

SURFACE LEASE AGREEMENT

Date: November 1, 2012

Landlord: TOM GREEN COUNTY, a legal and political subdivision of the State of Texas
112 West Beauregard
San Angelo, Tom Green County, Texas 76903

Tenant: BD&J Partnership, a Texas general partnership, whose General Partners are:

Robert (Bobby) Allen
3618 Old Post Court
San Angelo, Tom Green County, Texas 76904

Donald Vardeman
2709 Selman Drive
San Angelo, Tom Green County, Texas 76905

John F. Conn
P.O. Box 1112
San Angelo, Tom Green County, Texas 76902

Premises:

The surface estate of 17.66 acres of land, more or less, being out of a 112.2 acre tract of land, out of Llano County School Land Survey 964, Abstract 1609, and being more particularly described in Vol. 669, Page 152, of the Deed Records of Tom Green County, Texas.

The Premises is subject to all existing easements and rights-of-way for pipelines, water lines, telegraph, telephone, power lines, transmission lines, utilities, roads, and streets of record or which are apparent by observation of the Premises.

Term: 120 months

The Surface Lease Agreement may be terminated by either party upon one hundred twenty (120) days prior written notice of either party, with or without cause.

Commencement Date: November 1, 2012

Termination Date: October 31, 2022

Base Rent (annually): \$1,700.00

Security Deposit: \$500.00

Permitted Use: The temporary parking of trucks and equipment on the Premises.

Definitions

"Injury" means (a) harm to or impairment or loss of property or its use, (b) harm to or death of a person, or (c) "personal and advertising injury" as defined in the form of liability insurance Tenant is required to maintain.

"Essential Services" means utility connections (electrical, telephone, gas, water, etc.) reasonably necessary for occupancy and use of the Premises for the Permitted Use.

"Landlord" means Tom Green County and its elected officials, officers, employees, agents, invitees and licensees.

"Rent" means Base Rent payable by Tenant to Landlord.

"Tenant" means Robert (Bobby) Allen, Donald Vardeman, John F. Conn, individually and doing business as BD&J Partnership.

"Surface Lease Agreement" is identified or referred to herein as Lease or Agreement.

Clauses and Covenants

A. Tenant agrees to -

1. Lease the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date, subject to earlier termination as set forth in Term.

2. Accept the Premises in its present condition "AS IS," the Premises being currently suitable for the Permitted Use.

3. Obey (a) all applicable laws relating to the use, condition, and occupancy of the Premises; (b) any requirements imposed by insurance companies covering the Premises; (c) compliance with all licensing requirements of the State of Texas; and (d) any rules and regulations for the use of Premises as may be adopted and required by Landlord.

4. Pay the Rent on the first day of November 2012 to Landlord at Landlord's Address. All obligations for the payment of the Rent shall be due and payable to Landlord on the 1st day of November thereafter.

5. Pay a late charge of 5 percent of any Rent not received by Landlord by the fifth day after it is due.

6. Obtain at Tenant's sole cost and expense all Essential Services reasonable and necessary for the occupancy of the Premises for the Permitted Use.

7. Pay for all Essential Services used by Tenant for the occupancy of the Premises for the Permitted Use.

8. Allow Landlord to inspect the Premises.

9. Repair and maintain any part of the Premises that Landlord is not obligated to repair, replace, or maintain, reasonable wear excepted.

10. Keep the Premises clean and unobstructed of equipment, material, trash and debris.

11. Submit in writing to Landlord any request for repairs, replacement, and maintenance that are the obligations of Landlord.

12. Vacate the Premises and return the Premises on the last day of the Term or upon early termination as provided for herein.

13. Pay all costs and expenses caused by Tenant's introduction of materials and damages to Premises.

14. The following conditions shall apply to all insurance policies obtained by Tenant for the purpose of complying with this Agreement.

14.1 **Satisfactory Companies.** Coverage shall be maintained with insurers licensed to do business in Texas.

14.2 **Named Insureds.** All insurance policies required herein shall be drawn in the name of Tenant with Landlord, its elected officials, officers, employees, agents, invitees and licensees named as additional insureds.

