

Agenda Item: 10.

**From:** "Japp, Scott" <[sjapp@abbnebraska.com](mailto:sjapp@abbnebraska.com)>  
**Date:** September 28, 2014, 7:55:22 AM CDT  
**To:** John Winkler <[jwinkler@papionrd.org](mailto:jwinkler@papionrd.org)>  
**Cc:** Papio Directors <[Papio\\_Directors@papionrd.org](mailto:Papio_Directors@papionrd.org)>  
**Subject: Resolution to sell soil mineral aggregates to Scott Japp**

Place on the up coming Oct. board meeting the following resolution.

Resolution to sell soil mineral aggregates to Scott Japp.

The Papio-Missouri Natural Resources District will allow Scott Japp to have a borrow site at dam site 15A in Douglas County to excavate up to 10 million cy of top soil and fill aggregates. Scott Japp will compensate the PMNRD a royalty payment of \$1 per cy for fill soil excavated from Dam site 15A. Soil removal locations will be to enhance lake size, detention basins and increase fish habitat.

Quarry Lease Agreement is provided.

**QUARRY LEASE AGREEMENT**

This quarry lease agreement (hereinafter "Lease") is made, entered and effective as of

\_\_\_\_\_, 2014 by and between

\_\_\_\_\_ [hereinafter "Lessor(s)], whose address for all purposes include notice issued pursuant hereto is.

\_\_\_\_\_, and R. Scott Japp [ hereinafter "Lessee(s)"], whose address for all purposes including notices pursuant hereto is 4752 Count Road 15, Arlington, Nebraska 68002.

**RECITALS**

Lessee will pay Lessor a royalty payment of \$10,000,000 for 10 million cy of mined mineral aggregate.

Lessee shall not excavate or work within 200 feet of any dam detention structures.

Lessor owns fee title and mineral estates to land within the proposed Papio-Missouri Natural Resources District dam site 15A project limits.

Lessor owns fee title and mineral estates to \_\_\_\_\_

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(hereinafter "Leased Land")

Lessors also own fee simple title to land located on Rainwood, State, Ida, Fort and 186<sup>th</sup> street for which the Leased Land and public road in the vicinity, over which they can grant Lessee easement for access to the Leased Land from such roads.

Lessee wishes to lease the Leased Land so that it can quarry topsoil and fill soil thereupon and to obtain all necessary easements and rights of way for roads to access and work upon the Leased Land and to quarry for the production thereof.

Lessors wish to lease Leased Land to Lessee so that it can quarry topsoil and fill dirt located thereupon and grant necessary easements and rights of ways to Lessee so that it can operate a quarry.

Lessee has paid or provided Lessor with good, valuable and adequate consideration, and promises additional production payments pursuant to the terms hereof, acknowledged as sufficient to support Lessors execution hereof and the parties mutual performance hereunder.

THEREFORE, in exchange for their mutual promises and considerations identified and set forth herein, subject to terms, conditions, warranties, representations and covenants expressly set forth in this Lease, Lessors and Lessee agree and contract as follows:

**1. Grant of Lease**

Lessors hereby convey all interests in Leased Land and all interest therein whether now owned or hereafter acquired to Lessee, absolutely and exclusively, for (a) exploring for, developing, quarrying, processing, removal, stockpiling and selling mineral materials including specifically top soil(s) and fill dirt/material which may be used or useful as aggregate for agricultural, horticulture, road and street construction, real estate development other purposed consistent therewith and (b) uses and activities determined by Lessee as necessary or convenient in connection the specified purpose above set forth including without limitation, constructing, installing, using and removing equipment (drills, compressors, generators, screens, crushers, conveyors, scales, loaders, water trucks, haulage trucks, dozer, excavators, motor graders and other mobile support equipment), buildings, fences, portable toilets, pits, excavations, settling basins, utilities, fuel storage and dispensation, pipelines and all associated facilities and improvements necessary or incidental in any way thereto. **Lessee shall have no rights to mine or remove base or precious metals, oil or gas from the Leased Land.** Lessor shall not conduct or permit others to conduct any activity on the Leased Land that would materially interfere with Lessee's exclusive right to conduct activities authorized by this agreement.

