

**CITY OF EL PASO, TEXAS  
REQUEST FOR COUNCIL ACTION (RCA)**

**DEPARTMENT:** Environmental Services  
**AGENDA DATE:** January 13, 2009  
**CONTACT PERSON/PHONE:** Ellen A. Smyth, P.E., (915) 621-6719  
**DISTRICT (S) AFFECTED:** District 2

**SUBJECT:**

**Amendment to License Agreement with CEMEX**

**BACKGROUND / DISCUSSION:**

In February 25, 2003, the City entered into agreement with "Jobe" to use their land located at 2492 Harrison as a Citizen Collection site. The proposed license agreement is now with CEMEX and addresses cleanups or remediation of soils, documentation of reportable spills, installation and operation of secondary containment equipped with a cover to prevent rain and snow, at least 40 hours of HazMat training, development and implementation of a storm water plan and sampling of all soils at the termination of the agreement.

**PRIOR COUNCIL ACTION:**

N/A

**AMOUNT AND SOURCE OF FUNDING:**

N/A

**BOARD / COMMISSION ACTION:**

N/A

\*\*\*\*\*REQUIRED AUTHORIZATION\*\*\*\*\*

**LEGAL:** (if required) Josette Flores

**FINANCE:** (if required) \_\_\_\_\_

**DEPARTMENT HEAD:** \_\_\_\_\_

  
(Example: if RCA is initiated by Purchasing, client department should sign also)  
*Information copy to appropriate Deputy City Manager*

**APPROVED FOR AGENDA:**

**CITY MANAGER:** \_\_\_\_\_

**DATE:** \_\_\_\_\_

CITY CLERK DEPT.  
09 JAN -8 AM 11:44

# RESOLUTION

## BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT, the City Manager be authorized to sign an Amendment to License Agreement by and between the City of El Paso ("City") and Cemex Construction Materials South, LLC. ("CEMEX"), amending that certain License Agreement dated February 25, 2003, by and between the City and Jobe Concrete Products, Inc. ("Jobe"), acknowledging CEMEX as Jobe's successor in interest, and adding certain environmental requirements for the City to fulfill.

ADOPTED this \_\_\_ day of \_\_\_\_\_, 2009.

CITY OF EL PASO

\_\_\_\_\_  
John F. Cook  
Mayor

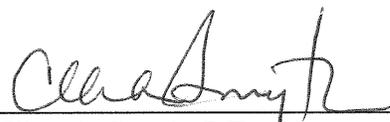
ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Ellen A. Smyth, P.E., Director  
Environmental Services Department

CITY CLERK DEPT.  
09 JAN - 8 AM 11:45

STATE OF TEXAS        )  
  )  
COUNTY OF EL PASO    )

**AMENDMENT TO LICENSE AGREEMENT**

This Amendment (“Amendment”) to that certain February 25, 2003 License Agreement (“Agreement”) by and between the City of El Paso (“City”) and Jobe Concrete Products, Inc., whose successor in interest is Cemex Construction Materials South, LLC (“CEMEX”) is made and entered into on this the 13th day of January, 2009. The terms of this Amendment shall take precedence over the terms of the Agreement to the extent of any contradiction.

**WHEREAS**, on April 1, 2005, Articles of Amendment were filed with the Texas Secretary of State changing the name of Jobe Concrete Products, Inc. to CEMEX El Paso, Inc.;

**WHEREAS**, on January 1, 2006, the merger of CEMEX El Paso, Inc. into Cemex Construction Materials, L.P. became effective pursuant to a Certificate of Merger filed with the Texas Secretary of State; and

**WHEREAS**, on August 1, 2008, CEMEX Construction Materials Pacific, LLC was renamed CEMEX Construction Materials Pacific, LLC, which subsequently transferred certain facilities, including that property in El Paso, Texas the subject of the present Amendment, to CEMEX Construction Materials South, LLC.

