
THE VILLAGE OF COAL CITY
GRUNDY & WILL COUNTIES, ILLINOIS

ORDINANCE
NUMBER 15-10

**AN ORDINANCE AUTHORIZING ENTRY INTO A RAIL CONSTRUCTION
DEVELOPMENT AGREEMENT WITH INLAND LOGISTICS PORT COAL CITY,
LLC**

NEAL E. NELSON, President
PAMELA M. NOFFSINGER, Village Clerk

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DAVID TOGLIATTI
JUSTIN WREN
Village Trustees

Published in pamphlet form by authority of the President and Board of Trustees of the Village of
Coal City
on March 23, 2015

ORDINANCE NO. 15-10

AN ORDINANCE AUTHORIZING ENTRY INTO A RAIL CONSTRUCTION DEVELOPMENT AGREEMENT WITH INLAND LOGISTICS PORT COAL CITY, LLC

WHEREAS, the Village of Coal City (“Village”) is a non-home rule municipality; and

WHEREAS, Inland Logistics Port Coal City, LLC (hereinafter, “ILPCC”) is desirous of developing a rail-served industrial park (the “Park”) on certain property located within the Village; and

WHEREAS, ILPCC requires financial assistance from the State of Illinois in order to develop certain elements of the Park and has requested that the Village assist it by undertaking the rights and obligations described more particularly in that certain Rail Construction Development Agreement by and among Inland Logistics Port Coal City, LLC and the Village of Coal City, attached hereto as Exhibit 1 (the “Agreement”), but generally described as the Village serving as the conduit for securing State grant funds by applying for same, leasing the real property upon which rail facilities will be developed from ILPCC, receiving deposits of funds from ILPCC in amounts necessary to retain third parties to design and construct the rail facilities and associated improvements connecting and extending the previously constructed track extension from the main line tracks of the Union Pacific Railroad to the west side of South Broadway Road in Coal City, Illinois throughout the remainder of the Park, receiving reimbursement for such expenditures from the State and disbursing the grant fund proceeds to ILPCC to reimburse ILPCC for fronting funds to the Village to enable construction, and owning and operating the newly constructed portion of railroad tracks and associated appurtenances for approximately seven (7) years; and

WHEREAS, the President and Trustees (the “Corporate Authorities”) of the Village are desirous of promoting economic development within the Village by facilitating the development

of the Park; and

WHEREAS, the Village is authorized by Section 8-1-2.5 of the Illinois Municipal Code, 65 ILCS 5/8-1-2.5, to appropriate and expend funds for economic development purposes, including making expenditures deemed necessary or desirable for the promotion of economic development within the Village; and

WHEREAS, the Corporate Authorities of the Village find that the Park is a critical component of the Village's economic development objectives of transforming underutilized properties into higher and more productive uses, creating public-private partnerships to foster private investment, creating jobs, increasing property tax revenues, encouraging further development in the area, and diversifying the Village's economic base; and

WHEREAS, the Village is authorized under the provisions of Article VII, Section 10 of the State of Illinois Constitution of 1970, to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

WHEREAS, the Corporate Authorities hereby find and determine that the Project is in furtherance of a proper public purpose for the reasons set forth hereinabove and that it is advisable, necessary and in the best interests of the Village's public health, safety and welfare to enter into this Agreement and the obligations provided herein in support of the Park;

NOW, THEREFORE, BE IT ORDAINED by the President and Board of Trustees of the Village of Coal City, Counties of Will and Grundy, Illinois, as follows:

SECTION 1. Recitals. The foregoing recitals shall be and are hereby incorporated into and made a part of this Ordinance as if fully set forth in this Section 1.

SECTION 2. Enactment.

A. Approval and Authorization.

1. The Corporate Authorities hereby approve and direct the Village to enter into the Agreement and hereby authorize, approve, and direct Village President Neal Nelson to execute and deliver the Agreement to ILPCC.
2. The Corporate Authorities shall and do hereby authorize, approve, and direct the Village Clerk to affix the Village seal to the Agreement and to attest the executed Agreement following the Village President's signature. The Village Clerk shall be further authorized and directed to certify any document, including without limitation the Ordinance *sub judice*, to evidence the adoption by the Corporate Authorities of an enactment authorizing entry into the Agreement.
3. The Corporate Authorities shall and do hereby authorize, approve, and direct the Village President, Village Clerk, Village Manager, Village Attorney and Village Treasurer to execute and deliver such documents, and undertake such additional tasks as may be necessary or convenient to carry out the intent of this Ordinance and consummate the Agreement.

SECTION 3. Resolution of Conflicts. All ordinances or parts of ordinances in conflict herewith are hereby repealed to the extent of such conflict.

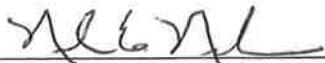
SECTION 4. Saving Clause. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

SECTION 5. Effectiveness. This Ordinance shall be in full force and effect from and after its passage, approval, and publication in the manner provided by law.

SO ORDAINED this 23 day of March, 2015, at Coal City, Grundy and Will Counties, Illinois.

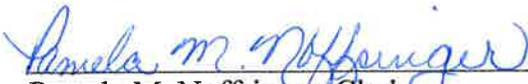
AYES: 6
NAYS: 0
ABSENT: 0
ABSTAIN: 0

VILLAGE OF COAL CITY



Neal E. Nelson, President

Attest:



Pamela M. Noffsinger, Clerk

Exhibit 1

Rail Construction Development Agreement by and among Inland Logistics Port Coal City, LLC
and the Village of Coal City

(ATTACHED ON FOLLOWING PAGES)

***AFTER RECORDING
RETURN TO:***

Mark R. Heinle, Esq.
ANCEL, GLINK, DIAMOND,
BUSH, DICIANNI &
KRAFTHEFER, P.C.
1979 N. Mill St., Suite 207
Naperville, IL 60563

This space for Recorder's use only

RAIL CONSTRUCTION DEVELOPMENT AGREEMENT

By and Between

THE VILLAGE OF COAL CITY, ILLINOIS

AND

INLAND LOGISTICS PORT COAL CITY, LLC

RAIL CONSTRUCTION DEVELOPMENT AGREEMENT

THIS RAIL CONSTRUCTION DEVELOPMENT AGREEMENT (the “**Agreement**”) is made and entered into as of the _____ day of _____, 2015 by and among Inland Logistics Port Coal City, LLC and the Village of Coal City (the “**Agreement**”) is entered into by and between THE VILLAGE OF COAL CITY, an Illinois non-home rule municipal corporation duly organized and validly existing legal entity organized and operated pursuant to the Constitution and laws of the State of Illinois (the “**Village**”) and INLAND LOGISTICS PORT COAL CITY, LLC, an Illinois limited liability company organized and existing under the laws of the State of Illinois (“**ILPCC**”). Collectively, the Village and ILPCC shall be referred to herein as the “**Parties**”.

