

AGREEMENT
(City/TLC - CSS Reimbursement for Rail Improvements)

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

WITNESSETH

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

WHEREAS, the City Track connects to the Union Pacific Railroad Company (“UP”) main line, the BNSF Railway Company (“BNSF”) main line, and various industrial property spur tracks; and

WHEREAS, City and TLC entered into a Lead Track Agreement, dated October 1, 2004 (“Lead Track Agreement”) whereby TLC agreed to perform railroad switching on the City Track to and from the UP main line, the BNSF main line, and various industries along the City Track; and

WHEREAS, under the Lead Track Agreement, TLC sets rates that it charges UP and BNSF for switching filled incoming and outgoing rail cars on behalf of the City (“Switch Fees”), collects the Switch Fees from UP and BNSF on behalf of the City, and divides the Switch Fees between City and TLC based on the terms of the Lead Track Agreement; and

WHEREAS, City and Coated Sand Solutions, LLC, (“CSS”) entered into an agreement dated April 12, 2012 (“City/CSS Agreement”), whereby CSS agreed to pay for certain rail improvements to the City Track (“Improvements”), and City agreed to reimburse CSS for the

construction costs of the Improvements out of the Switch Fees for rail cars owned or leased by CSS each month (“Monthly Reimbursement Amounts”); and

WHEREAS, the parties agree that it is to their mutual benefit that the Improvements be constructed, that CSS pay for the Improvements, and that the parties hereto pay the Monthly Reimbursement Amounts, and the parties have therefore agreed to share the obligation of the payment of the Monthly Reimbursement Amounts between themselves on the terms set forth herein;

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

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

2. Reimbursement Amount. The amount to be reimbursed to CSS is \$750,000.00 plus two percent (2%) simple interest for three (3) years, commencing January 1, 2013, and without interest thereafter. Reimbursement payments are to be applied first to the principal balance, and then to interest, with interest to be calculated monthly on the declining principal balance.

3. Division of Reimbursement Payments. The parties acknowledge that the Monthly Reimbursement Amount for each month is \$72.00 per rail car for each filled rail car delivered to or shipped from CSS during that month. The parties shall share the Monthly Reimbursement Amount obligation as follows:

- a. TLC shall pay \$48.00 per rail car (“TLC’s Share”); and
- b. City shall pay \$24.00 per rail car (“City’s Share”).

If, for any reason, the Switch Fees should be paid from industries direct to the City or its operator, rather than from the Class I common carriers, the parties acknowledge that City's

obligation for payment of the Reimbursement Amount continues in effect, and the parties shall in that event continue to share the obligation in the same amounts set forth herein.

4. Method of Payment. The parties acknowledge that under the City/CSS Agreement, City must remit payment of the Monthly Reimbursement Amount to CSS promptly upon receipt of the Switch Fees from the Class I common carriers for said month. The parties further acknowledge and agree that the amount to be paid to CSS each month is determined by multiplying \$72.00 times the total number of filled rail cars completely handled by TLC during the calendar month to be paid based on those rail cars that have been cleared by the UP and the BNSF electronic switching data system.

At the beginning of each month, TLC shall provide an accounting to CSS and the City of the number of filled rail cars delivered to or shipped from CSS that were switched on the City Track for the previous month. Upon receipt of the Switch Fees from the Class I common carriers for the month to be paid, customarily 60 days after the end of said month, TLC shall pay to the City TLC's Share for said month, in addition to all Switch Fee amounts payable to the City. City shall, promptly thereafter, pay the full Monthly Reimbursement Amount owed to CSS for that month.

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

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

6. Assignment. This Agreement may not be assigned, in whole or in part, by TLC, without the prior written consent of City.

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

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

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

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

CITY OF ROCHELLE, an Illinois municipal corporation

TOTAL LOGISTIC CONTROL, LLC, a Delaware limited liability company

By: _____
David S. Plyman, City Manager

By: _____

Attest: _____
Bruce McKinney, City Clerk

Its: _____