14.3 **Notice.** Tenant shall furnish certificate(s) of insurance evidencing the coverages which are in effect reflecting that the Landlord is an additional insured. Tenant shall furnish a copy of said policies of insurance to Landlord. Tenant shall give 30 days written notice to the Landlord before any policy of insurance may be canceled or materially changes. The failure of Tenant to obtain and keep in force the insurance coverages as required shall enable Landlord, at its sole option, to terminate the Agreement.

14.4 **Waiver of Subrogation.** Tenant shall require its insurance carrier(s), with respect to all insurance policies, to waive all rights of subrogation against Landlord, its elected officials, officers, employees, agents, invitees and licensees.

14.5 **Tenant's Liability.** The procuring of such policy of insurance shall not be construed to be a limitation upon Tenant's liability. Tenant's obligations are, notwithstanding any policy of insurance, for the full and total amount of any damage, injury or loss caused by or attributable to its activities conducted at or upon the Premises. Failure of Tenant to maintain adequate coverage shall not relieve Tenant of any contractual responsibility or obligation.

14.6 Tenant shall obtain, and continue to maintain in effect at all times under the terms hereof at Tenant's sole expense, insurance coverages and terms as follows with limits not less than those as set forth below:

Throughout the term of this Agreement Tenant shall carry and maintain, at Tenant's sole cost and expense, a comprehensive automobile liability insurance policy and commercial general liability insurance of an "occurrence" type, which is primary and non-contributory, against all claims arising out of liability of the execution of this Agreement for injury to persons or property occurring in or about the Premises or arising out of the use or occupancy thereof, with limits equal to or exceeding those listed below and sufficient to cover any and all instances arising from activities of Tenant, its agents, servants, employees, contractors, visitors, licensees or invitees in the Premises. Tenant will carry and maintain workers' compensation insurance in the amounts listed below for any employees, workers, contractors or subcontractors which may be operating on the Premises. All policies of insurance described in this Section or otherwise required to be obtained

pursuant to this Agreement shall be issued by insurance companies acceptable to County and admitted to conduct casualty insurance business in the state of Texas. All such policies of insurance (except Workers Compensation) shall name the County as an additional insured and waive all rights of subrogation against the County. The County requires 30 days advance notification of material change in insurance coverage, cancellation, non-renewal or termination of insurance coverage by certified mail, return receipt requested.

Tenant shall occupy the Premises at Tenant's own risk and the County shall not be liable to anyone for the action or omissions of Tenant, its agents, servants, employees, contractors, visitors, licensees or invitees. Tenant agrees to and shall indemnify, defend and hold harmless the County, its elected officials, officers, employees, agents, representatives, invitees and licensees from and against all claims, suits, demands, losses, costs, damages, expenses and liabilities of every kind (including, without limitation, attorneys' fees, accountants' fees, litigation costs, court costs and interest) in connection with, resulting from, arising from or incidental to any and all bodily injury, death or damage to property arising from, in whole or part by, the occupancy of the Premises by Tenant and/or the acts or omissions of Tenant (its agents, servants, employees, contractors, visitors, licensees or invitees). The County shall not be liable to Tenant for any inconvenience or loss to Tenant in connection with any repair, maintenance, damage, destruction, restoration, or replacement of the Premises. The County shall not be obligated or construed to insure any of Tenant's goods, supplies, inventory, property or equipment, or otherwise be liable for any damage to or destruction of any of the foregoing.

COMMERCIAL GENERAL LIABILITY:

General Aggregate Limit	\$2,000,000
Bodily Injury Limit	\$1,000,000
Personal Injury Limit	\$1,000,000
Property Damage Limit	\$1,000,000
Each Occurrence Limit	\$1,000,000

COMPREHENSIVE AND AUTOMOBILE LIABILITY covering all owned, non-owned and hired vehicles with limits of not less than \$500,000 each person/\$1,000,000 each accident bodily injury, and \$100,000 each accident property damage.