WHEREAS, ILPCC is desirous of developing a rail-served industrial park (the “**Park**”) on certain property located within Village’s boundaries; and

WHEREAS, ILPCC requires financial assistance from the State of Illinois in order to develop certain elements of the Park; and

WHEREAS, the State of Illinois requires a governmental entity to serve as the applicant for and recipient of the grant funds described herein and to serve as the primary obligor under the various agreements, instruments and documents pertaining to the receipt and expenditure of said grant funds; and

WHEREAS, ILPCC has requested that the Village assist in the development of the Park by serving as the applicant for and recipient of said financial assistance, which role requires the Village to lease the real property underneath and along the railroad tracks, to construct rail facilities and associated improvements connecting and extending the previously constructed track extension from the main line tracks of the Union Pacific Railroad to the west side of South Broadway Road in Coal City, Illinois throughout the remainder of the Park, all as more particularly set forth in the ILPCC – Coal City Railroad ROW Exhibit prepared by Manhard Consulting LTD and dated _____, and attached hereto as **Exhibit A** and incorporated as though fully set forth herein, and to own the newly constructed portion of railroad tracks and associated appurtenances for the duration of the Ground Lease By and Between the Village of Coal City and Inland Logistics Port Coal City, LLC, dated _____ and attached hereto as **Exhibit B** and incorporated as though fully set forth herein (the “**Lease**”) [cumulatively, the “**Project**”]; and

WHEREAS, pursuant to 65 ILCS 5/8-1-2.5, the Village is authorized to expend funds for economic development purposes; and

WHEREAS, the Village is desirous of promoting economic development within the Village by facilitating the development of the Park; and

WHEREAS, the President and Trustees (the “**Corporate Authorities**”) of the Village find that the Park is a critical component of the Village’s economic development objectives of

transforming underutilized properties into higher and more productive uses, creating public-private partnerships to foster private investment, creating jobs, increasing property tax revenues, encouraging further development in the area, and diversifying the Village's economic base; and

WHEREAS, the Village is authorized under the provisions of Article VII, Section 10 of the State of Illinois Constitution of 1970, to contract and otherwise associate with individuals, associations, and corporations in any manner not prohibited by law; and

WHEREAS, the Corporate Authorities hereby find and determine that the Project is in furtherance of a proper public purpose for the reasons set forth hereinabove and that it is advisable, necessary and in the best interests of the Village's public health, safety and welfare to enter into this Agreement and the obligations provided herein in support of the Park; and

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration received and to be received, the parties hereby agree as follows:

1. **Incorporation.** The foregoing Recitals are made a part of this Agreement and the Agreement shall be interpreted and construed in light of those Recitals.

2. **Parties.** This Agreement is entered into by and between THE VILLAGE OF COAL CITY, an Illinois non-home rule municipal corporation duly organized and validly existing legal entity organized and operated pursuant to the Constitution and laws of the State of Illinois (the "Village") and INLAND LOGISTICS PORT COAL CITY, LLC, an Illinois limited liability company organized and existing under the laws of the State of Illinois ("ILPCC").

3. **Effective Date.** This Agreement becomes effective on the date that both ILPCC and the Village have executed this Agreement ("Effective Date").

4. **Term of Agreement.** The term of this Agreement (the "Term") shall commence on the Effective Date and terminate upon the earliest to occur of (i) the "Termination Date" (as that term is defined in the Lease) of the Lease; or (ii) the Village's election to terminate the Agreement following an Event of Default by ILPCC related to its obligations to timely obtain the Premises or enter into the Lease with the Village, respectively. Notwithstanding the Termination Date, the Lease shall be subject to prior termination as provided hereinafter.

5. **ILPCC Responsibilities.** It is expressly understood, agreed and acknowledged by and amongst the Parties that ILPCC's obligations hereunder to perform pursuant to this Agreement are absolute and unconditional, and that the non-performance by the State of any material obligation under that certain agreement entered into by and between the Village of Coal City and the State of Illinois dated _____, 2015 and known as the *Track Construction Grant Agreement By and Between the State of Illinois, Acting Through its Department of Transportation and the Village of Coal City*, which is attached hereto as **Exhibit C** and incorporated by reference as though fully set forth herein (the "Grant Agreement"), including but not limited to the non-appropriation of the Grant Funds by the Illinois General Assembly for the Project, a change in law eliminating the authority of the State to disburse the Grant Funds, or a

failure by the State to release or disburse the Grant Funds, shall not be construed to be a condition precedent to the performance of all or any of ILPCC's obligations hereunder.

- A. Obtain Property. ILPCC shall obtain fee simple title to certain real property located within Coal City, Grundy County, Illinois legally described in **Exhibit D**, which is attached hereto and incorporated by reference as though fully set forth herein (the "Premises"). Notwithstanding anything to the contrary contained herein, ILPCC's acquisition of fee simple title to the Premises is mutually understood and acknowledged to be a condition precedent to any obligations incurred by the Village hereunder, including without limitation any obligation to execute and deliver the Grant Agreement or any other agreements, instruments or other documents to the State. Should ILPCC fail to acquire fee simple title to the Premises with sixty (60) days of the Effective Date of this Agreement, such failure shall constitute a default under this Agreement. If the failure to obtain the Premises becomes an Event of Default as defined herein, the Village may, in the exercise of its sole discretion terminate the Agreement, which termination shall become effective immediately upon service of such notice of termination on ILPCC as provided hereunder.

- B. Lease Property to Village for Railway Development Purposes. ILPCC shall enter into the Lease with the Village within sixty (60) days of the Effective Date of this Agreement. Notwithstanding anything to the contrary contained herein, ILPCC's entry into the Lease with the Village is mutually understood and acknowledged to be a condition precedent to any obligations incurred by the Village hereunder, including without limitation any obligation to execute and deliver the Grant Agreement or any other agreements, instruments or other documents to the State. Should ILPCC fail to enter into the Lease within sixty (60) days of the Effective Date of this Agreement, such failure shall constitute a default under this Agreement. If the failure to obtain the Premises becomes an Event of Default as defined herein, the Village may, in the exercise of its sole discretion terminate the Agreement, which termination shall become effective immediately upon service of such notice of termination on ILPCC as provided hereunder.

- C. Taxes. ILPCC shall pay, before any fine, penalty, interest or costs is incurred, all real estate taxes and special assessments and other impositions of every kind including without limitation tax assessments, levy, imposition or charge of any kind or nature pertaining to the Premises and accruing on or after the Effective Date. Real estate taxes shall be paid on a cash basis. It is expressly understood and agreed between and amongst the parties that Village shall not have any responsibility for the payment of any real estate taxes on the Premises or any of the easement areas accruing, prior to, during or after the Term of the Lease.

