
THE VILLAGE OF COAL CITY
GRUNDY & WILL COUNTIES, ILLINOIS

ORDINANCE
NUMBER 15-03

**AN ORDINANCE AUTHORIZING THE EXECUTION OF AN OWNER'S
AGREEMENT BY AND BETWEEN INLAND LOGISTICS PORT COAL CITY, LLC,
THE VILLAGE OF COAL CITY, AND THE STATE OF ILLINOIS**

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

GEORGETTE VOTA
ROSS BRADLEY
TIMOTHY BRADLEY
TERRY HALLIDAY
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 January 12, 2015

ORDINANCE NO. 15-03

AN ORDINANCE AUTHORIZING THE EXECUTION OF AN OWNER'S AGREEMENT BY AND BETWEEN INLAND LOGISTICS PORT COAL CITY, LLC, THE VILLAGE OF COAL CITY, AND THE STATE OF ILLINOIS

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 Ground Lease By and Between Inland Logistics Port Coal City, LLC and the Village of Coal City (the "Lease"), but generally described as receiving and disbursing State grant funds to third parties engaged in the construction of a railroad 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 (the "Rail Extension"), leasing the real property underneath and along the Rail Extension, constructing the Rail Extension (the "Project"), and owning the newly constructed portion of railroad tracks and associated appurtenances for approximately five (5) years following the completion of construction of the Rail Extension; and

WHEREAS, as a condition precedent to disbursing up to \$2,950,000.00 in grant funds to the Village in support of the Project, the State of Illinois ("State") requires ILPCC, the Village and the State to enter into that certain Owner's Agreement by and between Inland Logistics Port Coal City, LLC, the Village of Coal City and the State of Illinois, acting by and through its Department of Transportation (the "Owner's Agreement"), a true and correct copy of which is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein;

WHEREAS, the Owner's Agreement provides that the State shall have a security interest in the Rail Extension and provides for the Village's and ILPCC's consent to the State's secured interest in the Rail Extension improvements and the State's rights in and to the Rail Extension in the event of an uncured default under the Track Construction Grant Agreement and various related agreements, instruments and documents; and

WHEREAS, the Village intends to and shall convey the Rail Extension improvements to ILPCC at the conclusion of the Lease pursuant to the terms thereof and has no long-term designs on ownership of the Rail Extension; and

WHEREAS, the Village finds that it is advisable, necessary, desirable and in the best interests of the Village to promote economic development by undertaking the obligations provided in the Owner's Agreement, and finds that said Owner's Agreement is in furtherance of a proper corporate and public purpose by promoting economic development objectives, including fostering private investment, creating jobs, increasing property tax revenues, encouraging further development in the area, and diversifying the Village's economic base; and

WHEREAS, the Corporate Authorities have found and determined that the Owner's Agreement, substantially in the form affixed hereto as Exhibit 1, is in the best interests of the Village, and the Corporate Authorities hereby conclude that it is advisable, necessary and in the best interests of the public health, safety and welfare of the Village to enter into the Owner's Agreement;

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 entering into the Owner's Agreement by the Village and hereby authorize, approve, and direct Village President Neal Nelson to execute and deliver the Owner's Agreement on the Village's behalf with such changes thereto as such person deems appropriate and any related documents necessary to the consummation of the transactions contemplated by the Owner's Agreement.
2. The Corporate Authorities shall and do hereby authorize, approve, and direct the Village Clerk to affix the Village seal to the Owner's Agreement and to attest the executed Owner's 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 Owner's Agreement.
3. The Corporate Authorities shall and do hereby authorize, approve, and direct the Village President, Village Clerk, Village Administrator, 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 Owner's Agreement.

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

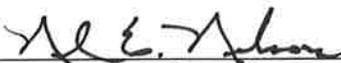
SECTION 4. Saving Clause. If any section, paragraph, clause, or provision of this Ordinance shall be held invalid, the invalidity thereof shall not affect any of the other provisions of this Ordinance, which are hereby declared to be separable.

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 12 day of January, 2015, at Coal City, Grundy and Will Counties, Illinois.

