



DATE: October 24, 2005

TO: The Honorable Mayor and Councilmembers

FROM: Jeff Harley Bryant, City Attorney *JHB*

SUBJECT: Request to approve Assignment of Land Lease and Addendum No. 4 to Contract by the City of Norman with Oklahoma Construction Materials, L.L.C.; Contract K-8990-32

BACKGROUND:

The City has been informed that Haskell Lemon Construction Co. has purchased the assets and operations of Oklahoma Construction Materials. As part of said purchase, Haskell Lemon has requested that the City give its consent to the assignment of said Lease as is required in paragraph 8 of the leasehold agreement. Haskell Lemon is also requesting a revision to paragraph 8 of the original Lease to allow the lease to be assigned to another corporate entity which has the same family owners as Haskell Lemon. A similar provision was contained in the original lease. Also, paragraph 12 is being amended to reflect proper notice address.

DISCUSSION:

The City Legal Staff has examined the documentation submitted and has inquired into the structure of Haskell Lemon Construction Co. and their ability to perform under the leasehold agreement. We find that all the documentation is in order and that Haskell Lemon is a well-established and respected business concern which has been in business in the Oklahoma City area for a number of years.

Regarding the assignment clause in paragraph #8 referring to other companies whose ownerships reflect the same family members, rather than amend this clause to apply to the current assignees, the legal staff recommends this clause be deleted thereby requiring all assignments of the lease to be approved by the City. Haskell Lemon has agreed to the deletion and that is reflected in the addendum.

RECOMMENDATION:

Based upon the above and foregoing background and discussion, it is Legal Staff's recommendation that consent to this assignment and assumption and the addendum to the lease be granted and the execution of the written consent agreement and addendum by the Mayor be approved.

Reviewed by: Brad Gambill, City Manager *Brad*

Office memorandum

**CONSENT TO ASSIGNMENT AND ASSUMPTION
OF LEASE AGREEMENT**

WHEREAS, the City of Norman has leased to Norman Asphalt Company pursuant to Lease Agreement No. K-8990-32 a certain tract of land located at 4511 South Chautauquah Avenue, Norman, Oklahoma, to be used as an asphalt plant site;

WHEREAS, said Lease Agreement provides in paragraph 8 thereof that any assignment of said land lease does require the written consent of the City of Norman; and

WHEREAS, Oklahoma Construction Materials, L.L.C. of Oklahoma City, Oklahoma, has purchased the assets and operations of Norman Asphalt Company and pursuant thereto has received an assignment and assumption of said Lease Agreement from Norman Asphalt; and

WHEREAS, Oklahoma Construction Materials has requested consent of the City of Norman for said assignment and assumption of said Lease Agreement and has tendered therewith a draft in payment of the May rental on said property and all accompanying documentation.

NOW, THEREFORE, the City of Norman does hereby give its consent to the assignment and assumption of said Lease Agreement being Contract No. K-8990-32 by Oklahoma Construction Materials, L.L.C.

This Consent granted this 27th day of April, 2004.

APPROVED BY THE CITY COUNCIL OF THE CITY OF NORMAN, this 27th day of April, 2004.

ATTEST:

Mary Hatley
City Clerk

Bob Anderson
Mayor

Approved as to form and legality this 27th day of April, 2004.

[Signature]
City Attorney

ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

This Assignment And Assumption Of Lease Agreement (this "Assignment") is made as of this 31st day of March, 2004, by and between Norman Asphalt Co. (the "Seller"), an Oklahoma corporation to Oklahoma Construction Materials, L.L.C., (the "Purchaser") a Kansas limited liability company, contemporaneously with the execution and delivery of that certain Asset Purchase Agreement by and between Seller and Purchaser dated as of the date hereof (the "Asset Purchase Agreement").

RECITALS

The City of Norman, Oklahoma, as lessor, entered into a lease agreement (the "Lease"), as amended, originally dated December 1, 1989, with Norman Asphalt Company, Inc., predecessor of Seller, as lessee, covering 88.735 acres, more or less, in Cleveland County, Oklahoma, a copy of which is attached hereto as Exhibit A and incorporated herein.

In connection with the Asset Purchase Agreement, Seller desires to enter into this Assignment in order to assign its rights and interests in the Lease to Purchaser and to evidence the assumption by Purchaser of Seller's obligations and liabilities under the Lease.