- D. Easements.
 - i. Temporary Construction Easements. Prior to or contemporaneously with the execution of the Lease, ILPCC shall obtain and record temporary construction easements in favor of the Village from REED & BROADWAY,

LLC (“R&B”), an Illinois limited liability company organized and existing under the laws of the State of Illinois and FIRST NATIONAL BANK OF OTTAWA, AS TRUSTEE UNDER TRUST AGREEMENT DATED JULY 26, 2013 AND KNOWN AS TRUST NUMBER 2811, a federally chartered bank (“First National Bank”), respectively, in substantially the form(s) collectively attached hereto as **Exhibit E**, which is attached hereto and incorporated by reference as though fully set forth herein, for the real property legally described therein.

- ii. Permanent Drainage and Access Easements. Prior to or contemporaneously with the execution of the Lease, ILPCC shall obtain and record permanent 110’-wide drainage and access easements in favor of the Village along and across the real property of R&B and First National Bank, and any other person or entity who may now or hereafter own the real property subject to the aforesaid drainage easements, which easements shall provide for the drainage of two culverts that will be installed under or upon real property within the Inland Logistics Port industrial park, in substantially the form(s) attached hereto as **Exhibit F** and incorporated by reference as though fully set forth herein.

E. Payments.

- i. ILPCC shall be responsible for and make funds available to the Village as provided herein to enable the prompt and timely payment by the Village of any and all sums owed by the Village to contractors, consultants, engineers, attorneys, material suppliers, or vendors having performed Work on or related to the Project (“Payees”) for, without limitation, labor, supplies, materials, and consulting, engineering, and legal services and other work of any kind or nature related to the planning, design, construction, installation, removal, replacement, rehabilitation, modification, maintenance and operation of the Railway (the “Work”) as and when due and any interest or late payment penalties which may be incurred as a result of any failure or delay in the performance of its payment or deposit obligations under this Subsection 5(E) and its subparts. All sums due for the Work shall be cumulatively known as the “Project Costs”, notwithstanding whether such Project Costs are reflected in the “Project Budget” as the same may be amended from time to time and remitted to the State of Illinois Department of Transportation (the “State”) pursuant to the terms of the Grant Agreement, and further notwithstanding whether such Project Costs are deemed to be “Eligible Project Costs”, as that term is defined in the Grant Agreement.
- ii. The Parties acknowledge and agree that the State requires, as a condition of disbursement of the grant funds, that the Village remit invoices, records and receipts or other evidence that the Village paid out on an Eligible Project Cost (“Village Outlay”). The Parties further acknowledge and agree that it is the mutual intention of the Parties that ILPCC, rather than the Village, fund the

Village Outlay and await reimbursement of such expended funds via the Village's receipt and subsequent disbursement of Grant Funds from the State upon actual receipt thereof from ILPCC. It is expressly contemplated by the parties hereto that the ILPCC shall be obligated to deposit funds into the Project Accounts (as herein defined) from time to time as herein provided and then await reimbursement from Grant Funds once the same are disbursed by the State to the Village and then from the Village to ILPCC. ILPCC covenants and agrees with particularity that it shall defend, indemnify, and hold harmless Village and its officers, officials, employees, volunteers and agents from and against all claims, damages, losses and expenses, including, but not limited to, legal fees (attorney's and paralegal's fees, expert fees and court costs) arising out of or resulting from ILPCC's breach of all or any portion of its payment/deposit obligations hereunder. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which ILPCC would otherwise have. The indemnification obligations under this paragraph shall not be limited in any way by any limitation on the amount or type of damages that may arise out of such breach.

- iii. To secure the performance of ILPCC's obligations under Section 5(E)(i) and (ii), prior to the Village contracting for the performance of any Work, ILPCC shall deposit with the Village the sum of FIVE HUNDRED THOUSAND DOLLARS AND ZERO/100 CENTS (\$500,000.00) [the "Replenishable Project Funds"]. The Village shall deposit the Replenishable Project Funds into one or more dedicated accounts established for purposes of the Project (the "Project Accounts"). The Village may not commingle the Replenishable Project Funds with any general or other special-purpose funds or accounts of the Village. No interest shall be payable to ILPCC for any Replenishable Project Funds retained from time to time in the Project Accounts. The Parties acknowledge and agree that the Village is authorized to withdraw and apply all or any portion of the Replenishable Project Funds to the payment of the Project Costs as and when incurred. The Village shall notify ILPCC when the Replenishable Project Funds have been drawn upon to pay a Project Cost and provide ILPCC with a copies of all invoices received and evidence of a Village Outlay, it being understood and agreed that Village's expense reporting obligations need not exceed one per month itemizing all Project Expenses incurred, draws upon the Replenishable Project Funds, and evidence of Village Outlay(s). ILPCC shall be obligated to continuously maintain the above-specified amount of Replenishable Project Funds on deposit with the Village at all times and replenish the Replenishable Project Funds within five (5) business days of being notified by the Village of a draw thereon in an amount necessary to maintain the required minimum balance provided herein. The foregoing deposit obligations notwithstanding as to amount or timing, ILPCC expressly agrees that it shall promptly make such additional funds available to the Village promptly as may be necessary for the Village to timely pay a Project Cost in full. The Village shall be under no obligation to

continue performing Work or having any Work performed until the Replenishable Project Funds are replenished to the original amount.

- iv. The Village shall disburse any and all Grant Funds upon actual receipt of same to reimburse ILPCC for deposits of Replenishable Project Funds into the Project Accounts, but ILPCC agrees that the Village may retain and deposit into the Project Accounts any and all Grant Funds disbursed by the State to the Village in an amount necessary to restore the minimum balance required hereunder in the Project Accounts in the event that the Replenishable Project Funds on deposit in the Project Accounts shall drop below the \$500,000.00 minimum balance threshold established herein.
 - v. ILPCC's payment and deposit obligations hereunder shall exist independently of the State's obligation to provide Grant Funds under the Grant Agreement. It is expressly understood and agreed that ILPCC shall make timely deposits into the Project Funds in full and that such obligation shall exist notwithstanding any non-appropriation of Grant Funds or other failure to disburse Grant Funds by the State, and notwithstanding any delay in disbursing Grant Funds, insufficiency of the Grant Funds to cover the Project Costs, determination by the State, acting in its sole discretion, that all or a portion of the Project Costs are not Eligible Project Costs, and notwithstanding any delays, planned or unplanned in connection with the final disbursement of Grant Funds as provided in Section 3.5 of the Grant Agreement.
- F. Labor and Material Payment Bond. ILPCC shall furnish a Labor and Material Payment Bond for the duration of the Term (or until the Project is completed, whichever occurs first) in an amount equal to 100% of the full amount of the outstanding Project Costs (as such sum shall change from time to time) as security for the payment of all persons performing labor and furnishing materials in connection with the Work. The Labor and Material Payment Bond shall be issued by a corporate surety authorized to do business in the State of Illinois, be acceptable to Village, and shall name Village as a primary co-obligee. The Labor and Material Payment Bond will become a part of the Agreement. In case of neglect, failure, or refusal of ILPCC to provide a satisfactory surety and Labor and Material Payment Bond on or before the commencement of the Village's performance of any of its obligations hereunder or within such extended period as Village may grant if the forms do not meet its approval, the Village may declare ILPCC in default of this Agreement. The Parties acknowledge and agree that the Project is a public works construction project within the meaning of the Public Bond Construction Act, 30 ILCS 550/1, et seq., and that all contracts awarded by the Village for the performance of qualifying work thereunder shall require that the contractor furnish a Performance Bond and a Labor and Material Payment Bond in the full amount of the contracted service where such work is in excess of \$50,000.00. The obligation of ILPCC's Labor and Material Payment Bond surety in this Section is intended to and shall cover the occurrence of

any default in ILPCC's performance of an obligation imposed by Section 5(E) or any of its subparts.