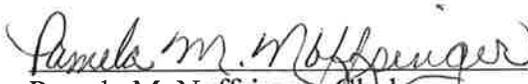
AYES: 4
NAYS: 0
ABSENT: 2
ABSTAIN: 0

VILLAGE OF COAL CITY



Neal E. Nelson, President

Attest:



Pamela M. Noffsinger, Clerk

Exhibit 1

Owner's Agreement by and between Inland Logistics Port Coal City, LLC, the Village of Coal City and the State of Illinois, acting by and through its Department of Transportation

(ATTACHED ON FOLLOWING PAGES)

OWNER'S AGREEMENT

THIS OWNER'S AGREEMENT ("Owner's Agreement"), is entered into as of the ____ day of January, 2015 by and among Inland Logistics Port Coal City, LLC, an Illinois Limited Liability Company ("Owner"), the Village of Coal City, an Illinois municipal corporation ("Recipient"), and the STATE OF ILLINOIS, acting by and through its Department of Transportation ("State").

WHEREAS, State and Recipient have entered, and may from time to time hereafter enter into, a Track Construction Grant Agreement and various related agreements, instruments and documents (collectively the "Grant Agreement"), providing for State to grant funds to Recipient; and

WHEREAS, To secure performance of all Recipient's obligations and liabilities to State under the Grant Agreement ("Recipient's Liabilities"), Recipient granted to State a valid and perfected first priority purchase money security interest in and to all of Recipient's now existing and/or owned and hereafter arising and/or acquired track, track material, rail, cross-ties, culverts, switches and any and all property, replacements and proceeds thereof in which the acquisition of rights by Recipient was enabled, directly or indirectly, with proceeds of a "Grant" (as defined in the Grant Agreement), including but not limited to those items listed in Exhibit A. All of the foregoing is referred to herein and collectively as the ("Collateral"); and

WHEREAS, All of the Collateral is now or will be used to construct a rail facilities project on the Owner's property in Grundy County, Illinois, which is legally described on Exhibit B attached hereto and by this reference made a part hereof (such rail project being hereinafter referred to as the "Project" and such real property of Owner being hereinafter referred to as the "Premises"; and

WHEREAS, Recipient's rights with respect to the use of the Premises including construction of the Project are set forth in a Lease Agreement (the "Lease") between Owner and Recipient in form referenced in the Grant Agreement that is to be attached to such Grant Agreement upon its execution.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, Owner hereby covenants and agrees with State and Recipient as follows:

1. Owner agrees that the Collateral (i) is and shall remain personal property notwithstanding the manner or mode of the attachment of any item of Collateral to the Premises, and (ii) is not and shall not become or be deemed to be fixtures.
2. Owner recognizes and acknowledges that State's security interest in the Collateral pursuant to the Grant Agreement is superior to any lien, right or claim of title of any nature which Owner now has or hereafter may have or assert in or to the Collateral by statute, the Lease, any other agreement or otherwise.
3. In the event of default by Recipient in the performance of any of Recipient's Liabilities, State may, upon reasonable notice to Owner, exercise its rights and remedies with respect to the Collateral or any part thereof in accordance with the terms and conditions of the Grant Agreement and statutory law appertaining thereto without objection, delay, hindrance or interference by Owner and in such case Owner will make no claim or demand whatsoever against State or the Collateral.
4. State may, without affecting the validity of this Owner's Agreement, amend or in any way modify the terms of payment or performance of any of Recipient's Liabilities to State, without the consent of Owner and without giving notice thereof to Owner.

