



City of Norman, OK

Municipal Building Council
Chambers
201 West Gray Street
Norman, OK 73069

Text File

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Title

AMENDMENT NO. TWO TO CONTRACT NO. K-0607-47: BY AND BETWEEN THE CITY OF NORMAN, OKLAHOMA, AND SAND EXPRESS, INC., CLARIFYING TERMS OF THE CONTRACT, ASSIGNING OWNERSHIP TO ADKINS MATERIAL CENTER, L.L.C.; D/B/A SAND XPRESS, L.L.C., AND PROVIDING FOR PAYMENT OF OUTSTANDING ROYALTIES IN THE AMOUNT OF \$24,000.

Body

BACKGROUND: The City of Norman entered into a contract in 2006 with Sand Express, Inc. to mine sand on City-owned property near the Canadian River. The contract terms required Sand Express to use the land solely for mining sand and to pay the City a specified amount for area of sand mined with payments to be adjusted upwards over time to adjust for inflation.

Sand Express, Inc. has encountered financial difficulties, and, as a result, has ceased operation of the sand pit. When Sand Express went out of business, the City believed that Sand Express, Inc. owed the City of Norman back royalties for mined sand. City staff calculates that Sand Express owed \$24,000. Sand Express contended that they had assigned their contract with the City of Norman to Adkins Material Center, LLC. Questions regarding the property amount of back sand mining royalties, whether the lease was properly assigned, and whether Adkins Material Center, LLC or Sand Xpress, LLC should be allowed to continue the sand mining operation all appeared to be leading to litigation of these issues. City Staff has negotiated a proposed contract amendment with Adkins Material Center, LLC d/b/a Sand Xpress. The potential litigation issues and the proposed contract amendment were discussed in Executive Session with City Council on February 12th. Adkins Material Center, LLC now wants to begin mining sand, and they have requested permission to do so from the City of Norman.

Council asked for additional background information concerning the Lease assignee. Adkins Material Center, LLC is an Oklahoma Limited Liability Company based in Norman, Oklahoma with its corporate office located at 621 24th Avenue SW, Norman, Oklahoma 73069. The principals of Adkins Material Center, LLC, Brett Adkins and Robert Outland, have over 45 years of experience in the construction, land surveying, material hauling and dirt contracting and excavation business. Adkins Material Center, LLC is current with its filings with the Secretary of State. There are also no liens filed of record with the Cleveland County Clerk against Adkins Material Center, LLC.

City Staff requested information regarding Adkins Material Center, LLC's business profile. Adkins Material Center, LLC provided the following: Adkins Material Center, LLC is one of the primary providers of fill sand, gravel, dirt, mulch and top soil to both commercial and residential customers in the City of Norman. The company currently operates a material center and sand mining operation along the south side of the South Canadian river and just west of Interstate 35. The company also provides hauling services through its network of independent haulers and company owned trucks.

DISCUSSION: The proposed Contract Amendment, if approved by City Council, formalizes the agreement between the City and Adkins Material Center, LLC. It contains several terms that were not in the original lease agreement, and their inclusion helps to clarify several points and is favorable to the City.

First, the City is entitled to an unlimited amount of sand at no cost to the City for use by the City or by contractors doing work for the City. Adkins Material Center, LLC will charge a loading fee of \$1.00/ton, but the charge will never be less than \$10.00. The City, if Adkins Material Center, LLC is to haul the sand, will pay \$2.50/ton for the first five miles and \$0.10/ton per mile thereafter. The hauling fee will 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."

Second, Adkins Material Center, LLC agrees to use a computerized tracking program, the Loadrite LSeries 2180 technology or other comparable technology, as agreed to by the City, to track the amount of sand mined. Adkins Material Center, LLC agrees to use this technology to provide monthly reports to the City. In addition, the Contract Amendment allows the City to conduct bi-annual cross-section surveys of the mine area performed by an Oklahoma licensed surveyor. Using the survey data, the City will determine a figure for the amount of sand removed from the mine area during the preceding six months. That figure shall be reconciled with the monthly figures reported by Adkins Material Center, LLC to the City and the Department of Mines. If these figures have a difference of less than ten percent, no payment adjustments are required. If it is determined that Adkins Material Center, LLC owes additional fees to the City, Adkins Material Center, LLC shall pay the additional royalty fees due within thirty (30) days after notification by the City. If it is determined that Adkins Material Center, LLC has overpaid the City, the amount of overpayment will be credited to Adkins Material Center, LLC's account. 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.

Third, Adkins Material Center, LLC, 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 the City for previously unpaid fees due and owing to the City. This payment represents payment in full for any and all outstanding royalty payments, accrued prior to execution of this Lease Amendment #2, owed to the City by Sand Express, Inc.

Fourth, the Lease Amendment adds provisions regarding termination of the Lease. The Lease Agreement may only be terminated upon the following conditions: by either party in the event the other party becomes insolvent, as evidenced by a filing in bankruptcy or otherwise or in the event of material breach of the Agreement by Adkins Material Center, LLC. Upon termination of the Lease Agreement, Adkins Material Center, LLC agrees 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.

Lastly, the Lease Amendment is a formal acknowledgement of the assignment of the Lease Agreement by Sand Express, Inc. to Adkins Material Center, LLC. Also, from the date of the execution of the Lease Amendment forward, Adkins Material Center, LLC shall not assign, sublease, or otherwise devise this Lease Agreement without express written permission from the City.

RECOMMENDATION: If City Council wishes to continue the existing Contract K-0607-47, the proposed Contract Amendment clarifies terms of that Contract, formalizes the relationship of Adkins Material Center, LLC as the assignee of Sand Express' interest in the Contract, and provides for the payment of the outstanding royalties in the amount of \$24,000. For that reason, City staff recommends execution of the attached Contract Amendment.