In consideration of the mutual covenants contained herein and other good and valuable consideration, City and CEMEX agree as follows:

1. Amendment. The provisions of the Agreement are amended as follows:
  - A. The following shall be inserted as number 14: City is responsible for all clean-ups or remediation of soil at the site (or surrounding the site if necessitated by conditions on the site) due to City’s operations.
  - B. The following shall be inserted as number 15: City shall document all reportable spills as required by law or regulation and shall provide CEMEX environmental department with a copy of all such reports.
  - C. The following shall be inserted as number 16: City shall install and operate secondary containment equipped with a cover to prevent rain and snow from contacting the materials in the secondary containment.
  - D. The following shall be inserted as number 17: City shall operate the site with employees that are at least 40 hours hazmat certified.

E. The following shall be inserted as number 18: City shall develop and implement a storm water plan for the site and an operation and maintenance plan detailing what steps will be taken during a non-reportable and reportable spill and what safety measures will be taken. A copy of all such plans shall be provided to CEMEX environmental department.

F. The following shall be inserted as number 19: City shall copy CEMEX on all reports submitted to the Texas Commission on Environmental Quality (TCEQ).

G. The following shall be inserted as number 20: City shall remove all equipment, tanks, buildings and secondary containment at termination of the Agreement.

H. The following shall be inserted as number 21: At termination of the Agreement, City shall sample all soils under the secondary containment and in other locations as appropriate to confirm no contamination. The City will submit a report on such samples and analysis to CEMEX environmental department. Such report shall indicate that the site is free of contamination and needs no remediation. If remediation is necessary, then City shall perform the remediation. After remediation the City shall provide a report that site is free of contaminants and needs no further remediation.

2. Notice. Under this Agreement, City is entitled to use and occupy the agreed upon parking lot(s) on times and days to be mutually agreed upon by City and CEMEX. Regardless of the date of execution hereof, the term of this Agreement shall commence on the date described in paragraph 3 to this Amendment, and shall continue for as long as CEMEX is in possession of the premises, unless terminated earlier as provided hereinafter. This Agreement may be terminated by mutual consent of the parties in writing, or by any party upon thirty (30) days written notice to the other party as follows:

Notice to the City: Mayor  
City of El Paso  
#2 Civic Center Plaza  
El Paso, Texas 79901-1196

Copy to: Director  
Environmental Services Department  
7969 San Paulo  
El Paso, Texas 79907

Notice to the CEMEX: Patrick L. Strader  
Vice President / General Manager  
Texas and New Mexico  
CEMEX  
411 N. Sam Houston Pkwy., E.  
Suite 550  
Houston, Texas 77060

3. Effect of Amendment. This Amendment will be effective on January 13, 2009. All other provisions of the Agreement will remain in full force and effect as originally written.

CITY OF EL PASO, TEXAS

CEMEX CONSTRUCTION MATERIALS  
SOUTH, LLC

\_\_\_\_\_  
Joyce A. Wilson  
City Manager

\_\_\_\_\_  
Printed Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

APPROVED AS TO CONTENT:

  
\_\_\_\_\_  
Josette Flores  
Assistant City Attorney

  
\_\_\_\_\_  
Ellen A. Smyth, Director  
Environmental Services Department

CITY CLERK DEPT.  
09 JAN -8 AM 11:45

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### RESOLUTION

**BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:**

THAT the Mayor be authorized to sign an Equipment Use Agreement between the City of El Paso and Jobe Concrete Products, Inc. for the use of one (1) 25 Cubic Yard rolloff container, and authorize the Mayor to sign a License Agreement between the City of El Paso and Jobe Concrete Products, Inc. to allocate a portion of the property located at 2492 Harrison, El Paso, Texas, to be utilized as a Citizen Collection Station, on behalf of the City of El Paso Solid Waste Management. Additionally, Jobe Concrete Products, Inc. will provide an entrance gate, barricade rails to section the area and provide landscaping for an aesthetic atmosphere. The property will serve as a Citizen Collection Station, as long as the site is used only for a collection station for the use of the residents of the City of El Paso. (District 2)

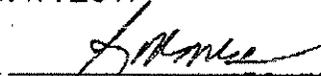
**ADOPTED this 25th day of February, 2003.**