5. Owner hereby agrees, notwithstanding anything to the contrary contained in the Lease, that the creation, perfection and/or existence of State's liens, encumbrances and security interests in the Collateral shall not cause a default under the Lease.
6. Owner hereby agrees to notify the State within 10 days of any and all action, whether proposed, pending or completed, affecting the Collateral.
7. This Owner's Agreement shall inure to the benefit of and shall be binding upon the Owner, Recipient and State, and their respective heirs, personal representatives, successors and assigns.
8. This Owner's Agreement represents the entire understanding of the parties, may not be waived or modified except in writing and shall be governed and controlled in all respects by the internal laws of the State of Illinois without reference to principles of choice of law.
9. All notices to the parties must be in writing and delivered by first class, registered or certified U.S. Mail or private express carrier to the parties at the addresses shown below or such other addresses as the parties designate from time to time.
10. This Owner's Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.
11. Owner hereby represents and covenants to State and Recipient that:
 - a) The Premises are currently in compliance and will remain in compliance with all applicable environmental, health and safety laws and regulations
 - b) Owner (i) has not received any notice of any hazardous or toxic or other waste substances or materials in, under or upon the Premises or of any violation of any environmental protection laws or regulations with respect to the Premises; or (ii) knows of any basis for any such notice or violation with respect to the Premises. Recipient covenants and agrees that no waste, petroleum products, pesticides or toxic or hazardous substances or materials, within the definition of any applicable statute or regulation, are being or will be used or stored upon the Project (except those products, which are used in full and complete compliance with any and all applicable laws, ordinances or regulations relating to the use or storage thereof) and that Recipient shall protect, defend, indemnify and hold State harmless from and against any and all loss, cost (including attorneys' fees and expenses), liability and damage whatsoever because of or in any way resulting from any violation or claimed violation of any of the covenants or agreements set forth in this Subparagraph 11(b) or any applicable statute or regulation for the protection of the environment which occurs upon the Project, or by reason of the imposition of any governmental lien for the recovery of environmental cleanup costs expended by reason of such violation, without regard to fault on the part of Recipient.
 - c) There are no pending or threatened actions, suits or proceedings (or notices of potential actions, suits or proceedings) by any governmental agency or any other entity regarding any environmental, health or safety law, waste disposal or "super lien" or similar governmental actions, or proceedings that would affect or impair the value or usefulness of the Premises. Owner has not received notice of any of such actions, suits or proceedings, and will promptly notify State of any notices, or any pending or threatened action, suit or proceeding in the future, and Owner will promptly cure and have dismissed with prejudice any such actions, suits and proceedings to the satisfaction of State and Recipient.

- d) The business and all activities and operations conducted by Owner on the Premises have and will lawfully dispose of wastes.

IN WITNESS WHEREOF, this Owner's Agreement has been duly executed and delivered as of the day and year specified at the beginning hereof.

OWNER:

Inland Logistics Port Coal City, LLC
800 West 79th Street – Suite #3
Willowbrook, IL 60527
Attention: Chris McGrath

By: _____
Name:
Title:

STATE:

Illinois Department of Transportation
Bureau of Railroads
100 West Randolph Street – Suite #6-600
Chicago, Illinois 60601

BY: _____
Name: Erica J. Borggren
Title: Acting Secretary

RECIPIENT:

Village of Coal City
515 South Broadway
Coal City, Illinois 60416

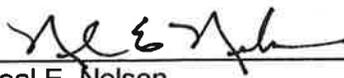
BY:  _____
Name: Neal E. Nelson
Title: Mayor and President of Board of Trustees

EXHIBIT A

Purchase Money Security Interest – Collateral

No.	Item	Unit	Quantity
1	Subbalast (CA-6-12")	CY	8,250
2	AREMA Class 1 Relay Rail 112# (Min)	LF	17,728
3	New AREMA IG 7"x9"x8'-6" Ties	Each	5,030
4	Other Track Material (Tie Plates, Anchors, Joint Bars, Bolts, Nuts & Washers)	LF	8,864
5	No. 9 AREMA Turnout with Sampson Switch Points	Each	2
6	UPRR Class 2 Ballast (8" below Tie)	CY	5,800
7	Strom Water Culverts	LF	300

EXHIBIT B

LEGAL DESCRIPTION OF OWNER'S REAL ESTATE

SECTION A:

A STRIP OF LAND 36.00 FEET WIDE, SITUATED IN THE NORTHEAST AND SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 32 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING 12.00 FEET (NORMALLY DISTANT) TO THE RIGHT AND LYING 24.00 FEET (NORMAL DISTANT) TO THE LEFT OF THE FOLLOWING DESCRIBED CENTER LINE OF TRACK:

COMMENCING AT A BRASS DISK LOCATED AT THE NORTHEAST CORNER OF SOUTHEAST QUARTER OF SAID SECTION 15; THENCE SOUTH 88 DEGREES 31 MINUTES 41 SECONDS WEST ALONG THE NORTH LINE OF SAID SOUTHEAST QUARTER, A DISTANCE OF 542.28 FEET TO SAID CENTER LINE; THENCE SOUTH 01 DEGREES 17 MINUTES 54 SECONDS EAST ALONG SAID CENTER LINE, A DISTANCE OF 1,085.55 FEET TO A POINT HEREINAFTER CALLED "POINT A" AND THE POINT OF BEGINNING; THENCE NORTH 01 DEGREES 17 MINUTES 54 SECONDS WEST, A DISTANCE OF 1,420.71 FEET TO A POINT OF TERMINUS, IN GRUNDY COUNTY, ILLINOIS.