WORKERS COMPENSATION:

Statutory Limits	
Employee Liability Each Incident	\$1,000,000
Employee Liability Disease - Each Employee	\$1,000,000
Employee Liability Disease - Policy Limit	\$1,000,000

15. INDEMNIFY, DEFEND, AND HOLD LANDLORD HARMLESS FROM ANY INJURY (AND ANY RESULTING OR RELATED CLAIM, ACTION, LOSS, LIABILITY, OR REASONABLE EXPENSE, INCLUDING ATTORNEY'S FEES AND OTHER FEES AND COURT AND OTHER COSTS) OCCURRING IN ANY PORTION OF THE PREMISES. **THE INDEMNITY CONTAINED IN THIS PARAGRAPH (a) IS INDEPENDENT OF TENANT'S INSURANCE, (b) WILL NOT BE LIMITED BY COMPARATIVE NEGLIGENCE STATUTES OR DAMAGES PAID UNDER THE WORKERS' COMPENSATION ACT OR SIMILAR EMPLOYEE BENEFIT ACTS, (c) WILL SURVIVE THE END OF THE TERM, AND (d) WILL APPLY EVEN IF AN INJURY IS CAUSED IN WHOLE OR IN PART BY THE ORDINARY NEGLIGENCE OR STRICT LIABILITY OF LANDLORD BUT WILL NOT APPLY TO THE EXTENT AN INJURY IS CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF LANDLORD.**

B. Tenant agrees not to -

1. Use the Premises for any purpose other than the Permitted Use.
2. Create a nuisance.
3. Permit any waste.
4. Use the Premises in any way that would void insurance on the Premises.
5. Alter the Premises.
6. Allow a lien to be placed on the Premises.
7. Assign this Lease or any portion of the Premises.
8. Sublease the Premises to any third party without Landlord's written consent, which consent shall not be unreasonably withheld. Any sublease as approved by Landlord shall comply with and be subject to all terms, conditions, and obligations of the Agreement. Any sublease not approved by Landlord shall be void.
9. Place any improvements or make any material changes or alterations to the Premises without Landlord's written consent, which consent shall not be unreasonably withheld.
10. Place any signs on the Premises without Landlord's written consent, which consent shall not be unreasonably withheld.

C. Landlord agrees to -

1. Lease to Tenant the Premises for the entire Term beginning on the Commencement Date and ending on the Termination Date, subject to earlier termination as set forth in Term.
2. Return the security deposit to Tenant, less itemized deductions, if any, on or before the 60th day after the Tenant surrenders the Premises.

D. Landlord agrees not to -

Interfere with Tenant's possession of the Premises as long as Tenant is not in default.

E. Landlord and Tenant agree to the following:

1. **Alterations.** Any physical additions or improvements to the Premises made by Tenant will become the property of Landlord. All improvements, physical additions or alterations to the Premises shall be with Landlord's written consent, which consent shall not be unreasonably withheld. Landlord may require that Tenant, at the end of the Term and at Tenant's sole expense, remove any physical additions and improvements, repair any alterations, and restore the Premises to the condition existing at the Commencement Date, normal wear excepted.

2. **Abatement.** Tenant's covenant to pay Rent and Landlord's covenants are independent.

Tenant will not be entitled to abate Rent for any reason except upon early termination of the Agreement by Landlord as provided for herein.

3. **Insurance.** Tenant will maintain the insurance coverages described in A.14.

4. **Casualty/Total or Partial Destruction**

a. If the Premises are damaged by casualty and can be restored within sixty days, Landlord will, at its expense, restore the Premises. If Landlord fails to complete the portion of the restoration for which Landlord is responsible within sixty days from the date of written notification by Tenant to Landlord of the casualty, Tenant may terminate this Lease by written notice delivered to Landlord before Landlord completes Landlord's restoration obligations.

b. If Landlord cannot complete the portion of the restoration for which Landlord is responsible within sixty days, Landlord has an option to restore the Premises. If Landlord chooses not to restore, this Lease will terminate. If Landlord chooses to restore, Landlord will notify Tenant in writing of the estimated time to restore and give Tenant an option to terminate this Lease by notifying Landlord in writing within ten days from receipt of Landlord's estimate. If Tenant does not notify Landlord timely of Tenant's election to terminate this Lease, the lease will continue and Landlord will restore the Premises as provided in a. above.

c. To the extent the Premises are untenable after the casualty, the Rent will be adjusted as may be fair and reasonable.