- G. **Performance Bond.** In addition to its obligation to furnish a Labor and Material Payment Bond as set forth in the preceding paragraph, ILPCC shall be additionally obligated to obtain and maintain a Performance Bond through a date sixty (60) days after the conclusion of the Term in an amount equal to equal to 100% of the full amount of the Project Budget, as the same may be amended from time to time (the "Performance Bond") as security against the occurrence of an "Event of Default", as said term is defined herein. The parties mutually acknowledge that the occurrence of an Event of Default within the meaning of Section 8.1 of the Grant Agreement triggers the repayment of the Grant Funds to the State within 30 days of the receipt of notice of an Event of Default from the State and intend said repayment to be made from the proceeds of the Performance Bond. The Performance Bond shall be issued by a corporate surety authorized to do business in the State of Illinois, be acceptable to Village, and shall name Village as a primary co-obligee. The Performance Bond will become a part of the Agreement. In case of neglect, failure, or refusal of ILPCC to provide a satisfactory surety and Performance Bond in the amount set forth herein on or before the commencement of the Village's performance of any of its obligations hereunder or within such extended period as Village may grant if the forms do not meet its approval, the Village may declare ILPCC in default of this Agreement. The Parties acknowledge and agree that the Project is a public works construction project within the meaning of the Public Bond Construction Act, 30 ILCS 550/1, et seq., and that all contracts awarded by the Village for the performance of qualifying work thereunder shall require that the contractor furnish a Performance Bond and a Labor and Material Payment Bond in the full amount of the contracted service where such work is in excess of \$50,000.00. Where a contractor's Performance Bond coverage may apply to the same failure to complete an element of the Work as ILPCC's Performance Bond coverage, the obligations of ILPCC's surety shall be secondary.
- H. **Accept Assignment of Contracts Between Village and Third-Party Payees.** At Village's election, and pursuant only to the approval of the State and to the extent permissible under the terms of any contract, agreement or purchase order between Village and a Payee related in any manner to the performance of Work or supplying of materials connected with the construction and installation of the Railway, the Village may assign its rights and obligations under such contracts to ILPCC and ILPCC hereby agrees to accept all rights and obligations therein provided, including but not limited to the pursuit of any claims or remedies related to improper or untimely performance of a Payee's obligations under such contracts, and to execute any instruments as may be necessary to accomplish said assignment(s).
- I. **Enforcement Costs as Against Third Parties.** ILPCC agrees to pay on demand all costs and expenses of any kind or nature, including reasonable attorney's and paralegal's fees, paid or incurred by the Village in enforcing the terms of any contract with a Payee for the performance of Work related to the Project.

- J. Maintain Railway. ILPCC shall, at its sole cost and expense, perform or cause to be performed all maintenance, replacement, removal, modifications, and upgrades to the Railway (cumulatively, "Railway Maintenance") as may be necessary to maintain the Railway in compliance with Federal Railroad Administration Class I Track Safety Standards as set forth at 49 CFR Part 213, as amended, sufficient to handle weight limits of 286,000 pounds and to allow the safe operation of rail freight on the Railway throughout the Term of the Lease. ILPCC shall keep the Premises and Railway in good condition and repair and in a clean and safe condition. ILPCC shall not cause or permit any nuisances of any kind or nature in or about the Premises.
- K. Books and Records. ILPCC shall prepare and maintain the Project Budget (as defined in the Grant Agreement), and proper, accurate and complete books, records, lists, invoices, canceled checks and other evidence of payment, and supporting documents of any kind or nature related directly or indirectly to the Project or Project-related expenditures (the "Records") and to complete all forms, reports and instruments (including but not limited to form OPP 2200 "Authorization of Agreement Changes" and to prepare quarterly reporting requirements as set forth in 30 ILCS 705/4) throughout the Term as may be necessary (i) to enable Village to apply to the State for disbursement of Grant Funds under Sections 3.2 and 7.1 of the Grant Agreement and (ii) to determine and verify the amounts, recipients, and uses of all disbursements of Grant Funds connected in any manner with the Project and for any other purposes established in Section 6.5 of the Grant Agreement. ILPCC shall cooperate fully with Village and the State and any officials or employees thereof, including without limitation Village's accountants and the Illinois Auditor General, to provide full access to said Records on demand for inspection, copying, review and audit.
- L. Instruments and Agreements. ILPCC shall negotiate, prepare and provide to Village for review and submittal to the State for additional review and approval any and all agreements, instruments and documents related directly or indirectly to the Work and the Grant Funds. ILPCC is solely responsible to ensure that said agreements, instruments and documents are accurate and in accordance with the terms of the Grant Agreement, that certain agreement entered into by and between *Inland Logistics Port Coal City, LLC, the Village of Coal City and the State of Illinois* dated _____, 2015, which is attached hereto as **Exhibit G** and incorporated by reference as though fully set forth herein (the "Owner's Agreement"), and the *Development Agreement By and Between the Village of Coal City and Inland Logistics Port Coal City, LLC, Reed & Broadway, LLC, LLC and First National Bank of Ottawa, as Trustee Under Trust Agreement dated July 26, 2013 and Known as Trust Number 2811* dated August 1, 2013 and recorded at the Grundy County Recorder of Deeds as Instrument No. 543330 on November 13, 2013 (the "Development Agreement") and any other Project-related agreements.
- M. Avoiding Event of Default Under Grant Agreement. ILPCC shall perform any and all actions that may be required to prevent the occurrence of an "Event of Default"

under Section 8.1 of the Grant Agreement, including without limitation the obligation to timely complete the Project, to properly maintain the Railway, and to avoid discontinuance of use of the Railway for rail freight during the Term, and excluding only the performance of obligations that are personal to the Village (e.g. legislative enactments, approval and execution of instruments, and avoiding dissolution or bankruptcy).