Accordingly, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties, intending to be bound hereby, agree as follows:

AGREEMENT

1. Seller hereby assigns, transfers and delivers to Purchaser all of the right, title, and interest of Seller in and to the Lease, provided, however, that Seller may, for a period of ninety (90) days following the date hereof, have the right to unrestricted access, and exclusively use, the office building on the property covered by the Lease that is shown more fully on Exhibit B which is attached hereto and incorporated herein.

2. Purchaser hereby accepts the foregoing assignment of the Lease from Seller, and assumes and agrees to be bound by and timely perform, discharge and otherwise comply with all of the agreements, duties, obligations, and undertakings of Seller under the Lease which are to be performed, discharged or otherwise complied with following the date hereof.

3. Seller shall defend, indemnify and hold harmless Purchaser, its officers, directors, and insurers, against any damage, claim, loss, liability, or expense (including reasonable attorney's fees, penalties and interest, and other costs and expenses incident to any suit, action or proceeding), tax, or liability suffered by any of them to the extent related to (i) any failure by Seller to properly carry out its obligations under the Lease prior to, or on, the date hereof, or the use or occupancy of the office building referred to in Section 1 above while it is occupied by Seller.

4. Purchaser shall likewise defend, indemnify and hold harmless Seller, its officers, directors, and insurers, against any damage, claim, loss, liability, or expense (including reasonable attorney's fees, penalties and interest, and other costs and expenses incident to any suit, action or

proceeding), tax, or liability suffered by any of them to the extent related to any failure by Seller to properly carry out its obligations under the Lease following the date hereof.

5. The Seller represents and warrants to Purchaser that the documents which have been provided to Purchaser reflecting the Lease represent true and correct representations thereof and accurately and completely set forth all of the terms and conditions of the Lease, other than those terms and conditions which are implied by law in all similar matters.

6. This Agreement and the other documents referred to herein represent the entire understanding among the parties regarding the subject matter hereof, including all representations, warranties, conditions and other provisions relating hereto, and they may not be expanded, altered or modified in any way except pursuant to a written document which is signed by all parties. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

7. This Agreement shall be interpreted and construed under the laws of the State of Oklahoma, considered without regard to its choice of law rules. In the event that any of the provisions of this Agreement shall be declared void or unenforceable by a court, then such provision shall be severed from this Agreement without affecting the remainder hereof, and the parties shall negotiate in good faith to replace such provision with a similar clause to achieve, to the extent permitted under law, the purposes of the provision declared void or unenforceable.

8. The waiver by any party of any default in any of the terms and conditions stated herein shall not be deemed a waiver of any subsequent default of the same or any other term or condition hereof.

Norman Asphalt Co.

By: David L Wenzel
Name: DAVID L WENZEL
Title: Authorized Representative

Oklahoma Construction Materials L.L.C.

By: Larry H. Lemon
Name: LARRY H. LEMON
Its: PRESIDENT

14-4



The City of NORMAN

201 West Gray, Bldg. C • P.O. Box 370
Norman, Oklahoma 73069 • 73070

Aug/Cont/K-8990-32

FINANCE DEPARTMENT
UTILITY CUSTOMER SERVICE
Phone: 405-366-5320
Fax: 405-366-5417

December 5, 2003

Norman Asphalt
%Martin Marietta Materials
P.O. Box 428
Norman, OK 73070
Attn: Chris Lohne

Dear Mr. Lohne:

Pursuant to our lease agreement for the City of Norman's property leased to Norman Asphalt % Martin Marietta Materials dated December 1, 1989 (Contract K-8990-32), the rental payments made to the City of Norman were to be inflated annually, based on the Consumer Price Index for All Urban Consumers.

Please accept this as formal notice of your requirement to increase your monthly rental payments to \$621.99, and royalty to 11.43 cents per ton of sand removed, effective with your payment due on January 10, 2004. This payment is based on published CPI-U rate increase of 2%.

We appreciate your timely payment and we look forward to the continuation of our lease agreement.

If you have any questions regarding this matter, please contact me.

