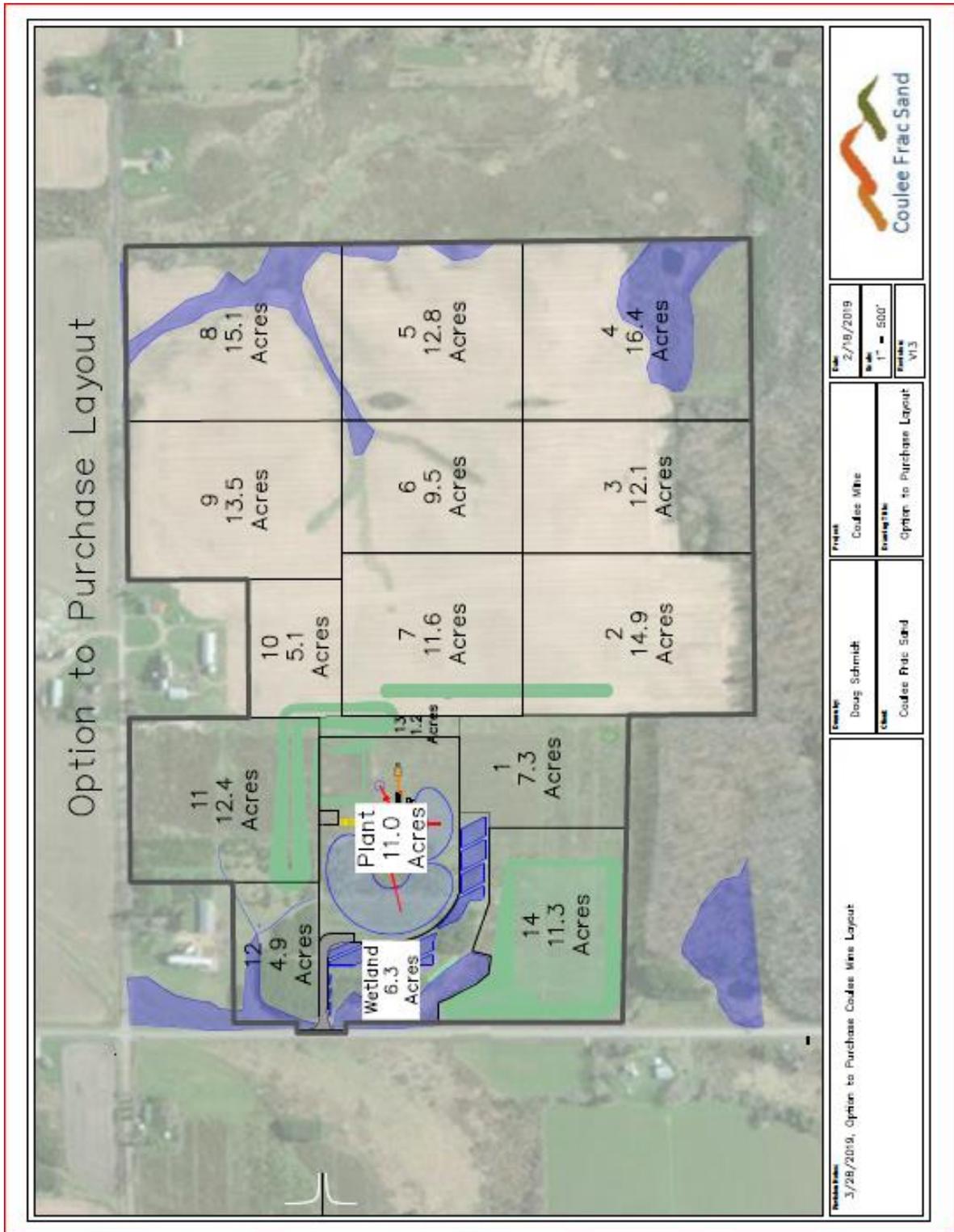
16. If significant contamination is determined to be present on an otherwise eligible property, as determined by a Phase I or Phase II environmental site assessment (“**ESA**”) conducted by a qualified and licensed consultant, COULEE shall have no obligation under this PVG with respect to the property unless the contamination on the property is remediated. The property owner of a property for which an Intent to Sell Notice has been provided to COULEE shall provide COULEE with access to the property to perform an inspection and/or conduct an ESA. This provision only applies if COULEE informs the owner of the presence of significant contamination within 90 days of receipt of the Intent to Sell Notice.

17. Property which is for sale on the Effective Date shall not be eligible for this PVG unless the Intent to Sell Notice is provided to COULEE no less than 3 years after that Effective Date.

18. This PVG shall apply only once for each identified parcel, and shall only apply to the owners of record on the Effective Date. For purposes of this provision, “owner of record” includes immediate family members and trusts, limited liability companies, and other entities wholly owned by or providing benefit solely to the owners of record and their immediate family members.

19. In any year, the COULEE allocation to PVG payments may not be required to exceed \$500,000. If more than \$500,000 in PVG payments are required to be paid to owners as provided above, the payments will be accommodated on a "first in" basis and payments to parcel owners who do not receive payment in the year in which the right to the payment accrues carry over to the following year in the same order as the right to payment accrues. COULEE may elect to allocate more than \$500,000 to PVG payments in calendar year at its sole discretion.

EXHIBIT B - Site Plan



**EXHIBIT C**

**Option to Purchase Agreement**

**EXHIBIT D**

**Coulee Plan of Operation (including exhibits)**

**EXHIBIT E**

**Fugitive Dust Control Plan**