5. **Condemnation/Substantial or Partial Taking**

a. If the Premises cannot be used for the purposes contemplated by this Lease because of condemnation or purchase in lieu of condemnation, this Lease will terminate.

b. If there is a condemnation or purchase in lieu of condemnation and this Lease is not terminated, Landlord will, at Landlord's expense, restore the Premises, and the Rent payable during the unexpired portion of the Term will be adjusted as may be fair and reasonable.

c. Tenant will have no claim to the condemnation award or proceeds in lieu of condemnation.

6. **Default by Landlord/Events.** Defaults by Landlord are failing to comply with any provision of this Surface Lease Agreement within sixty days of receipt of written notice.

7. **Default by Landlord/Tenant's Remedies.** Tenant's remedies for Landlord's default are termination of the Surface Lease Agreement.

8. **Default by Tenant/Events.** Defaults by Tenant are (a) failing to pay timely Rent, (b) abandoning or vacating a substantial portion of the Premises, (c) failing to maintain insurance, and (d) failing to comply within ten days after written notice with any provision of this Lease other than the defaults set forth in (a), (b) and (c) above.

9. **Default by Tenant/Landlord's Remedies.** Landlord's remedies for Tenant's default are to (a) enter and take possession of the Premises, after which Landlord may relet the Premises on

behalf of Tenant and receive the Rent directly by reason of the reletting; and (b) terminate this Lease by written notice and sue for damages. Landlord may enter and take possession of the Premises by self-help, by locking out Tenant or any other person who may be occupying the Premises, until the default is cured, without being liable for damages.

10. **Default/Waiver/Mitigation.** It is not a waiver of default if the nondefaulting party fails to declare immediately a default or delays in taking any action. Pursuit of any remedies set forth in this Lease does not preclude pursuit of other remedies in this lease or provided by applicable law. Landlord and Tenant have a duty to mitigate damages.

11. **Security Deposit.** If Tenant defaults, Landlord may use the Security Deposit to pay arrears of Rent, to repair any damage or injury to the Premises, or to pay any expense or liability incurred by Landlord as a result of the default.

12. **Holdover.** If Tenant does not vacate the Premises following termination of this Lease, Tenant will become a tenant at will and must vacate the Premises on receipt of written notice from Landlord. No holding over by Tenant, whether with or without the consent of Landlord, will extend the Term.

13. **No Hazardous Materials.** Tenant shall not permit any Hazardous Materials (as such term is hereinafter defined) to be brought onto, stored in, used in, or disposed of in, on, under or about the Premises except in such quantities as are found in materials used in connection with the operation of Tenant's Permitted Use on the Premises and which comply with and are handled, used and disposed of in compliance with Applicable Law. As used herein "Hazardous Materials" means, but is not limited to (a) any petroleum or petroleum products, radioactive materials, asbestos, urea formaldehyde foam insulation, transformers or other equipment that contains dielectric fluid containing levels of polychlorinated biphenyls, and radon gas, (b) any chemicals, materials, or substances defined as or included in the definition of "hazardous substances," "hazardous wastes," "hazardous materials," "extremely hazardous wastes," "restricted hazardous wastes," "toxic substances," "toxic pollutants," "contaminants," or "pollutants," or words of similar import, under applicable law, and (c) any other chemical, material or substance which is in any way regulated by applicable law.

14. **Easements.** Landlord reserves the right to execute easements and rights-of-way of all kinds and character upon the Premises.

15. **Bankruptcy.** In the event Tenant or any of its general partners are adjudged bankrupt, or institutes proceedings seeking any composition, extension, or other relief as a debtor under any law now or which may hereafter may be in force, or make any voluntary assignment for the benefit of creditors, or in the event a receiver be appointed for Tenant's property, Landlord, upon the occurrence of either of the events specified, shall have the right and option to terminate this Agreement, and upon Landlord's election to exercise such option, full possession of the Premises shall be redelivered to Landlord.