- N. Repayment of Grant Funds In Event of Default. Village hereby assigns to ILPCC, and ILPCC hereby accepts said assignment from Village, its obligation to repay the Grant Funds to the State if the same is demanded by the State following the occurrence of an Event of Default in accordance with Section 8.2 of the Grant Agreement. ILPCC agrees to immediately upon demand provide such funds to the Village as may be necessary to repay all or any portion of the Grant Funds to the State.
- O. Insurance. To obtain and keep in force, to the satisfaction of Village, at all times during the Term, insurance coverages of the types, in the amounts and containing such provisions as required herein:
- i. Property: ILPCC shall maintain Property Insurance upon the Premises, Railway and other improvements constructed on the Premises, as well all the Village's personal property, equipment and trade fixtures located on or about the Premises (cumulatively, the "Facilities") to the extent of its full replacement cost plus the cost of debris removal with coverage for perils as set forth under the ISO special causes of loss form (CP 10 30) or its equivalent, with coverage extended for the perils of flood and earthquake, in an amount equal to full insurable replacement cost. Such insurance shall contain an agreed valuation provision in lieu of any co-insurance clause, an ordinance and law endorsement, debris removal coverage, and a waiver of subrogation endorsement in favor of the Village.
 - ii. Commercial General Liability:
 - a. \$10,000,000.00 General Aggregate
 - b. \$5,000,000.00 Each Occurrence
 - c. Policy must include "explosion, collapse, and underground hazard ("XCU") coverage
 - d. Any exclusion for construction or demolition activities conducted within 50 feet of railroad tracks shall be deleted from the policy and include the following endorsement: Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing the "Premises" as defined herein as the designated job site.
 - e. Policy written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).
 - f. Include a waiver of subrogation against the Village of Coal City

- iii. Workers' Compensation:
 - a. State: Statutory
 - b. Applicable Federal (e.g., Longshoremen's): Statutory
 - c. Employer's Liability
 - (i) \$500,000.00 Per Accident
 - (ii) \$500,000.00 Disease, Policy Limit
 - (iii) \$500,000.00 Disease, Each Employee

- iv. Business Automobile Liability (including owned, non-owned and hired vehicles):
 - a. Bodily Injury:
 - \$5,000,000.00 Per Person
 - \$5,000,000.00 Per Accident

 - b. Property Damage:
 - \$1,000,000.00 Per Occurrence

 - c. Policy must include the following endorsements:
 - i. Coverage for Certain Operations In Connection With Railroads
ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing the "Premises" as defined herein as the designated job site;
 - ii. Motor Carrier Act Endorsement – Hazardous Materials Clean-Up (MCS-90)

- v. Umbrella Excess Liability:
 - (i) \$5,000,000.00 over Primary Insurance per occurrence
 - (ii) \$5,000,000.00 over Primary Insurance annual aggregate

- vi. Such other insurance and in such amounts as may be from time to time reasonably required by Village in accordance with customary commercial or institutional practice for comparable industrial railroad developments in the greater Chicago area.

- vii. The insurance policies described in this Section 9(O) shall include an endorsement naming the Village of Coal City, and its officials, employees, and agents as Additional Insureds. The Additional Insured endorsement shall state that the coverage afforded the Additional Insureds shall be primary insurance for the Additional Insureds and shall state that: (i) if the Additional Insureds have other insurance which is applicable to the loss, such other insurance shall be on an excess or contingent basis and (ii) the amount of the insurance company's liability under the insurance policy shall not be reduced by the existence of such other insurance.

- viii. For insurance companies which obtain a rating from A.M. Best, that rating should be no less than A VII using the most recent edition of the A.M. Best's Key Rating Guide. If the Best's rating is less than A VII or a Best's rating is not obtained, the Village has the right to reject insurance written by an insurer it deems unacceptable. All insurance companies must be authorized to do business in the State of Illinois.
 - ix. ILPCC shall provide Certificates of Insurance and Policy Endorsements evidencing the coverages and the addition of the Village of Coal City as an insured. No such policy of insurance shall have a deductible or self-insurance retention amount in excess of \$5,000.00 per occurrence. All deductibles applicable to the insurance coverage shall be borne by ILPCC. All insurance shall be written on an "occurrence" basis rather than a "claims-made" basis.
 - x. Failure of the Village to demand any certificate, endorsement or other evidence of full compliance with these insurance requirements or failure of Village to identify a deficiency from evidence that is provided shall not be construed as a waiver of ILPCC's obligation to maintain such insurance. ILPCC agrees that the obligation to provide the insurance required by these documents is solely its responsibility and that this is a requirement which cannot be waived by any conduct, action, inaction or omission by the Village. Upon request, ILPCC will provide copies of any or all policies of insurance maintained in fulfillment hereof.
 - xi. ILPCC acknowledges and agrees that nothing contained in the insurance requirements of the Agreement is to be construed as limiting the liability of ILPCC.
 - xii. All contractors and subcontractors retained or hired to perform the Work shall be required to maintain the same coverages, limits and term equivalent as set forth in Sections 5(O)(ii), (iii), (iv), and (v) herein.
 - xiii. All certificates shall provide for 30 days' written notice to the Village prior to the cancellation or material change of any insurance referred to therein. Written notice to Village shall be by certified mail, return receipt requested.
 - xiv. Nothing contained in this Agreement is to be construed as limiting the liability of ILPCC. Village does not, in any way, represent that the coverages or limits of insurance specified is sufficient or adequate to protect Village, or ILPCC, but are merely minimums. The obligations of ILPCC to purchase insurance shall not, in any way, limit its obligations to Village in the event that the Village should suffer an injury or loss in excess of the amount recoverable through insurance, or any loss or portion of a loss which is not covered by ILPCC's insurance.
- P. Indemnification and Hold Harmless. To the fullest extent permitted by law, ILPCC agrees to waive any and all rights of contribution against Village and to defend, indemnify and hold harmless Village and its former, current and future

officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents from and against any and all claims, actions, omissions, losses, injuries, lawsuits, counterclaims, debts, dues, obligations, judgments, awards, demands, liens, expenses, attorneys' and paralegal's fees, costs and expenses, costs of litigation, expert witness fees and consultant fees, and liability for damages of any kind and causes of action of any kind and nature, whether known or unknown at this time, whether present or future or contingent, that are brought or filed against the Village of Coal City or any of its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents and/or successors in interest of any kind, by any person or entity arising out of, relating to, connected with, or in any way associated directly or indirectly with this Agreement, the Lease, the Project, the Village's leasehold interest in the Premises, the Village's possession, occupancy and use of the Premises, the Village's ownership of the Railway, or the Village's breach or default in the performance of any covenant or agreement contained in the Owner's Agreement or Grant Agreement for which written notice of such breach or default has been received by Village and tendered within five (5) business days of receipt to ILPCC in accordance with the notice provisions provided herein, or the Village's breach or default in the performance of any covenant or agreement contained in any of its contractual obligations pursuant to any subsequent agreements with Payees for the performance of any Work related to the Project, the Village's conduct or management of any business conducted by or for Village in or on the Premises. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right to indemnity which Village would otherwise have. ILPCC shall similarly, defend, protect, indemnify and hold and save harmless, Village and its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents against and from any and all claims, costs, causes, actions and expenses, including, but not limited to, legal fees, incurred by reason of ILPCC's breach of any of its obligations hereunder, or ILPCC's default of any provisions of the Lease. The rights and obligations of this Paragraph shall survive the termination of this Agreement. In case any action or proceeding is brought against Village, by reason of any such claim described in this Paragraph, the Village and its former, current and future officers, elected and appointed officials, employees, volunteers, attorneys, insurers and agents sued thereunder shall have the right to determine the attorney(s) of its, his, her or their choice to represent and defend their interests in any legal or administrative action, all at ILPCC's expense pursuant to this Agreement.

