

CITY OF ARDMORE
Office of City Manager

Council Letter No. 568
Meeting Date: May 3, 2021

Mayor and City Commission
City of Ardmore, Oklahoma

RE: Consent of Sublease Property Agreement between the Ardmore Development Authority and Continental Intermodal Group, Trucking LLC

Dear Commission Members:

The Sublease Property Agreement (Agreement) entered into is between the Ardmore Development Authority, a public trust of the City of Ardmore and Continental Intermodal Group, Trucking LLC, an Oklahoma Limited Liability Company which will allow certain property to be subleased located within the Ardmore Industrial Airpark (Airpark), which property is encompassed within the Lease by the City of Ardmore, a consenting party to this Agreement to the Ardmore Development Authority of the Ardmore Industrial Airpark. This Agreement is for a certain area within the Terminal Building located at the Airpark, 620 General Drive, Suite 2. The Sublease Agreement requires approval by the City Commission.

Staff respectfully recommends approval of the Sublease Property Agreement between the Ardmore Development Authority and Continental Intermodal Group, Trucking LLC.

Respectfully Submitted,



Kevin Boatright
City Manager

SUBLEASE AGREEMENT
By and Between
The Ardmore Development Authority and
Continental Intermodal Group- Trucking LLC

This Sublease Agreement (“Sublease”) is entered into and made effective on the 1st day of April, 2021, by and between Ardmore Development Authority, a public trust (“Authority”), and Continental Intermodal Group- Trucking LLC, an Oklahoma limited liability company (“Company”). The City of Ardmore, a municipal corporation (“City”), is a consenting party to this Sublease.

The Authority leases from the City the Ardmore Industrial Airpark in Ardmore, Oklahoma (“Airpark”¹). The Authority desires to sublease certain property within the Airpark, as more particularly described herein, to the Company under the terms and conditions set forth below. Company likewise desires to lease such property under the same terms and conditions. In addition to the terms and conditions described herein, this Agreement is subject to the terms of the Lease Agreement, as amended, by and between the Authority and the City.

NOW, THEREFORE, in return for ten dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. GRANT OF SUBLEASE, USE, SINAGE.

The Authority hereby subleases to Company and Company hereby subleases from the Authority, the following facilities: *(land and /or building description and location listed below)*

- A. That certain area within the Terminal Building located at the Airpark having a physical address of: 620 General Drive, Suite 2, Ardmore, Oklahoma 73401 (the “office Space”), along with all attendant common areas including but not limited to: parking areas, shared conference room spaces, common walkways and point of ingress/egress and all public restrooms. Together with the Office Space, all property to be leased herein shall be referred to as the “Leased Property.”
- B. The Office Space and Leased Property shall be used by the Company for administrative office purposes and all purposes incidental to such use.
- C. The Company shall be allowed to display its name and Company logo on the entryway door and/or adjoining window to the Office Space. Additionally, during the Term hereof the Authority shall display

¹ The Airpark is an approximately two thousand one hundred (2100) acre tract of land more particularly described in the Lease Agreement, as amended, by and between the Authority and the City. As used herein, the words “Airpark” also include any other lands adjoining such tract that are hereafter purchased or leased by the Authority and used together as part of the same project.

Company's name and logo on the monument signage located directly adjacent to the Terminal Building. Company hereby grants such limited license as is necessary to accommodate the use and display of its name and logo for signage display purposes.

2. **TERM.**

Unless earlier terminated as provided herein and subject to necessary and appropriate approvals by the City and the Federal Aviation Administration ("FAA"), if any, the initial rental period of this Agreement will begin on April 1, 2021 ("Effective Date") and will continue for an initial term of one year, through March 31, 2022.

Company may, upon approval of the Ardmore Development Authority and consented by the City of Ardmore, extend the Initial Term for up to one (1) additional year (i.e., to March 31, 2023) by providing written notice to the Authority as provided in Section 21 of this Agreement at least three (3) months prior to the expiration of the Initial Term. Thereafter the Company may further extend the Term by providing written notice to the Authority as provided in Section 21 of this Agreement, provided however that the provisions of any such further extension of the Term shall be determined by mutual consent of the Parties and the City.