**2. Rights of Way and Easement**

Lessors grant unto Lessees easements and rights of ways across other lands owned by them to allow efficient access to and from the Leased Land. Such grant includes, without limitation, construction, use, maintenance and removal of roads. Initial easement shall be placed as and where indicated on Attachment #1, which is herein incorporated by this reference. Other and further easements necessary to exercise rights and payments obligations for Leased Land shall be established by agreement of the parties. Lessee shall be solely responsible for construction and maintenance of roads installed or constructed on Leased Land or easements right of way hereby granted. All access points to Leased Lands may be secured by locking gates, which Lessee may remain locked except when roads are being used by Lessee or its employee/designees. Except in the event of an emergency, neither Lessee nor any of its employees/designees shall go upon or enter any land owned by Lessor other than Leased Land or easements/rights of way herein authorized.

**3. Ownership**

Execution of this agreement shall create and vest in Lessee present ownership of any and all top soil(s) and fill materials(s) which are subject to quarrying and removal from the Leased Land by operation of this agreement. Such ownership shall revert to Lessors if this lease I cancelled or if Lessee shall be in breach hereof by reason of failure to provide contracted payments. Ownership by Lessee, of material to be quarried shall be absolute and shall be deemed to include all right, title and interest to the materials as well as any claims, causes of action or rights associated with ownership of the materials whether they are undisturbed and in place upon the Leased Land or have been separated, severed and/or removed therefrom. In the event of any governmental taking of the land Leased Land or any portion or part thereof, Lessee shall be entitled to full compensation for any loss, forfeiture or prohibition/limitation of activities authorized hereunder but rendered impossible of performance because of such taking. Lessee's exclusive remedy for such loss shall be compensation paid or to be paid by a taking or condemning entity or governmental subdivision. Such payment to Lessee shall be treated as the equivalent of removal and sale of mineral materials, as authorized hereby, thus giving rise to a right to full royalty participation therein on the part of Lessor. Should Lessees ownership of in place materials be determined insufficient to support claims for compensation of loss, Lessee shall grant and convey to Lessor its right, title and interest in and to the materials and Lessors agrees that they will pursue all claims for financial compensation occurring as a result of inability to remove mineral materials from Leased Land. Lessor shall be first paid any royalty due or accruing as a result of contact right arising hereunder. It is equally and expressly mutually agreed that the mineral materials subject to quarry and removal by operation of this agreement have a direct and present monetary value which is subject to determination with requisite certainty.

**4. Water**

Lessee may construct a pipeline(s) to transport water from location or locations specified by Lessee. Lessee may, at its own cost and expense, in the name of Lessors make application to any governmental authorities charged with oversight of ground and surface water activities to pump or drill a well(s) upon Leased Land and withdraw water therefrom for irrigation, reclamation, wildlife habitat, dust suppression, production operations as well as employee hygiene.

**5. Term**

This Lease shall remain in effect for the primary lease term ending in the extraction of up to 10 million cubic yards of top soil and fill aggregate mineral material. The Lease shall be automatically extended for a period deemed by Lessee to be necessary to allow it to remove, from Leased Land, all of its stockpiled mineral materials and equipment not otherwise assigned or deliverable to Lessors pursuant to this agreement.

**6. Payment**

In addition to other considerations as above specified, including but not limited to assurance of payment of all sums justly due Lessors in the event of a taking or condemnation of Leased Land by a governmental authority, and insofar as possible, recovering the full value of mineral materials located thereupon which would be otherwise lost as a result of such taking or condemnation. Lessee shall pay to Lessors:

a. **Production Royalty: Top Soil and Mineral Material Aggregate,**

For the initial Lease Term, Lessee shall pay Lessors a production royalty of \$1.00 per cubic yard of mineral top soil and mineral materials aggregate actually removed from Lease Land and sold by Lessee. To calculate production royalties due, Lessee shall determine yardage by using accurate methods as mutually agreed. Lessee shall pay any royalty that is due with respect to removal and sale of mineral materials aggregate and soil in any calendar month by the end of the following calendar month. Payment shall be made to Lessors at the address set forth above or such other location as Lessor may designate by notice provided to Lessee. Any payment issued shall include a written statement disclosing the manner by which royalty then due has been calculated.