Sincerely,

Anthony Francisco, Finance Director

CP: Harold Anderson, City Manager
Mary Hatley, City Clerk
Martha Lipps, Revenue Collection Supervisor



The City of
NORMAN

201 West Gray, Bldg. C • P.O. Box 370
Norman, Oklahoma 73069 • 73070

Reg/Cont/K-8990-32
PA/Norman Asphalt/Contracts

OFFICE OF THE FINANCE DIRECTOR
Phone: 405-366-5413
Fax: 405-366-5417

January 12, 2005

Norman Asphalt
% Oklahoma Construction Materials
P.O. Box 75637
Oklahoma City, Oklahoma 73147

Dear Sirs:

Pursuant to our lease agreement for the City of Norman's property leased to Norman Asphalt % Oklahoma Construction Materials dated December 1, 1989 (Contract K-8990-32), the rental payments made to the City of Norman were to be inflated annually, based on the Consumer Price Index for All Urban Consumers.

Please accept this as formal notice of your requirement to increase your monthly rental payments to \$643.76, and royalty to \$11.83 cents per ton of sand removed, effective with your payment due on January 10, 2005. This payment is based on published CPI-U rate increase of 3.5%.

We appreciate your timely payment and we look forward to the continuation of our lease agreement.

If you have any questions regarding this matter, please contact me.

Sincerely,

Anthony Francisco
Finance Director

cc: Brad Gambill, City Manager
Mary Hatley, City Clerk
Martha Lipps, Revenue Collection Supervisor



The City of NORMAN

201 West Gray, Bldg. C • P.O. Box 370
Norman, Oklahoma 73069 • 73070

Leg/Cont/K-8990-32

OFFICE OF THE FINANCE DIRECTOR
Phone 405-366-5413
FAX: 405-366-5417

February 14, 2014

Larry Lemon
Haskell Lemon Construction Company
PO Box 75608
Oklahoma City, OK. 73147-0608

Dear Mr. Lemon:

Pursuant to the property lease agreement dated December 1, 1989 (Contract K-8990-32), between the City of Norman and Norman Asphalt, the rental payments made to the City of Norman were to be inflated annually, based on the Consumer Price Index for All Urban Consumers.

As the current lessee of record, please accept this as formal notice of the requirement to increase your monthly rental payments to Seven hundred seventy seven and forty two cents (\$777.42), and royalty to twenty cents (\$.2060) per ton of sand removed, effective with your payment due for January 2014. This payment is based on published CPI-U rate increase of 1.7%.

We appreciate your timely payment and we look forward to the continuation of our lease agreement.

If you have any questions regarding this matter, please contact me.

Sincerely,

Anthony Francisco
Finance Director

PC: Steve Lewis, City Manager
Brenda Hall, City Clerk
Martha Lipps, Revenue Collection Supervisor
David Woods, Oil & Gas Inspector



The City of NORMAN

201 West Gray, Bldg. C • P.O. Box 370
Norman, Oklahoma 73069 • 73070

OFFICE OF THE FINANCE DIRECTOR
Phone 405-366-5413
FAX: 405-366-5417

February 14, 2014

Adkins Material/Bear Sand & Gravel, Inc., LLC
Attn: Scott Dutton
PO Box 633
Lindsey, OK. 73052

Dear Mr. Dutton:

Pursuant to the property amendment dated February 26, 2013 to the property lease agreement dated September 12, 2006 (Contract K-0607-47), between the City of Norman and Norman Asphalt, the payments for sand mined made to the City of Norman are to be inflated annually, based on the Consumer Price Index for All Urban Consumers.

As the current lessee of record and should you have any royalty payments between now and January 2015, please accept this as formal notice of the requirement to inform you that the royalty payment is one dollar and fourteen cents (\$1.1419) per cubic yard of sand removed. This payment is based on published CPI-U rate. In October 2014, we will review the CPI-U rate and make any adjustments at that time.

We appreciate your timely payment and we look forward to the continuation of our lease agreement.

If you have any questions regarding this matter, please contact me.

Sincerely,

Anthony Francisco
Finance Director

PC: Steve Lewis, City Manager
Brenda Hall, City Clerk
Martha Lipps, Revenue Collection Supervisor
David Woods, Oil & Gas Inspector

ADDENDUM NO. 4 TO CONTRACT NO. K-8990-32

THIS ADDENDUM is made and entered into this 13th day December, 2005, by and between the City of Norman, Oklahoma, a Municipal corporation, hereinafter referred to as the "City" and Haskell Lemon Construction Co., an Oklahoma corporation, hereinafter referred to as "Haskell Lemon";

WITNESSETH:

WHEREAS, the City entered into Contract No. K-8990-32 on the 1st day of December, 1989, leasing property for the purpose of operating an asphalt manufacturing plant, sand mine or related purposes;