3. **RENT.**

For the Initial Term, Company will pay to the Authority monthly rent, in advance, in the amount of \$150.00. Rent shall be payable on the first day of each and every month during the Term of the Agreement and any renewal. Such rent shall be delinquent after the 10th day of each month, and the Company shall pay a late fee of five percent (5%) of the rent applicable to the portion of the Leased Premises for which payment was delinquent. Rent for any partial months during the Term shall be prorated in accordance with the number of days in such month. Should Initial Term be extended as described herein, the Company will pay the Authority rent agreed upon by the Company and the Authority to be set forth in a document entitled the Rent Appendix.

4. **MAINTENANCE AND REPAIR.**

The Company acknowledges the current condition of the Leased Premises and assumes the lease of the Leased Premises in its current condition. The Company will, at Company's expense, maintain the Leased Property in good condition and good repair. Upon request of the Authority, the Company will permit the Authority to inspect the Leased Premises and document of its condition. The Authority will share any such documentation with the Company. Company will repair or replace, with material of the same quality as that to be repaired or replaced, any damage done to the Leased Property by the Company or Company's agents, employees or invitees. Company will not commit or allow any waste or damage to be committed on any portion of the Leased Property. The Company will employ the industry's best practices regarding the prevention of contamination. If the Authority must make any necessary repair or replacement because of the negligence or abuse of the Company or its agents, employees or invitees, or of any other person using the Leased Property with the Company's consent, express or implied, the Authority may make such reasonable repair, after giving 30 day notice to the Company and providing the Company thirty (30) days to conduct the referenced repair or replacement. Upon the Company's failure to conduct the repair or replacement within the thirty (30) day period given, the Authority

may add the reasonable cost incurred by the Authority to the next installment of Rent, unless the Authority actually recovered such cost through insurance proceeds.

5. **RESPONSIBILITY OF COMPANY.**

The Company will be responsible for all governmental authorizations and other items necessary for it to conduct its operations, which are not the responsibility of the Authority hereunder. All costs related to such activities will also be the sole responsibility of the Company. The Company shall not permit any encumbrances to be filed against the Leased Property or other portions of the Airpark as a result of its failure to properly pay such costs and, in the event such an encumbrance is filed, the Company shall take all steps at its expense necessary to cause the encumbrance to be promptly removed.

6. **QUIET ENJOYMENT.**

So long as the Company pays the Rent and performs all of the Company's obligations under this Agreement, Company will peacefully hold the Leased Property, free of interference from anyone, claiming by, through, or under the Authority, for the term of this Agreement, subject to any applicable zoning ordinances, building codes, laws, and regulations affecting the use of the Leased Property.

7. **AD VALOREM TAXES.**

The Company shall timely pay directly to applicable authorities all ad valorem taxes and other similar charges that may be assessed by governmental or other public entities against its equipment, plants, machinery, stockpiles and other property located on the Leased Property. The Company shall timely make or cause to be made payments in lieu of taxes against the leased land that constitutes the Leased Property. Calculation of the payments in lieu of taxes shall be made by an assessment provided by the Carter County Assessor in such a manner that is applicable by law to other property located in Carter County. Such amounts shall be paid as and when due to the Carter County Treasurer so as to avoid imposition of any penalties or accrual of interest that would be owed if the Leased Property were subject to assessment, levy and tax thereon.

In this regard, the Company acknowledges that an ad valorem exemption may be claimed by reason of ownership of the Leased Property by the City within an increment district, but pursuant to the Oklahoma Local Development Act, 62 O.S. §850, *et seq.*, specifically §861(G), such exemption shall not inure to the benefit of the Company or any of its successors or sub lessees. However, under no circumstance shall the obligation to make any payment in lieu of taxes required by this Section be extend beyond the term of this Agreement.

8. **UTILITIES.**

The Company shall pay for all utilities it uses in connection with its operations hereunder, including, telephone and internet.

