



**AGREEMENT**  
**For**  
**COLUMBIA TERMINAL RAILROAD TRANSLOAD AND SIDE TRACK USAGE**  
**Between**  
**CITY OF COLUMBIA, MISSOURI**  
**And**  
**OZINGA CEMENT, INC.**

THIS AGREEMENT (hereinafter "Agreement"), by and between the City of Columbia, Missouri, a municipal corporation (hereinafter "City") and Ozinga Cement, Inc., a corporation organized in the State of Illinois, whose mailing address is 19001 Old Lagrange Rd., #300, Mokena, IL 60448 (hereinafter "Customer") is made and entered into on the date of the last signatory noted below (hereinafter "Effective Date"). City and Customer are each individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, City owns and operates the Columbia Branch of the Norfolk Southern Railway as the Columbia Terminal Railroad (hereinafter "COLT"), consisting of over 20 miles of rail (also referred to herein as "track") starting at Centralia, Missouri on the north end and winding south to Columbia, Missouri; the COLT interchanges with the Norfolk Southern Railway at Centralia, and at the Columbia end is the COLT transload facility located at 6501 N. Brown Station Road in north Columbia, which includes track, transload and warehouse facilities;

WHEREAS, Customer, for the conduct of its business, desires to utilize City's COLT track and transload facilities and land thereunder, located at Railroad Mile Post 140.07 as shown on Plan #1, dated April 12, 2023, which is attached hereto and made a part of this Agreement, and hereinafter referred to as the "Premises"; and

WHEREAS Customer desires the nonexclusive use of 893 feet of side track number 104 for the loading and unloading of Customer's freight.

NOW, THEREFORE, in consideration of the mutual covenants herein set forth, the Parties agree as follows:

1. Subject to the terms and conditions of this Agreement, City authorizes Customer the nonexclusive right to enter onto and utilize City's Premises for the purpose of loading and unloading its freight to and from railway cars. City further authorizes Customer the nonexclusive right to place railway cars on said Premises for the purpose of furnishing Customer railway car placement and other customary and usual railway service thereon.

2. City authorizes Customer to enter onto or to utilize no other areas other than those set out herein. Customer agrees to utilize its own equipment and staff for loading, unloading, and any other transload related work on Premises, City facilities, tracks or property. Other than specifically authorized herein, Customer agrees not store any freight, products, vehicles, equipment or other property on Premises, City facilities, tracks or property.

3. City reserves the right to operate over Premises, City facilities, tracks or property

when necessary in carrying on City's general business.

4. Customer agrees to pay directly to City the amount of one hundred fifty dollars (\$150.00) for each railway car that is loaded or unloaded on track number 104 and or Premises. Such payments shall continue until the termination of this Agreement. Such payments shall be made to the City monthly, for each month during which there is at least one railway car loaded or unloaded. Such payments are separate from and in addition to any payments made by Customer to Norfolk Southern Railway.

5. The initial term of this Agreement is for one (1) year from the Effective Date.

6. If City requests an increase in payment for any renewal period, City shall notify the Customer no less than thirty (30) days prior to the end the Agreement period with specifics regarding the proposed increase in payment. Any increase in payment shall be agreed to in writing by the Parties before such increase becomes effective.

7. Customer shall pay during the term of this lease all taxes, licenses, and other charges which may be assessed or levied upon the business of Customer upon the Premises, or against the City by reason of occupation or use of the Premises by Customer.

8. Customer shall comply with recommended practice of the Association of American Railroads pertaining thereto and with all applicable federal, state, or municipal law, orders, regulations and ordinances, and with all law, orders, regulations and recommendations from time to time prescribed or published by any public authority having jurisdiction, or by the City relating to safe handling on Premises. Premises shall not be used for loading or unloading of flammable liquids or other products of a hazardous nature. Current standards of the Occupational Safety and Health Act shall be applied. Customer shall not commit or permit a public or private nuisance on Premises, adjacent tracks or right of way. Customer shall take all necessary steps to protect their own workers, City personnel, and the public from unnecessary danger or hazards.

9. Customer shall at all times observe all federal and state laws, rules and orders of federal and state governments and commissions now in force or which may hereafter be enacted or promulgated, relating to clearances over and about said tracks; and Customer shall not permit any structure or obstructions of any kind to be placed or maintained within the clearance limits as shown on Plan #2 dated April 12, 2023, which is attached hereto and made a part of this Agreement.

10. Customer shall prevent the intentional or unintentional placement upon Premises and all adjacent City tracks and right of way any kind of debris from the cars consigned to or ordered by the Customer to be placed on said Premises. Customer shall keep Premises, City tracks and right of way free from all debris from said cars or from other sources in connection with the operation or business of Customer. Knowledge or notice, express or constructive, by any City officer or employee of the presence of such debris on Premises, City tracks or right of way shall not be a waiver of this provision.

11. Parties agree that the movement of railway locomotives involves some risk of fire

and that Customer assumes all responsibility for and covenants and agrees to indemnify City against loss or damage to real or personal property of the Customer, or property of third parties upon the Premises or other lands under the control of the Customer, arising from fire caused by locomotives operated by the City on said track or Premises, or in the vicinity thereof, for the purpose of serving Customer, except to the property of City and to rolling stock belonging to City or to others, or to other shipments in the course of transportation and except to the extent caused by City's negligent acts or omissions.

12. Customer covenants and agrees to indemnify, protect and save City harmless from and against any and all loss of or damage to any property whatsoever (including property of the Parties and all other persons whomsoever), and from and against any and all suits, claims, liabilities, and demands, for such loss or damage, and any reasonable cost or expenses in connection therewith, but only to the extent caused by Customer's negligent acts or omissions and except where loss or damage, other than by fire caused by locomotives as aforesaid, is due to the sole negligence of City.

