

Amendment #2 to the Lease Agreement
Between Adkins Material Center, LLC and the City of Norman

THIS CONTRACT AMENDMENT, made this _____ day of _____, 201~~8~~ by and between Adkins Material Center, LLC (hereinafter referred to as the "Lessee"), the City of Norman (hereinafter referred to as the "Lessor") amends terms of the original Lease Agreement, K-0607-47, hereinafter referred to as "Lease Agreement" between the parties dated September 12, 2006.

WHEREAS, Lessee and Lessor wish to continue the relationship created by the Lease Agreement;

WHEREAS, Lessee and Lessor recognize that the following amendments are necessary to adjust the terms of the Lease Agreement so that it continues to be a beneficial agreement to both parties;

THEREFORE, in consideration of the foregoing premises and the mutual covenants hereinafter set forth and other valuable considerations, the parties hereto agree to the following amended terms:

I. Lessor's Right to Sand

- A. Lessor shall be entitled to an unlimited amount of sand at no cost to the Lessor for use by Lessor or by contractors doing work for Lessor.
- B. All sand provided to Lessor will be loaded by Lessee and Lessor agrees to pay Lessee a loading charge of \$1.00/ton for all sand loaded, but the charges shall never be less than \$10.00 to load the sand.
- C. Lessor agrees to pay a hauling fee of \$2.50 a ton for the first five miles and .10¢ a ton per mile thereafter; provided that the hauling fee shall be adjusted in direct proportion to the increase or decrease in the cost of living as reflected in the "Consumer Price Index for All Urban Consumers, Southern Region Average" compiled by the Bureau of Labor Statistics, of the United States Department of Labor.

II. Tracking Amount of Sand Removed

- A. Lessee agrees to use the Loadrite LSeries 2180 technology or other comparable technology, as agreed to by the Lessor, to track the amount of sand mined. Lessee agrees to use this technology to provide monthly reports to Lessor as required by Paragraph 5 of the Lease Agreement.
- B. The parties agree that Lessor has the right to conduct bi-annual cross-section surveys of the mine area to be performed by an Oklahoma licensed surveyor. The results of the survey will be provided to both parties and

either party may contract their own licensed surveyor if they wish to dispute the finding of the original survey.

C. Using the survey data, Lessor will determine a figure for the amount of sand removed from the mine area during the preceding six months. The conversion factor of 1.35 tons per cubic yard shall be used when converting the survey results from tons to cubic yards. That figure shall be reconciled with the monthly figures reported by Lessee to the Lessor and the Department of Mines.

D. Subsequent to a survey of the mine, the amount of sand provided to the City during the preceding six months shall be subtracted from the survey results. The resulting figure shall be compared with the figures previously reported to Lessor by Lessee.

If these figures have a difference of less than ten percent, no payment adjustments are required. If it is determined that the Lessee owes additional fees to the Lessor, the Lessee shall pay the additional royalty fees due within thirty (30) days after notification by Lessor. If it is determined that Lessee has overpaid Lessor, the amount of overpayment will be credited to Lessee's account.

E. If a flood event occurs, a licensed surveyor will re-survey the mine area to determine a new baseline figure for the amount of sand in the mine area.

F. Lessor also reserves the right to enter the mine area and to observe the loading and tracking process used by Lessee to ensure proper use of the Loadrite LSeries 2180 technology or other comparable technology, as agreed to by the Lessor.

III. Department of Mines Reports

A. The Lessee shall submit copies of all reports submitted to the Department of Mines to the Lessor.

IV. Payment of Fees Owed.

A. Lessee, as the assignee of Contract No. K-0607-47, agrees to pay an additional sum of \$24,000, at a rate of \$1,500 per month for the first sixteen months following execution of this Lease Amendment, to compensate Lessor for possible previously unpaid fees due and owing to Lessor. This payment represents payment in full for any and all outstanding royalty payments, accrued prior to execution of this Lease Amendment #2, owed to Lessor by Adkins Material Center, LLC.

V. Termination

The Lease Agreement may only be terminated upon the following conditions:

- A. By either party in the event the other party becomes insolvent, as evidenced by a filing in bankruptcy or otherwise.
- B. In the event of material breach of the Agreement by Lessee. A material breach includes, but is not limited to: failure to make payments under the terms of the Lease Agreement and failure to operate the leased premises as a sand mine. The Lessor shall provide written notice of breach to the Lessee and the Lessee shall have 30 days in which to cure the breach. However, Lessee may make a written request to temporarily suspend mining operations, and, upon written consent of the Lessor, may do so without termination of the Lease Agreement. If the breach is not cured within that 30 day period, the Lease Agreement is automatically terminated.
- C. Upon termination of the Lease Agreement, Lessee shall agree to release its mining permit from the Department of Mines and allow such permit to be transferred to the City of Norman or its designee. This transfer shall occur no later than one month following the date of termination of the Lease Agreement.

VI. Assignment

- A. This Lease Amendment shall serve as a formal acknowledgement of the assignment of the Lease Agreement by Sand Express, Inc. to Adkins Material Center, LLC.
- B. From the date of the execution of the Lease Amendment forward, Lessee shall not assign, sublease, or otherwise devise this Lease Agreement without express written permission from the Lessor.

VII. Modification

- A. No alteration, change or modification of the terms of this Amendment shall be valid unless made in writing and signed by all three parties hereto.
- B. The provisions in this Lease Amendment, if contrary to any provisions of the original Lease Agreement, shall supersede those earlier, contrary provisions.

VIII. Severability

Any provision of this contract which is hereafter found by a court of law or otherwise to be in conflict with the laws, rules, and/or regulations of the United States, State of Oklahoma or City of Norman shall be considered null and void. Any provision rendered null and void by the operation of this provision will not invalidate the remainder of this contract to the extent the contract is capable of execution.

ADKINS MATERIAL CENTER, LLC

By: *Donald A. Pungf, Manager*

Date: 2-19-2013

APPROVED this ____ day of _____, 2013, by the Norman City Council.

MAYOR Cindy Rosenthal

ATTEST:

Brenda Hall, City Clerk

APPROVED as to form and legality this 20th day of February 2013.

J. B. Messner
CITY ATTORNEY