9. **FAA AUTHORIZATIONS.**

Communication with the FAA to request, obtain, and update, if necessary, any FAA authorizations that may now or hereafter be required with respect to the Company's operations at the Leased Property, is strictly the responsibility of the Authority. Performance of and compliance

with FAA standards and authorizations, as well as providing verification of compliance with such FAA standards and authorizations, upon written request of the Authority, is strictly the responsibility of the Company.

10. LAWFUL CONDUCT.

All of the activities conducted on the Leased Property by the Authority and the Company shall comply in all material respects with all applicable federal, state, and local laws, as well as all other governmental rules and regulations that may affect their respective personnel, equipment and activities including, without limitation, such governmental laws, rules and regulations as may now or hereafter be in force relating to airports, railroads, safety and the environment.

11. INSPECTIONS.

The Authority shall be entitled to enter upon the Leased Property from time to time during regular business hours, upon reasonable advance notice to Company, in order to carry out such inspections of the Leased Property as the Authority may deem appropriate to ensure compliance with the terms hereof. The Authority shall be accompanied during any such inspections by an employee of the Company and, while on the Leased Property, the Authority shall comply with all applicable safety rules and regulations promulgated by Company or any applicable governmental entity.

12. ENVIRONMENTAL CONCERNS AND HAZARDOUS MATERIALS.

A. "Environmental Law(s)" shall mean any federal, state, or local law, statute, ordinance, code, rule, regulation, policy, common law, license, authorization, decision, order, or injunction which pertains to health, safety, any Hazardous Material (as hereinafter defined), or the environment (including but not limited to ground, air, water, or noise pollution or contamination, and underground or above-ground tanks) and shall include, without limitation, the Resource Conservation and Recovery Act, 42 U.S.C. §6901 *et seq.*, the Comprehensive

Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §9601 *et seq.* ("CERCLA"); the Hazardous Materials Transportation Act, 49 U.S.C. §5101 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. §1251 *et seq.*; the Clean Air Act, 42 U.S.C. §7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. §300f *et seq.*; the Emergency Planning and Community Right-to-Know Act, 42 U.S.C. 11001 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 to 136y; the Oil Pollution Act, 33 U.S.C. 2701 *et seq.*; and the Occupational Safety and Health Act, 29 U.S.C. 651 *et seq.*; all as have been amended from time to time, and any other federal, state, or local environmental requirements, together with all rules, regulations, orders, and decrees now or hereafter promulgated under any of the foregoing, as any of the foregoing now exist or may be changed or amended or come into effect in the future.

B. "Hazardous Material(s)" shall include but shall not be limited to, any substance, material, or waste that is regulated by any Environmental Law or otherwise regulated by any federal, state, or local governmental authority because of toxic, flammable, explosive, corrosive, reactive, radioactive or other properties that may be hazardous to human health or the environment, including without limitation asbestos and asbestos-containing materials, radon, petroleum and petroleum products, urea formaldehyde foam insulation, methane, lead-based paint,

polychlorinated biphenyl compounds, hydrocarbons or like substances and their additives or constituents, pesticides, agricultural chemicals, and any other special, toxic, or hazardous (a) substances; (b) materials; or (c) wastes of any kind, including without limitation those now or hereafter defined, determined, or identified as "hazardous chemicals," "hazardous substances," "hazardous materials," "toxic substances," or "hazardous wastes" in any Environmental Law.

C. Company shall strictly comply with all Environmental Laws. Company shall not maintain any treatment, storage, transfer or disposal facility, or underground storage tank, as defined by Environmental Laws, of or for Hazardous Materials on the Leased Property, except it is understood that the preparation of commercial aircraft for RDT&E testing will involve the temporary storage and subsequent removal of aviation related Hazardous Materials. Use or storage on the Leased Property of any Hazardous Materials that are not previously authorized by the Authority in writing in advance of such use or storage is a breach of this Agreement. Company shall abide by industry best practices in effort to prevent the release or suffer the release of oil or Hazardous Materials on, about or affecting the Leased Property.