13. Customer, at its cost and expense, shall procure and during the duration of this Agreement shall maintain in effect a policy of insurance acceptable to the City insuring Customer's liability under this Agreement, in the amounts for injury to or death to one person not less than \$1,000,000 and not less than \$1,000,000 for any one accident, and for damage to property not less than \$1,000,000 for any one accident. Customer shall furnish to City a certificate of insurance evidencing said coverages. Customer shall provide 30 days written notice to City prior to termination of the policy and before any changes are made therein. The furnishing of said insurance shall not be deemed a limitation of the liability of Customer as provided in this Agreement, but shall be additional security therefore.

14. City may, by written notice, terminate this Agreement in whole or in part for failure of Customer to perform or comply with any of the provisions of this Agreement. In such event, Customer shall be liable for payments to City that accrued prior to the effective date of such termination.

15. The City may terminate this Agreement in whole or in part, whenever City determines that such termination is in the best interest of the City of Columbia. Any such termination will be affected by delivery to Customer of a letter of termination specifying the extent to which the terms under this Agreement are terminated and the date upon which such termination is effective. After receipt of a termination letter, Customer shall:

- a. Cease utilization of Premises as authorized in this Agreement on the date and to the extent specified in the letter.
- b. Place no further railway cars in transit to Columbia except as may be necessary to complete any portions of freight shipments already en route prior to termination.
- c. Finish unloading any remaining railway cars on Premises within 45 days.

16. Neither Party hereto shall be relieved by the termination of this Agreement of any obligation which shall have accrued thereunder prior to such termination.

17. This Agreement shall not be assigned or in any manner transferred, nor shall said Premises or any part thereof be sublet, used or occupied by any party other than Customer, nor for any purpose other than specified therein without written consent of City.

18. Until terminated as provided herein, this Agreement shall enure to the benefit of and be binding upon the Parties hereto, their heirs, executors, administrators, and successors.

19. In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

20. No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

21. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this Agreement, shall be in Boone County, Missouri, or the United States Western District of Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

22. The following persons are designated by the respective Parties to act on behalf of such Party and to receive all written notices and payments:

**IF TO CITY:**

City of Columbia  
Finance Department  
P.O. Box 6015  
Columbia, MO 65205-6015  
Attn: Tammy Irovic

**IF TO CUSTOMER:**

Ozinga Cement, Inc.  
19001 Old LaGrange Rd., #300  
Mokena, IL 60448  
Attn: Bill Brown

With a copy to:

Ozinga Cement, Inc.  
19001 Old LaGrange Rd., Ste. 300  
Mokena, IL 60448  
Attn: Legal Department

23. This Agreement may be signed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. Faxed signatures, or scanned and electronically transmitted signatures, on this Agreement or any notice delivered pursuant to this Agreement, shall be deemed to have the same legal effect

as original signatures on this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their properly authorized officers on the date of the last signatory noted below.

CITY OF COLUMBIA, MISSOURI ("City")

BY: \_\_\_\_\_  
De'Carlon Seewood, City Manager *DAS*

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

ATTEST:

\_\_\_\_\_  
Sheela Amin, City Clerk

APPROVED AS TO FORM

\_\_\_\_\_  
Nancy Thompson, City Counselor/EK

OZINGA CEMENT, INC. ("Customer")

BY: \_\_\_\_\_

Name: *JUSTIN STEPP*

Title: *VP of SALES*

Date: *4/26/23*

ATTEST:

BY: *Lia Koo*

Name: *Lia KOOY*





Parcel Information Property of Boone County  
2022 Orthophoto Source: Nearmap



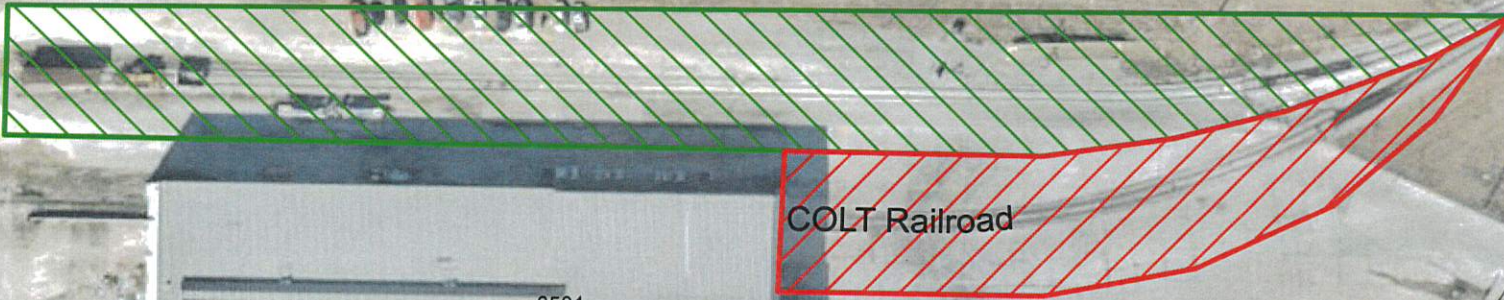
Colt Railroad

Ozinga Rail Access  
Plan #1

Date: 5/3/2023

0 50 100 200 Feet





**Legend**

-  Access Area
-  Do Not Foul
-  City Boundary

Parcel Information Property of Boone County  
2022 Orthophoto Source: Nearmap



Date: 5/3/2023

**Colt Railroad**

**Ozinga Rail Access  
Plan #2**

