



Agenda Commentary

Item Title/ Subject: Property Rental with Brainerd Chemical

Staff Source: City Manager, Steve Hewitt

Date: Oct. 13, 2012

History/Background Information:

City agreed to lease industrial property to Brainerd Chemical Company 202 Glenn Smith in 2008. This was a 5 year lease, \$1500 per month. (ending June 2013)

Subject Summary:

Brainerd contacted the City last year looking to possibly get out of the lease, that wasn't agreed unless the City could see another potential business replace them. Recently another company has approached us in coming to Clinton and leasing this property (similar company), and would also agree to extend this term on for another 5 years. Staff contacted Brainerd regarding their future intentions and thoughts. This was in favor of Brainerd.

Recommendation:

Staff would recommend that pending this new potential client signoff on the written agreement to the same terms, the City should agree to a mutual resolved contract with Brainerd. This would protect the City and help a new business to come in this location and continue the revenue stream.

Price/Cost: \$1500.00 per month, 5 years.

Steve Hewitt

From: Mathew A. Brainerd <mat@brainerdchemical.com>
Sent: Friday, October 12, 2012 12:23 PM
To: Steve Hewitt
Cc: Greg Nicka
Subject: Clinton Lease dated 3 June 2008

Steve Hewitt
City Manager
City of Clinton

Steve,

Pursuant to conversations conducted during the past few weeks I am writing to convey Brainerd Chemical's willingness to terminate the lease agreement dated 3 June 2008 between Brainerd Chemical Co., Inc. and Clinton Industrial Authority of Custer County, Oklahoma. Yesterday I authorized AquaTerra to conduct a Phase I with limited Phase II environmental study on the property in anticipation of the lease termination. I understand the formal termination date would be approximately October 31, 2012. I am in hopes this date would give time to empty the two rail cars, remove the cars from the property and conduct the soil testing necessary to finalize our environmental study.

Obviously Brainerd Chemical will continue to pay rent on the property until all matters of lease termination are concluded. We are in time of the essence mode and will diligently try to conclude our due diligence as we understand the spirit of this agreement to terminate said lease.

I would appreciate a formal response from you regarding a confirmation of my understanding so I am not wasting time and money moving towards a misunderstood end.

Thanks for your consideration and courtesy.

Kindest Regards,

Mathew A. Brainerd
Brainerd Chemical Co., Inc.
1200 North Peoria
Tulsa, Oklahoma 74106
U.S.A.

"Deus Lo Vult"

☎: 918-622-1214 ext 4911
☎: 918-301-6376 fax
✉: mat@brainerdchemical.com



AGREEMENT

THIS AGREEMENT is made and entered into by and between the Clinton Industrial Authority of Custer County, Oklahoma, hereinafter referred to as "Lessor", and Brainerd Chemical Co., Inc., hereinafter referred to as "Lessee", this 3rd day of June, 2008.

For the consideration of \$1,500 per month, Tenant does hereby rent the property owned by the Clinton Industrial Authority at ~~213 E. Hayes~~ and described more particularly as:

202 Glenn Smith 

The terms and conditions of the lease between the parties shall be as follows:

A tract of land lying in the Northeast Quarter of the Southeast Quarter (NE/4 SE/4) of Section 14, Township 12 North, Range 17 West of the Indian Meridian, Custer County, Oklahoma, said tract being more particularly described by metes and bounds as follows:

Beginning at the Southeast corner of said NE/4 SE/4; thence North 89° 30'58" West along the South line of said NE/4 SE/4 a distance of 310.76 feet to a point; thence North 10° 08'41" East a distance of 388.64 feet to a point; thence South 79° 51'59" East a distance of 249.56 feet to a point on the East line of said NE/4 SE/4; thence South 00° 33'53" West along the East line of said NE/4 SE/4 a distance of 341.30 feet to the point of beginning. Containing 2.33 acres more or less, and being subject to easements and conveyances of record.

Term.

1. This lease shall extend for a period of five (5) years beginning on the date executed by both parties. The lease may be extended by Lessee upon the same terms and conditions, with a reasonable increase in rent, for successive periods of five (5) years each with sixty (60) days written notice to Lessor.

General.

2. Lessee agrees to pay all real estate taxes or assessments if any are levied against the leased premises before the same become delinquent. In the event Lessee fails to pay such taxes, Lessor may, at its option, pay any such taxes and assessments that may be levied against the premises, and add such amounts to the following month's rent.
3. Lessee agrees to indemnify Lessor against liability on all claims for damages and injuries to persons on the property, which result from the activities or omission of Lessee or its agents or its employees upon the demised premises during the term thereof.
4. Nothing in this lease shall be construed to prevent the Lessor from making such use of the leased premises as they may see fit, so long as such use in no way restricts, limits, or interferes with the operations of, and the use of the premises by Lessee.

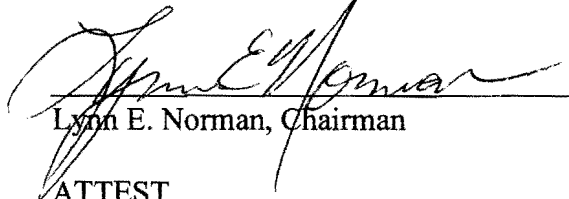
5. All improvements and equipment placed on the leased premises by Lessee shall remain the property of the Lessee, and Lessee shall have the right to remove such property prior to the expiration of this lease, provided that the removal will not cause injury to the subject property.
6. This agreement shall inure to the benefit of and shall be binding upon the heirs, legal representative, successors and assigns of the parties, provided that Lessee may not assign this lease without the permission of Lessor.
7. Tenant shall use best efforts to avoid damaging the property, ordinary wear and tear accepted. In spite of best efforts, should damage occur, outside of normal wear and tear, the tenant will indemnify the Lessor against any loss of any nature.
8. Tenant shall not make any alterations or additions or improvements in or to said premises without written consent of the Lessor.
9. Tenant is responsible for all utility services at the subject premises.

Default.

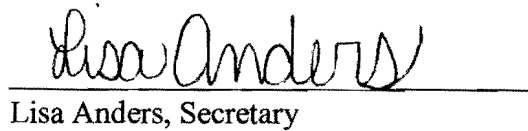
10. Upon default, Lessor shall have the right to terminate this lease and immediately reenter the property.

Witness the hands of the parties the day and date first above written.

CLINTON INDUSTRIAL AUTHORITY


Lynn E. Norman, Chairman

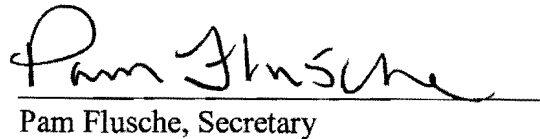
ATTEST


Lisa Anders, Secretary

BRAINERD CHEMICAL CO., INC.


Mathew A. Brainerd, President

ATTEST


Pam Flusche, Secretary

MUTUAL TERMINATION OF LEASE AGREEMENT

The parties mutually agree to terminate the agreement entered into on

_____, attached hereto as Exhibit A.

CLINTON INDUSTRIAL AUTHORITY

Lynn E. Norman, Chairman

ATTEST

Lisa Anders, Secretary

BRAINERD CHEMICAL CO., INC.

Mathew A. Brainerd, President

ATTEST

Pam Flusche, Secretary