D. Company shall give the Authority immediate notice of any release of Hazardous Materials on, from, or affecting the Leased Property, for any violation of Environmental Laws, or inspection or inquiry by governmental authorities charged with enforcing Environmental Laws with respect to use of the Leased Property by Company. Company also shall give the Authority immediate notice of all measures undertaken by or on behalf of Company to investigate, remediate, respond to or otherwise cure such release or violation and shall provide to the Authority copies of all reports and/or data regarding any investigations or remediation of the Leased Property. In the event that the Authority has notice from Company or otherwise of a release or violation of Environmental Laws on, from, or otherwise affecting the Leased Property which occurred or may occur during the Term of this Agreement as a result of use by Company, the Authority may require Company, at Company's sole risk and expense, to take timely measures to investigate, remediate, respond to or otherwise cure each such release or violation on, from, or otherwise affecting the Leased Property, including without limitation payment of any fines or penalties due.

E. Company shall promptly report to the Authority in writing any conditions or activities upon the Leased Property outside of the ordinary course of operations of Company's use of the Leased Property that create a risk of harm to persons, property or the environment. Company shall promptly take whatever action is necessary to mitigate injury or damage to persons, property or the environment arising out of conditions or activities resulting from use of the Leased Property by Company, including but not limited to releases or violations of Environmental Laws; provided, however, that Company's reporting to the Authority shall not relieve Company of any obligation whatsoever imposed on it by this Agreement or by law. Company shall promptly respond to the Authority's request for information regarding said conditions or activities.

F. The Authority and their agents and representatives shall have a right of entry and access to the Leased Property: (a) at any time an actual or suspected emergency exists; and (b) at any reasonable time, upon prior written notice, and, at Company's election, with a representative

of Company present, for the purposes of (1) inspecting the documentation relating to Hazardous Materials or environmental matters maintained by Company; and (2) ascertaining whether Company is in compliance with its obligations under this Section.

13. ENVIRONMENTAL ISSUES - WARRANTY AND INDEMNITY.

A. Company represents, warrants and covenants to the Authority, and agrees to the following: Company, to the fullest extent permitted by law, hereby indemnifies and agrees to reimburse, defend and hold harmless the Authority and the City and their employees, officers, directors, members, managers and agents for, from and against all demands, claims, actions or causes of action, assessments, losses, damages, liabilities, costs and expenses, including, without limitation, interest, penalties, punitive and consequential damages, reasonable attorney's fees, disbursements and expenses, and reasonable consultant's fees, disbursements and expenses asserted against, resulting to, imposed on, or incurred by the Authority or the City, directly or indirectly, in connection with any of the following:

events, circumstances or conditions that form the basis for an Environmental Claim (as hereafter defined) as a result of the acts or omissions of the Company or any of its officers, employees, agents, representatives, contractors, subcontractors, or invitees ("Permittees"). For purposes of this Agreement, "Environmental Claim" means any lien or other encumbrance, or any notice, notification, request for information, claim, administrative, regulatory or judicial action, suit, judgment, demand or other communication (whether written or oral) by any person or governmental authority alleging or asserting liability with indemnification, cost recovery, compensation, injunctive relief, investigatory, response, remedial or cleanup costs, damages to natural resources, personal injuries, fines or penalties arising out of, based on or resulting from: (1) the presence, use or release into the environment of any Hazardous Materials; (2) any fact, circumstance, condition or occurrence forming the basis of any violation of any Environmental Law; or (3) any injury or threat to health, safety or the environment, any pollution or threat to human health or the environment that is related in any way to Company's or any of Permittees' management, use or control of the Leased Property;

B. the nonperformance or delayed performance and completion of any remedial work to prevent, cure or mitigate any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, dispersal, leaching or migration into the indoor or outdoor environment, including, without limitation, the movement of Hazardous Materials through ambient air, soil, surface water, ground water, wetlands, land or subsurface strata; or

C. the breach of any environmental representation, warranty or covenant set forth in this Agreement.

Nothing in this Section shall be deemed to deprive either Party of any rights or remedies provided to it in this Agreement or otherwise available, at law or in equity.