- Q. Cooperation in Hiring. ILPCC shall cooperate with Village in the selection and retention of contractors, consultants, engineers, attorneys, material suppliers, or vendors (for purposes of this Paragraph, the foregoing shall be collectively known as the "Third Parties") to perform or supply labor, supplies, materials, and consulting, engineering, and legal services and other work of any kind or nature related to the planning, design, construction, installation, removal, replacement, rehabilitation, modification, maintenance and operation of the Railway. ILPCC expressly agrees and acknowledges that the Village shall at all times have and retain final authority, subject to approval and authorization from the State, to select, hire and enter into

contracts with any Third Parties of the Village's choosing. ILPCC acknowledges that the Village shall not delegate its legislative or executive authority to so select and hire the Third Parties and, moreover, that the Village shall at all times act in conformity with the procurement procedures set forth in Section 6.2 of the Grant Agreement, as well as any applicable obligations imposed by the Local Government Professional Services Selection Act (PSSA), 50 ILCS 510/0.01, *et seq.*, 65 ILCS 5/8-9-1, and any and all other applicable governmental statutes, ordinances, codes, rules, regulations, written guidelines or policy statements, regulations, permits, orders, writs, injunctions, decrees, judgments, decisions, principles of common law, rulings that have the force of law of any court, federal, state, county or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority (cumulatively, the "Procurement Requirements").

- R. Procurement Officer. The Parties acknowledge and agree that the Village may wish to retain a procurement officer to provide consulting services and in order to assist and facilitate the Village in drafting project specifications, reviewing qualifications of responsive bidders, generally administering and overseeing all aspects of procurement transactions related in any manner to the Work, and helping ensure that all such transactions are handled in full compliance with the Procurement Requirements. ILPCC acknowledges that the selection and retention of a procurement officer shall itself be subject to the selection processes and procedures imposed by the Procurement Requirements.
- S. Administrative & Professional Expense Reimbursement. In addition to the payment obligations imposed upon ILPCC in Section 5(C) of this Agreement, ILPCC shall also pay for or promptly reimburse the Village within 30 days of the presentment of an invoice for any and all reasonable expenses associated with administering its obligations under this Agreement, the Lease, the Grant Agreement, the Owner's Agreement, or in any way connected with the Project, including without limitation reasonable expenses related to the procurement of the Work, inclusive of the costs associated with advertising for bids, legal review of documents and contracts to which the Village is a party by virtue of its capacity as owner of the Railway during the Term, preparation of ordinances, resolutions, and motions, record-keeping and accounting or audit work, or communications with the State, to the extent that any of the foregoing are related to or in any way arising out of Village's capacity as Village, recipient of grant funds, or role in the Project. The parties further acknowledge and agree that Village reserves the right at any time during the Term to retain the professional services of attorneys, consultants and other professionals to review agreements and advise Village on issues related to railroad construction, ownership and operation and other issues related to, arising under or in any manner connected with the Lease, Grant Agreement and Owner's Agreement and Village's obligations thereunder. ILPCC shall pay for or promptly reimburse the Village within 30 days of the presentment of an invoice related to any reasonable administrative or professional services expenses incurred by Village as provided herein.

T. Insurance Payments. If the Village is required to obtain any additional liability or other insurance policies or increased coverages, pay any deductibles or increased premiums as a result of this Agreement, the Lease, Owner's Agreement, Grant Agreement, the Village's role with respect to the Project, or any claims or losses arising out of or related to any of Village's obligations thereunder, ILPCC agrees to indemnify and save harmless Village from and against the payment of such additional sums.

11. **Village Responsibilities.**

A. Railway Improvements. The Village shall construct, install, remove, replace, modify, maintain and operate, or cause the same to be performed with respect to, without limitation, a new railroad track, ties, track bed, rails, switches, cross-ties, culverts, and other related equipment, structures, appurtenances and facilities needed to provide service on a rail line (cumulatively, the "Railway") in accordance with the plans set forth in the obligations set forth in the Grant Agreement, to the extent necessary to enable freight traffic to travel from the Union Pacific main line rail trackage within and adjacent to the Inland Logistics Port, Coal City, IL on the Railway along and within the Premises, for the uses and purposes of the property owners, tenants and users within the Park.

B. Project Cooperation. The Village shall exercise good faith in assisting and cooperating fully with ILPCC in implementing the Project, including but not limited to paying Payees in a timely fashion to the extent that ILPCC makes such funds available to the Village in a timely fashion, keeping Records and authorizing access to or inspection of the Records, executing and remitting ILPCC-prepared forms, reports, instruments and Records as may be reasonably necessary to apply to the State for timely disbursements of Grant Funds under Sections 3.2 and 7.1 of the Grant Agreement, reviewing, authorizing and executing any and all agreements, instruments, contracts, and documents related directly or indirectly to the Work and the Grant Funds (cumulatively, the "Contract Documents"). The parties understand and agree that Village shall not, and ILPCC does not require, the delegation of any of Village's legislative or executive functions or corporate powers, and that Village shall at all times retain its independent authority to review, negotiate, modify, or reject any Contract Documents in its sole discretion.

C. Disbursement of Grant Funds. The Village shall promptly process and pay over to ILPCC the periodic disbursements of the Grant Funds actually received by the Village from the State in strict accordance with the amounts and purposes for which said disbursements are made by the State. The Village's obligations with respect to the Grant Funds hereunder shall not be construed to extend beyond remitting invoices and evidence of payment to the State in order to apply for periodic disbursements, and receiving, processing, and disbursing Grant Funds from the State to ILPCC. In no event shall the Village be obligated to make any payments to Payees out of any funds or proceeds other than the Replenishable Project Funds or such other funds as

may be made available from time to time as necessary by ILPCC in order to satisfy payment obligations, it being the express intent and agreement of the Parties hereto that ILPCC shall be liable for and assume any and all obligations incurred by the Village with respect to payment obligations to Payees for the Work as and when due and any interest or late payment penalties which may be incurred as a result of any untimely payments by the Village to Payees resulting from delays or failures by ILPCC's relating to the deposit of the Replenishable Project Funds or such other funds with the Village as provided herein, whether or not such delays or failures by ILPCC constitute a default or Event of Default within the meaning of this Agreement.