16. **Sale of Premises.** Landlord reserves the right to sell the Premises or any portion thereof. In the event Premises are sold Tenant shall be given one hundred twenty (120) days to vacate the Premises. Upon termination of the Lease, any prepaid Rent shall be refunded to Tenant when Tenant has complied with all of the provisions of the Lease.

17. **Alternative Dispute Resolution.** Landlord and Tenant agree to mediate in good faith before filing a suit for damages.

18. **Attorney's Fees.** If either party retains an attorney to enforce this Lease, the party

prevailing in litigation is entitled to recover reasonable attorney's fees and other fees and court and other costs.

19. **Venue.** Exclusive venue is in the county in which the Premises are located.

20. **Entire Agreement.** This lease is the entire agreement of the parties, and there are no oral representations, warranties, agreements, or promises pertaining to this lease not incorporated in writing in this lease.

21. **Amendment of Lease.** This lease may be amended only by an instrument in writing signed by Landlord and Tenant.

22. **Limitation of Warranties.** THERE ARE NO IMPLIED WARRANTIES OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OR OF ANY OTHER KIND ARISING OUT OF THIS LEASE, AND THERE ARE NO WARRANTIES THAT EXTEND BEYOND THOSE EXPRESSLY STATED IN THIS LEASE.

23. **Notices.** Any notice required or permitted under this Lease must be in writing. Any notice required by this lease will be deemed to be delivered (whether actually received or not) when deposited with the United States Postal Service, postage prepaid, certified mail, return receipt requested, and addressed to the intended recipient at the address shown in this lease. Notice may also be given by regular mail, personal delivery, courier delivery, facsimile transmission, or other commercially reasonable means and will be effective when actually received. Any address for notice may be changed by written notice delivered as provided herein.

24. **Abandoned Property.** Landlord may retain, destroy, or dispose of any property left on the Premises at the end of the Term.

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TOM GREEN COUNTY

Michael D. Brown

By: Michael D. Brown, County Judge acting in his Official Capacity and not in his Individual Capacity

BD&J PARTNERSHIP, a Texas general partnership

By: *Robert Allen*
Robert (Bobby) Allen, individually and as a General Partner

By: *Donald Vardeman*
Donald Vardeman, individually and as a General Partner

By: *John F. Conn*
John F. Conn, individually and as a General Partner

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on this 23 day of October, 2012, by Michael D. Brown, as County Judge of Tom Green County, on behalf of Tom Green County.



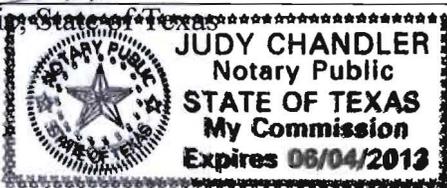
Elizabeth McGill
Elizabeth McGill, County Clerk, Tom Green County, Texas

Elizabeth McGill
County Clerk
Tom Green County, Texas

STATE OF TEXAS §

COUNTY OF TOM GREEN §

This instrument was acknowledged before me on this 26th day of October, 2012, by Robert (Bobby) Allen, individually and as a General Partner of BD&J Partnership.


Notary Public, State of Texas


STATE OF TEXAS §

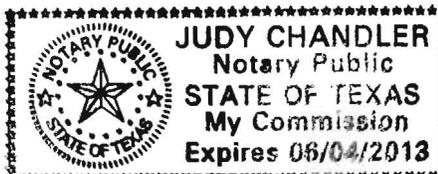
COUNTY OF TOM GREEN §

This instrument was acknowledged before me on this 25th day of October, 2012, by Donald Vardeman, individually and as a General Partner of BD&J Partnership.


Notary Public, State of Texas

STATE OF TEXAS §

COUNTY OF TOM GREEN §



This instrument was acknowledged before me on this 25th day of October, 2012, by John F. Conn, individually and as a General Partner of BD&J Partnership.


Notary Public, State of Texas