14. GENERAL INDEMNITY.

In addition to the indemnification provided in Section 14, Company shall indemnify, defend, and hold the Authority and the City and their employees, officers, directors, members, managers and agents, harmless from any and all costs, expenses, losses or damages (including but

not limited to reasonable attorneys', engineering and expert witness fees), arising from or in connection with (i) any injury sustained directly by such party; or (ii) any demand, claim, cause of action, or other proceeding brought against any of them, that is related to (a) any negligent or wrongful act or omission of Company whether occurring on or off the Leased Property or anywhere else within the Airpark; (b) any breach by Company of any provision of this Agreement, including, without limitation, any representation or warranty set forth herein.

The Authority shall likewise defend, indemnify and hold Company, its shareholders, officers, directors, agents and employees, harmless from any and all costs, expenses, losses or damages, (including but not limited to reasonable attorneys', engineering and expert witness fees), arising from or in connection with (i) any injury sustained directly by such party; or (ii) any demand, claim, cause of action, or other proceeding brought against any of them, that is related to (a) any negligent or wrongful act or omission of the Authority, whether occurring on or off the Leased Property or anywhere else within the Airpark; (b) any breach by the Authority of any provision of this Agreement, including, without limitation, any representation or warranty set forth herein.

The obligations of the parties under this Section shall apply regardless of whether it is determined that the indemnified party was partially responsible for the loss. To the extent that both Company and the Authority are jointly responsible for an indemnifiable loss, they shall each share such responsibility on the same proportional basis that their respective acts and omissions caused such loss. Further, the obligations contained in this Section will survive expiration or termination of this Agreement regardless of the reason for termination.

15. LIABILITY INSURANCE.

A. Hazard Insurance. Company shall maintain, at Company's expense, throughout the Term, a policy or policies of insurance insuring Company, the Authority, and the City, against all risks of direct physical loss, subject to standard exclusions acceptable to the Authority and the City, covering the Leased Property, to the extent of one hundred percent (100%) of the full insurable value of such property. Such policy shall name Company, the Authority, and the City, as insureds, as their interests may appear, with the Authority and the City named as loss payees, and shall be maintained with an insurance company or companies authorized to do business in the State of Oklahoma.

B. Liability Insurance. Throughout the Term, Company shall maintain at Company's expense, insurance insuring Company, the Authority, and the City, against all liability for injury to or death of any person occasioned by or arising out of or in connection with the occupancy of the Leased Property. The policy or policies shall provide not less than one million dollars (\$1,000,000.00) combined single limit coverage, shall name the Authority, the City, and Company and their respective agents as insureds and shall be maintained with an insurance company or companies authorized to do business in the State of Oklahoma.

C. Policies. Company shall furnish evidence that is satisfactory to the Authority of the maintenance of all insurance required by this Section, including certificates of such insurance and evidence of the payment of premiums. Additionally, Company shall obtain a written obligation on the part of each insurance company to notify the Authority at least thirty (30) days prior to cancellation or material change of any such insurance.

D. Subrogation. Company hereby waives any cause of action which Company or anyone claiming by, through, or under it, by subrogation or otherwise, might now or in the future have against the Authority on account of any loss or damage which is insured against under any insurance policy which names Company as a party insured. Company agrees to provide the Authority a waiver of subrogation endorsement, satisfactory to the Authority, to all policies of insurance maintained pursuant to this Agreement. Company hereby waives any cause of action which Company or anyone claiming by, through, or under it, by subrogation or otherwise, might now or in the future have against Company on account of any loss or damage which is insured against under any insurance policy which names the Authority as a party insured. The Authority agrees to provide Company a waiver of subrogation endorsement, satisfactory to Company, to all policies of insurance maintained by the Authority and covering the Leased Property.