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein, it is agreed that said Contract No. K-8990-32, shall be amended by amending paragraphs 8 and 12 on page 4 of said Lease with respect to Assignment and Default, to read as follows:

8. Assignment

"Lessee shall not assign this lease or sublet any portion of the property covered hereby without the written consent of Lessor, which consent shall not be unreasonably withheld. ~~Lessee may, without consent of Lessor, assign this lease to another corporate entity in which Gary J. Lohne or his children are the majority shareholders.~~"

12. Default

* * *

"Any notice given hereunder by either of the parties hereto shall be considered as having been legally given when deposited in the United States Post Office with postage thereon fully prepaid, addressed as follows:

The City of Norman, Oklahoma
Office fo the City Manager
Post Office Box 370
Norman, Oklahoma 73070

~~Norman Asphalt Company
Post Office Box 428
Norman, Oklahoma 73070~~

Haskell Lemon Construction Co.
Post Office Box 75608
Oklahoma City, Oklahoma 73147-0608."

K-8990-32

Page 2

IN WITNESS WHEREOF the parties hereto have set their official names and signatures on the day and year first above written.

Executed and adopted this 13th day of December, 2005, for Haskell Lemon Construction Co.

HASKELL LEMON CONSTRUCTION CO.

BY: Larry H. Lemon

Larry H. Lemon, Chairman

ATTEST:

Wendy M. Munn

Corporate Secretary

Approved by the City Council of the City of Norman this 13th day of December, 2005.

CITY OF NORMAN, OKLAHOMA
A Municipal CorporationBy: Harold Haralson

Harold Haralson

(SEAL)

ATTEST:

Mary Hatley
City Clerk

Approved as to form and legality this 17th day of November, 2005.

J. H. B.
City Attorney

Contracts/Amd #4 to Haskell Lemon 8990-32 10-11-05

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**CONSENT TO ASSIGNMENT AND ASSUMPTION
OF LEASE AGREEMENT**

WHEREAS, the City of Norman has leased to Oklahoma Construction Materials, L.L.C., pursuant to Lease Agreement No. K-8990-32 a certain tract of land located at 4511 South Chautauquah Avenue, Norman, Oklahoma, to be used as an asphalt plant site;

WHEREAS, said Lease Agreement provides in paragraph 8 thereof that any assignment of said land lease does require the written consent of the City of Norman; and

WHEREAS, Haskell Lemon Construction Co. of Oklahoma City, Oklahoma, has purchased the assets and operations of Oklahoma Construction Materials, L.L.C., and pursuant thereto has received an assignment and assumption of said Lease Agreement from Oklahoma Construction Materials, L.L.C.; and

WHEREAS, Haskell Lemon Construction Co. has requested consent of the City of Norman for said assignment and assumption of said Lease Agreement and has tendered therewith all accompanying documentation.

NOW, THEREFORE, the City of Norman does hereby give its consent to the assignment and assumption of said Lease Agreement being Contract No. K-8990-32 by Haskell Lemon Construction Co.

This Consent granted this 13th day of December, 2005.

13th day of December, 2005. APPROVED BY THE CITY COUNCIL OF THE CITY OF NORMAN, this

ATTEST:

Mary Hatley Harold Hanks
City Clerk Mayor

Approved as to form and legality this 12 day of October, 2005.

[Signature]
City Attorney

ASSIGNMENT AND ASSUMPTION OF LEASE AGREEMENT

THIS AGREEMENT is made and entered into as of this July 1, 2005, by and between OKLAHOMA CONSTRUCTION MATERIALS, LLC, a Kansas limited liability company ("OCM"); and HASKELL LEMON CONSTRUCTION CO., an Oklahoma corporation ("Lemon").

RECITALS

A. The City of Norman, Oklahoma, as lessor, entered into a Lease Agreement ("Lease") with Norman Asphalt Company, Inc. as lessee, on December 1, 1989, a copy of which is attached hereto and incorporated herein by reference.

B. Norman Asphalt Co., succeeded to the rights of Norman Asphalt Company, Inc. as lessee of the Lease.

C. The Lease has been amended from time to time as reflected on the amendments and addendums attached to the attached Lease.

D. The Lease was assigned on March 31, 2004, by Norman Asphalt Co., as lessee, to Oklahoma Construction Materials, LLC

E. The parties hereto desire to again assign the lessee's rights and obligations in the Lease and they have reached an understanding on the terms and conditions hereinafter set forth.