- i. No minimum production of materials on a annual basis or otherwise shall be applied or operative. Absent production, royalty, minimal or otherwise, shall not accrue or be due. Provisions of this lease concerning payment in the event of governmental taking or condemnation shall govern in lieu of these royalty provision should such proceeding be initiated.

**7. Lessees Additional Obligations,**

In addition to the foregoing obligations of payment and performance Lessee shall:

- a. Pay any additional tax or taxes accruing or arising as a result of Lessees operation upon Leased Land or placement of valuable assets thereupon, Lessee shall be authorized to protest or contest any and all such tax obligation, seek reduction, adjustment or cancellation thereof. Such contest shall be at Lessees cost and expense.
- b. Provide all necessary insurance required by law or sound business practices in the quarry industry. Proof of such insurance shall be provided to Lessee if requested by notice.
- c. Hold the Lessors harmless and indemnify against any loss or liability accruing out of Lessee operation upon Leased Land.
- d. Comply with all Federal, State and local laws, ordinances or regulations governing quarry operations. Lessee shall obtain, at its expense, any and all permits required as a condition to operation of a quarry. Should it be necessary or advisable in order to secure maximum benefits of this Lease Agreement for Lessor, applications for necessary permits and permissions may be made in the name of Lessors as owners, subject to assignment to or for the benefit of Lessee as a matter of right in order to facilitate quarry operation.
- e. Reclaim and restore lease land in compliance with statutes, ordinances, rules and regulations now or hereafter in effect pertaining to quarry operations.
- f. Maintain vegetative cover in compliances with local FSA and NRCS regulations.

**8. Lessors Obligations,**

- a. Stake property corners and provide plate of Leased Land.
- b. Stake property corners and provide plate of all easements.
- c. Stake limits of dam and detention structures.

**9. Representations and Warranties,**

Lessee represents and warrants to Lessee that this Lease Agreement is a valid, legal and binding obligation, fully enforceable according to its terms, that it has full authority to enter this Lease Agreement and that execution hereof does not violate or conflict with any known law, rule, regulation or governing authority. Lessor makes and provides identical representation and warranties to Lessee. Lessors warrant that they own the Lease Land and are entitled to enter a valid and binding lease therefore.

**10. Recording**

Lessee may, at its option cause a copy of this Lease Agreement to be filed for record with the office of the Register of Deeds in the County or counties where all or some portion of the Leased Land is located.

**11. Release**

Lessee may, at its option, deliver to Lessors or file for record in the applicable office of the Register of Deeds where such Lease Agreement is filed, a release of this Lease Agreement which shall release Lessor from all obligations hereunder except payment of royalty sums then due by reason of removal aggregate mineral materials and the duty to reclaim and restore such property in accord with governing authority as may be than applicable.

**12. Breach or Default**

Neither party shall file an action of damages or other relief on account of any alleged breach or default under this Lease Agreement until 90 days after the party claims breach has delivered to the other party by a written notice describing such alleged lease or default and then only if the party receiving notice has failed to remedy, address or contest such alleged breach within 90 days after actual receipt of such notice. Should legal proceeding be taken, this lease shall not be forfeit and shall remain in full force and effect unless the party which committed a judicially determined breach fails to address and remedy such breach within reasonable time after final judicial determination of the matter.

**13. Assignment,**

This Lease Agreement shall be assignable and transferable by Lessee and Lessor, shall insure to the benefit of both parties and be binding upon their respective heirs, successors and assigns.

**14. Mineral Severance Tax,**

Lessors shall be responsible for payment of all tax accruing as a result of payment of royalties hereunder. Any State tax attributable to severance of mineral from Lease Land shall be paid by Lessors.

In witness whereof, the parties have each executed and delivered this Lease Agreement as the date corresponding to their names hereinafter affixed.

\_\_\_\_\_, \_\_\_\_\_, Lessors  
Date Signature

\_\_\_\_\_, \_\_\_\_\_, Lessee  
Date Signature