D. **Hiring.** The Village shall cooperate with ILPCC in the selection and retention of contractors, consultants, engineers, attorneys, material suppliers, or vendors (for purposes of this Paragraph, the foregoing shall be collectively known as the "Third Parties") to perform or supply labor, supplies, materials, and consulting, engineering, and legal services and other work of any kind or nature related to the planning, design, construction, installation, removal, replacement, rehabilitation, modification, maintenance and operation of the Railway. The Village shall at all times have and retain final authority, subject to approval and authorization from the State, to select, hire and enter into contracts with any Third Parties of the Village's choosing. Nothing herein shall be construed as the Village delegating any of its legislative or executive functions or corporate powers to ILPCC, and the Village shall at all times retain its independent authority to select, negotiate with and hire the Third Parties. The Village shall at all times act in conformity with the Procurement Requirements.

i. **Procurement Officer.** The Parties acknowledge and agree that the Village may wish to retain a procurement officer to provide consulting services and in order to assist and facilitate the Village in drafting project specifications, reviewing qualifications of responsive bidders, generally administering and overseeing all aspects of procurement transactions related in any manner to the Work, and helping ensure that all such transactions are handled in full compliance with the Procurement Requirements. ILPCC acknowledges that the selection and retention of a procurement officer shall itself be subject to the selection processes and procedures imposed by the Procurement Requirements.

E. **Convey Railway At End of Term.** Promptly upon the conclusion of the Term, but in no event sooner than the Village's obligation to the State to retain ownership of the Railway, the Village shall convey to ILPCC, and ILPCC shall accept from the Village, title to the Facilities, which shall be evidenced by bills of sale from Village to ILPCC and such other instruments as may be necessary to effectuate the passing of title to the Facilities. The Village shall not demand any further compensation for the conveyance, it being mutually understood and agreed that said conveyance is adequately supported by the mutual covenants and agreements herein contained and other good and valuable consideration received and to be received by the Parties.

12. **Representations and Warranties of ILPCC.** ILPCC represents and warrants:

- A. ILPCC is an Illinois limited liability company, duly organized and existing in good standing under the laws of the State.
- B. ILPCC has the full and complete legal right, corporate power, and authority to enter into and perform this Agreement and to agree to the terms, provisions and conditions set forth in this Agreement; and the execution, delivery and performance hereof by ILPCC (i) will not violate any judgment, order, law or regulation applicable to ILPCC or any provisions of ILPCC's charter or by-laws and (ii) does not conflict with, constitute a default under or result in the creation of any lien, charge, encumbrance or security interest upon any assets of ILPCC under any agreement or instrument to which ILPCC is a party or by which ILPCC or its assets may be bound or affected.
- C. All legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken and this Agreement has been duly authorized, executed and delivered by ILPCC; and this Agreement constitutes the legal, valid and binding obligations of ILPCC, enforceable in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principles concerning remedies.
- D. There is no litigation or proceeding pending or, to the knowledge of ILPCC, threatened against or affecting ILPCC or (i) challenging the validity of this Agreement or any agreements contemplated hereby, (ii) seeking to enjoin the performance by ILPCC or (iii) which, if adversely determined, would materially adversely affect the financial condition of ILPCC or the ability of ILPCC to perform its obligations hereunder or thereunder.
- E. All representations and covenants made by "Owner" to the State of Illinois and the Village of Coal City in the Owner's Agreement are incorporated herein by reference and made a part hereof as a representation and warranty of ILPCC that served as a material inducement for Village to enter into this Agreement.

13. **Representations and Warranties of Village.** The Village represents and warrants:

- A. The Village is an Illinois non-home rule municipal corporation duly organized and validly existing legal entity organized and operated pursuant to the Constitution and laws of the State of Illinois.
- B. The persons executing this Agreement on the Village's behalf have been properly authorized to do so by Village's Corporate Authorities.
- C. The Village has the full power, authority and legal right to enter into and perform this Lease; and the execution, delivery and performance hereof by the Village (i) has the requisite approval of all governmental bodies, (ii) will not violate any

judgment, order, law or regulation applicable to the Village and (iii) does not conflict with, constitute a default under any agreement or instrument to which the Village is a party.

- D. All legal actions needed to authorize the execution, delivery, and performance of this Agreement have been taken and this Agreement has been duly authorized, executed and delivered by the Village; and this Agreement constitutes the legal, valid and binding obligations of the Village, enforceable in accordance with its respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, or by general equitable principles concerning remedies.
- E. There is no litigation or proceeding pending or, to the knowledge of the Village, threatened against or affecting the Village or (i) challenging the validity of this Agreement or any agreements contemplated hereby, (ii) seeking to enjoin the performance by the Village or (iii) which, if adversely determined, would materially adversely affect the financial condition of the Village or the ability of the Village to perform its obligations hereunder or thereunder.

14. **Events of Default.** Failure on the part of either party to comply with any material term, representation, warranty, covenant, agreement, or condition of this Agreement within thirty (30) days after written notice thereof shall constitute an "Event of Default." Except as otherwise expressly provided herein, no default by either party shall be actionable or be of other consequence unless and until it shall constitute an Event of Default.

- A. In the Event of Default by ILPCC in the performance of any of its obligations under this Agreement, the Village shall have the power to proceed with any right or remedy granted by the Constitution and laws of the State of Illinois as it may deem most effectual to protect its rights, including any suit, action or special proceeding in equity or at law for the specific performance of any covenant or agreement contained herein or for the enforcement of any proper legal or equitable remedy, insofar as such may be authorized by law, including but not limited to entitlement to specific performance, damages, indemnification for any monetary damages owed by the Village to any third party as a result of such ILPCC Event of Default, including without limitation, any Payee(s) or the State. The Village shall additionally be authorized to call upon the sureties to perform their obligations under the Performance Bond or Labor and Materials Payments Bonds in the Event of Default (but only if and to the extent that the Event of Default results in Village's obligation to repay all or a portion of the Grant Funds to the State or to pay Payees any outstanding sums), and/or terminate this Agreement at its sole discretion. No remedy by the terms of this Agreement conferred upon or reserved to the Village is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Village. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of

Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient. No waiver of any Event of Default shall extend to or shall affect any subsequent default or Event of Default or shall impair any rights or remedies consequent thereto. Neither party shall be liable to the other for consequential damages or lost profits.