AGREEMENTS

1. **Assignment.** OCM hereby assigns, transfers, and conveys to Lemon all right, title and interest of OCM, as lessee, in and to the Lease as of the date of this Agreement.

2. **Assumption.** Lemon hereby accepts this assignment of the Lease and assumes all obligations as lessee and agrees to faithfully and timely perform all obligations, duties, and agreements of lessee as set forth in the Lease.

3. **Indemnification.** Lemon hereby indemnifies OCM and shall hold it harmless from any damage, claim, loss or expense (including reasonable attorney fees) which OCM may suffer as a result of the failure of Lemon to timely pay and perform all obligations of lessee under the terms and conditions of the Lease.

4. **State Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Oklahoma.

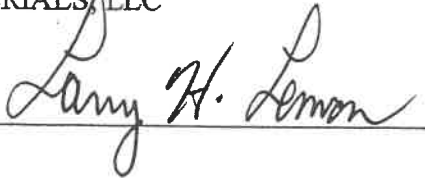
5. **Interpretation.** This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against either party.

6. **Entire Agreement; Amendment.** This Agreement is the entire understanding between the parties in regard to the assignment of the Lease, and supersedes all prior agreements and communications, whether oral or written, between the parties hereto with respect to the assignment of this Lease. Any amendment or modification of this Agreement must be in writing and duly signed by the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

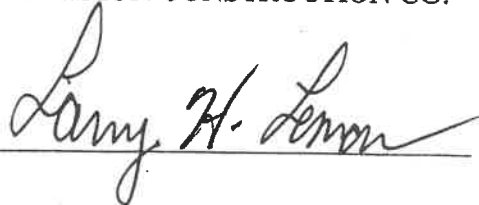
OKLAHOMA CONSTRUCTION
MATERIALS, LLC

BY



HASKELL LEMON CONSTRUCTION CO.

BY



CONSENT

The City of Norman, Oklahoma, as lessor, hereby consents to the assignment of lessee's interest in the attached Lease to Haskell Lemon Construction Co., and shall hereafter consider Haskell Lemon Construction Co., as solely responsible for all obligations of the lessee as set forth in the Lease.

Dated this 13th day of December, 2005.

CITY OF NORMAN, OKLAHOMA
a municipal corporation

BY 

Attest:


City Clerk



HASKELL LEMON CONSTRUCTION CO.

PLANT MIXED ASPHALT • SMOOTH • SAFE • DURABLE • ECONOMICAL

3800 S.W. 10TH
P.O. BOX 75608
OKLAHOMA CITY, OK 73147-0608
PHONE: (405) 947-6069
FAX: (405) 947-6068

September 26, 2005

Mr. Brad Gambill
City Manager
The City of Norman
201 West Gray, Bldg. A
Norman, Oklahoma 73070

RE: City of Norman Land Lease
Contract K-8990-32

Dear Mr. Gambill:

Haskell Lemon Construction Co. has purchased the assets and operations of the Norman Asphalt Company from Oklahoma Construction Materials, LLC. This operation is located on City of Norman land, and is your lease contract K-8990-32, with amendments.

As part of our purchase, Oklahoma Construction Materials, LLC, has assigned their interest in this lease to Haskell Lemon Construction Co. In accordance with lease Paragraph 8 on page four, we request the City of Norman give their written consent to recognize this assignment.

We also ask that the last sentence of paragraph 8 be updated to the family members of Haskell Lemon Construction Co. We suggest the sentence read "Lessee may, without consent of Lessor, assign this lease to another corporate entity which has the same family owners as Haskell Lemon Construction Co."

Haskell Lemon Construction Co. is a local family owned and operated road construction and materials company serving the central part of the State of Oklahoma. We look forward to working with the City of Norman, both as a lessee, and as your material supplier.

14-8

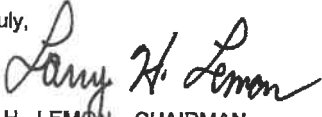


ASPHALT and CONCRETE PAVING
HIGHWAYS • AIRPORTS • SUBDIVISIONS



Please advise me of any other information or documents you need to execute the transfer of this lease to our company.

Yours truly,

A handwritten signature in cursive script, reading "Larry H. Lemon". The signature is written in dark ink and is positioned above the printed name.

LARRY H. LEMON, CHAIRMAN
HASKELL LEMON CONSTRUCTION CO.