16. TERMINATION BY AUTHORITY.

The Authority may terminate this Agreement at any time if Company (i) fails to pay any installment of rent when due hereunder and such failure continues for a period of ten (10) days following written notice from the Authority of such failure; or (ii) fails to perform any of its other obligations hereunder and such failure continues for a period of thirty (30) days after written notice specifying such failure. If through no fault of Company, the applicable non-monetary failure is impracticable to correct within such thirty (30) day period, the Authority shall not terminate this Agreement if Company commences with good faith and with due diligence, and provides proof of the same, to correct such non-monetary failure within the thirty (30) day period and diligently prosecutes the correction of such failure until cured. Nonetheless, no default shall be allowed to continue for more than one hundred and eighty (180) days under any circumstances.

17. TERMINATION BY COMPANY.

Company may terminate this Agreement at any time (i) if the Authority fails to perform any of its obligations hereunder, and such failure continues for a period of thirty (30) days after written notice from Company of such failure; provided that, if, through no fault of the Authority such failure is impracticable to correct within such thirty (30) day period, Company shall not terminate this Agreement if Owner commences with good faith and with due diligence, and provides proof of the same, to correct such failure within the thirty (30) day period and diligently prosecutes the correction of such failure until cured. Nonetheless, no default shall be allowed to continue for more than one hundred and eighty (180) days under any circumstances.

18. COMPANY'S PROPERTY.

Except the Building, all other structures, improvements, fixtures, machinery, plants, equipment and other personal property of Company installed, placed or kept on the Leased Property by Company shall be and remain the property of Company and shall not become a part of the Leased Property, provided that they are removed from the Leased Property prior to the conclusion of the term of this Agreement. Any Company property remaining on the Leased Property after the term of the Agreement may be removed by the Authority at the expense of Company, or if the Authority so elects, shall become the property of the Authority.

23. **FORCE MAJEURE.**

If the performance of any party hereunder, other than with respect to payments, is rendered commercially impracticable as a result of weather, strikes, wars, ice, governmental orders or regulations, court orders, acts of God, fire, or other events beyond such party's reasonable control, then performance, other than the payment of amounts due, will be excused and suspended during the period of such commercial impracticability.

24. **WAIVER.**

The waiver by either 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. Any right hereunder may be waived only by a written instrument executed by the party waiving such right.

25. **GOVERNING LAW.**

This Agreement shall be controlled, construed and enforced in accordance with the laws of the State of Oklahoma considered without regard to its choice of law rules.

26. **DISPUTE RESOLUTION.**

The parties will attempt to resolve any dispute that arises regarding the formation or terms of this Agreement, or the performance of the parties hereunder, by negotiation, or if that is unsuccessful, by non-binding mediation in Oklahoma City, Oklahoma before a mediator jointly selected and equally paid for by each party. Any statements made or documents produced at mediation shall be kept confidential as provided by the applicable provisions of the Oklahoma law.

If mediation is not successful, the parties agree that jurisdiction will be proper in Carter County, Oklahoma or, if it has or can acquire jurisdiction, in the United States District Court for the Eastern District of Oklahoma, and each of the parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waive any objection to venue laid therein.

27. **STATUS OF AUTHORITY.**

The Authority's obligations under this Agreement with respect to insurance, indemnity and liability are subject to and shall not constitute a waiver of the protection or limits of liability under the Oklahoma Governmental Tort Claims Act, 51 O.S. §151, *et seq.*, as interpreted by applicable case law concerning contractual indemnities. No provision of this Agreement modifies and/or waives any provision of the Governmental Tort Claims Act.

28. **BINDING EFFECT.**

This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and permitted assigns.

29. **COUNTERPARTS.**

This Agreement may be executed in multiple counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and

will constitute one and the same instrument.

IN TESTIMONY WHEREOF, witness the signature of the Authority and the Company, with consent by the City, by their respective authorized representatives, each as of the date first above written.

Continental Intermodal Group-Trucking LLC

By: 
(Company Representative/Owner)



Ardmore Development Authority,
an Oklahoma Public Trust

By: 
Nancy Sjulín, Chair

ATTEST:


Secretary

City of Ardmore,
a consenting party

By: _____
Doug Pfau, Mayor

ATTEST:

Lori Linney
City Clerk