- B. In the Event of Default by the Village in the performance of any of its obligations under this Lease, ILPCC's sole remedies shall be specific performance (including payment of money, whether or not denoted as damages). It is expressly understood and agreed amongst the Parties that the non-performance by the State of any material obligation under the Grant Agreement, including but not limited to the non-appropriation of the Grant Funds by the Illinois General Assembly for the Project, a change in law eliminating the authority of the State to disburse the Grant Funds, or a failure by the State to release or disburse the Grant Funds, shall not be attributable to the Village or be construed to constitute a default by the Village of its obligations hereunder. Neither party shall be liable to the other for consequential damages or lost profits.

15. General Provisions.

- A. Compliance with Laws. The Parties shall comply, and shall cause their respective agents, employees, contractors and subcontractors to comply, with the requirements of the Grant Agreement, Owner's Agreement, and any and all applicable governmental statutes, ordinances, codes, rules, regulations, written guidelines or policy statements, regulations, permits, orders, writs, injunctions, decrees, judgments, decisions, principles of common law, rulings that have the force of law of any court, federal, state, county or local government, department, commission, board, bureau, agency or other regulatory, administrative, governmental or quasi-governmental authority.
- B. FOIA Compliance. ILPCC agrees to maintain, without charge to the Village, all records and documents related to the Project in compliance with the Freedom of Information Act, 5 ILCS 140/1 *et seq.* In addition, ILPCC shall produce records which are responsive to a request received by Village under the Freedom of Information Act so that the Village may provide records to those requesting them within the time frames required. If additional time is necessary to compile records in response to a request, then ILPCC shall so notify the Village and if possible, the Village shall request an extension so as to comply with the Act. In the event that the Village is found to have not complied with the Freedom of Information Act due to ILPCC's failure to produce documents or otherwise appropriately respond to a request under the Act, then ILPCC shall indemnify and hold Village harmless, and pay all amounts determined to be due including but not limited to fines, costs, attorneys' fees and penalties.

- C. **Non-Assignment.** ILPCC shall not assign, transfer, convey, sublet, or otherwise dispose of any of its obligations hereunder or any or all of its rights, title, or interest in the Agreement, without the prior written consent of the Village and the State.
- D. **Enforcement of Agreement.** In the event that either party hereto institutes legal proceedings against the other party for violation of this Agreement and secures a judgment in its favor, the court having jurisdiction thereof shall determine and include in its judgment against the losing party all expenses of such legal proceedings incurred by the prevailing party, including, but not limited to, court costs and attorneys' fees, and witnesses' fees incurred by the prevailing party in connection therewith.
- E. **Notice.** Any notice or communication required or permitted to be given under this Agreement shall be in writing and shall be delivered (i) personally, (ii) by a reputable overnight courier, or (iii) by certified mail, return receipt requested, and deposited in the U.S. Mail, postage prepaid. Unless otherwise provided in this Agreement, notices shall be deemed received after the first to occur of (a) the date of actual receipt; or (b) the date that is one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit; or (b) the date that is three (3) business days after deposit in the U.S. mail, as evidenced by a return receipt. By notice complying with the requirements of this Section, each party to this Agreement shall have the right to change the address or the addressee, or both, for all future notices and communications to them, but no notice of a change of addressee or address shall be effective until actually received.

Notices and communications to the Village shall be addressed to, and delivered at, the following address:

Village of Coal City
515 S. Broadway
Coal City, IL 60416
ATTN: Village Administrator

With a copy to: Ancel, Glink, Diamond, Bush, DiCianni & Krafthefer
1979 Mill Street, Suite 207
Naperville, IL 60563
Attn: Mark R. Heinle, Esq.

Notices and communications to ILPCC shall be addressed to, and delivered at, the following address:

Inland Logistics Port Coal City
800 W. 79th Street, Suite 3
Willowbrook, IL 60527
Attn: Chris McGrath

- F. **Governing Law.** This Agreement shall be governed by, and enforced in accordance with, the laws of the State of Illinois, which are incorporated herein. Any suit

brought to enforce the provisions of this Agreement shall be filed in the Thirteenth Judicial Circuit, Grundy County, Illinois.

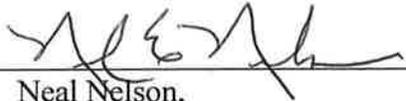
- G. Severability. It is hereby expressed to be the intent of the Parties that should any provision, covenant, agreement, or portion of this Agreement or its application to any person or property be held invalid by a court of competent jurisdiction, the remaining provisions of this Agreement and the validity, enforceability, and application to any person or property shall not be impaired thereby, but the remaining provisions shall be interpreted, applied, and enforced so as to achieve, as near as may be, the purpose and intent of this Agreement to the greatest extent permitted by applicable law.
- H. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all prior agreements and negotiations between the Parties, whether written or oral, relating to the subject matter of this Agreement.
- I. Amendments & Modifications. No amendment or modification to this Agreement shall be effective until it is reduced to writing and approved and executed by both parties to this Agreement.
- J. Interpretation. This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, each and every provision of this Agreement shall be construed as though all Parties to this Agreement participated equally in the drafting of this Agreement. As a result of the foregoing, any rule or construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
- K. Authority to Execute. The parties each hereby warrant and represent to one another that the persons executing this Lease on their respective behalves have been properly authorized to do so, and further that each has the full and complete right, power, and authority to enter into this Lease and to agree to the terms, provisions, and conditions set forth in this Agreement.
- L. Counterparts. This Agreement may be executed in counterpart, each of which shall constitute an original document, which together shall constitute one and the same instrument.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK
SIGNATURE PAGE TO FOLLOW**

IN WITNESS WHEREOF, ILPCC and Village have caused this Agreement to be executed in their respective names and Village has caused its seal to be affixed thereto, and attested as of the Effective Date.

“VILLAGE”:

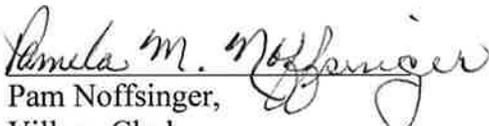
VILLAGE OF COAL CITY, ILLINOIS
an Illinois municipal corporation.

By: 

Neal Nelson,
Village President

(SEAL)

Attest:



Pam Noffsinger,
Village Clerk

“ILPCC”:

**INLAND LOGISTICS PORT COAL CITY,
LLC,**
an Illinois Limited Liability Company

By: _____

Name: _____

Title: _____

STATE OF ILLINOIS)
) ss.
COUNTY OF GRUNDY)

I, the undersigned, a Notary Public in and for such County and State aforesaid do hereby certify that _____, personally known to me to be the _____ of Inland Logistics Port, Coal City, LLC, an Illinois limited liability company, whose name is subscribed to the foregoing Lease, appeared before me this day in person and severally acknowledged that as such officers they signed and delivered the foregoing Lease as an officer of Inland Logistics Port, Coal City, LLC, as his free and voluntary act, and as the free and voluntary act and deed of Inland Logistics Port, Coal City, LLC, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of _____, 2015.

Notary Public

Commission expires _____, 20__