SECTION B:

A STRIP OF LAND 36.00 FEET WIDE, SITUATED IN THE SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 32 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING 12.00 FEET (NORMALLY DISTANT) TO THE LEFT AND LYING 24.00 FEET (NORMAL DISTANT) TO THE RIGHT OF THE FOLLOWING DESCRIBED CENTER LINE OF TRACK:

BEGINNING AT AFORESAID "POINT A"; THENCE SOUTH 05 DEGREES 03 MINUTES 41 SECONDS WEST, A DISTANCE OF 287.81 FEET TO A POINT OF CURVATURE; THENCE SOUTHERLY ALONG A CURVE CONCAVE TO THE NORTHWEST HAVING A RADIUS OF 573.69 FEET SUBTENDING A CHORD BEARING SOUTH 40 DEGREES 13 MINUTES 47 SECONDS WEST, AN ARC DISTANCE OF 704.26 FEET TO A TANGENT LINE; THENCE SOUTH 75 DEGREES 23 MINUTES 53 SECONDS WEST ALONG SAID TANGENT LINE, A DISTANCE OF 100.00 FEET TO A POINT HEREINAFTER CALLED "POINT B"; THENCE ALONG A LINE LYING 12.00 FEET (NORMALLY DISTANT) TO THE RIGHT AND LYING 24.00 FEET (NORMAL DISTANT) TO THE LEFT OF THE FOLLOWING DESCRIBED CENTER LINE OF TRACK: THENCE NORTH 81 DEGREES 45 MINUTES 28 SECONDS EAST, A DISTANCE OF 1,032.83 FEET TO A POINT HEREINAFTER CALLED "POINT C" AND A POINT OF TERMINUS FOR AFORESAID SIDELINES; THENCE NORTH 04 DEGREES 47 MINUTES 48 SECONDS EAST ALONG A RADIAL LINE, A DISTANCE OF 37.17 FEET TO A POINT HEREINAFTER CALLED "POINT D"; THENCE ALONG A LINE LYING 12.00 FEET (NORMALLY DISTANT) TO THE RIGHT AND LYING 24.00 FEET (NORMAL DISTANT) TO THE LEFT OF THE FOLLOWING DESCRIBED CENTER LINE OF TRACK: THENCE NORTHERLY ALONG A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 573.69 FEET SUBTENDING A CHORD BEARING NORTH 40 DEGREES 40 MINUTES 41 SECONDS WEST, AN ARC DISTANCE OF 788.59 FEET TO A TANGENT LINE; THENCE NORTH 01 DEGREES 17 MINUTES 54 SECONDS WEST ALONG SAID TANGENT LINE, A

DISTANCE OF 79.29 FEET TO AFORESAID "POINT A" AND THE POINT OF BEGINNING, IN GRUNDY COUNTY, ILLINOIS.

SECTION C:

A STRIP OF LAND 36.00 FEET WIDE, SITUATED IN THE NORTHEAST AND SOUTHEAST QUARTER OF SECTION 15, TOWNSHIP 32 NORTH, RANGE 8 EAST OF THE THIRD PRINCIPAL MERIDIAN, LYING 12.00 FEET (NORMALLY DISTANT) TO THE LEFT AND LYING 24.00 FEET (NORMAL DISTANT) TO THE RIGHT OF THE FOLLOWING DESCRIBED CENTER LINE OF TRACK:

BEGINNING AT AFORESAID "POINT B"; THENCE SOUTH 81 DEGREES 45 MINUTES 28 SECONDS WEST, A DISTANCE OF 507.34 FEET TO A POINT OF CURVATURE; THENCE NORTHERLY ALONG A CURVE CONCAVE TO THE NORTHEAST HAVING A RADIUS OF 573.69 FEET SUBTENDING A CHORD BEARING NORTH 49 DEGREES 46 MINUTES 13 SECONDS WEST, AN ARC DISTANCE OF 970.67 FEET TO A TANGENT LINE; THENCE NORTH 01 DEGREES 17 MINUTES 54 SECONDS WEST ALONG SAID TANGENT LINE, A DISTANCE OF 3,297.16 FEET TO A POINT OF TERMINUS, IN GRUNDY COUNTY, ILLINOIS.

THE SIDELINES OF SAID SECTIONS A, B AND C TO BE EXTENDED OR SHORTENED TO TERMINATE AT THE INTERSECTING SIDELINES OF SECTIONS A, B AND C.