CITY OF EL PASO

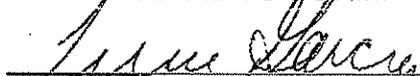


Raymond C. Caballero  
Mayor

ATTEST:

  
Richarda Duffy Momsen  
City Clerk

APPROVED AS TO FORM:

  
Teresa Garcia  
Assistant City Attorney

STATE OF TEXAS            )  
                                   )  
 CITY OF EL PASO            )            **EQUIPMENT USE AGREEMENT**

This Equipment Use Agreement, effective this 25th day of February, 2003, by and between the CITY OF EL PASO, hereinafter called "City", and JOBE CONCRETE PRODUCTS, INC., of El Paso, Texas, hereinafter called "Lender".

THE FOLLOWING TERMS AND CONDITIONS APPLY:

- 1.0 Lender shall lend the use to City one (1) 25 Foot Rolloff Container in conjunction with the License Agreement between the City and the Lender for the allocation of the portion of the property better known as 2492 Harrison, El Paso, Texas.
- 1.1 The described container shall only be used for its intended use as a recycling container.
- 2.0 City shall obtain and pay for all necessary licenses, permits, inspections and fees necessary for the lawful operation of said container.
- 2.1 City agrees that it shall be responsible for any loss or damage to the equipment occurring during City's use of this equipment in an amount equal to a reasonable estimate of the damage done or an amount not to exceed the replacement costs of the equipment.
- 3.0 The City shall be responsible for maintenance and repairs of the rolloff container. City at its own cost and expense is required to keep the equipment in good repair, condition and working order, except for ordinary wear and tear, and shall supply all parts and service required for such maintenance.
- 3.1 A routine preventive maintenance program shall be the responsibility of the City.
- 4.0 City accepts container in condition in which it is delivered. City shall be responsible for all damage of any character to property during the use term. Should an incident occur in which damage is done to said container during the use, the City shall notify Lender within 24 hours. The City shall restore the container to a condition equal to that existing before damage was done, or it shall make good such damage in an acceptable manner.
- 5.0 Responsibility for Claims: As permitted by law, the City shall indemnify and hold harmless Lender and all of its representatives from all suits, actions, or damages sustained by any person or property in consequence of any neglect by City in safeguarding said container or on account of any act or omission by City.

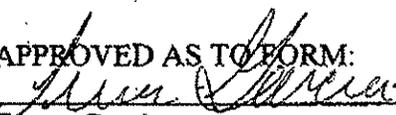
- 6.0 The Lender with the Department of Solid Waste Management's prior approval, shall have the right to enter the premises where the equipment is located to confirm the existence, condition and proper maintenance of the equipment.
- 7.0 The City shall be responsible for providing the Solid Waste Management and maintenance personnel for the proper operation and upkeep of the container.
- 7.1 City acknowledges that the title of the equipment shall at all times remain with the Lender.
- 7.2 City may not assign, sell, transfer, sublet, pledge or otherwise encumber any interest in this use or the equipment.
- 7.3 City agrees to keep Lender and equipment free from any lien, encumbrance or any other claim which may be asserted by any other third party.
- 8.0 Texas Law Prevails: The provisions of this agreement shall be governed by the laws of Texas.
- 9.0 Failure to comply with any of the above terms shall constitute a breach of this use Agreement.
- 10.0 If any paragraph, statement, clause or provision of this Use is construed or interpreted by a court of competent jurisdiction to be void, illegal or unenforceable, such decision shall affect only those paragraphs, statements, clauses or provisions.

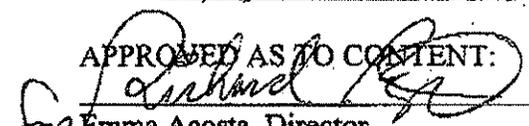
APPROVED this the 25th day of February, 2003.

  
 CITY OF EL PASO  
 Raymond C. Caballero  
 Mayor

ATTEST:   
 Richarda Duffy Momsen  
 City Clerk

JOBE CONCRETE PRODUCTS, INC.,  
 By:   
 Title: 

APPROVED AS TO FORM:   
 Teresa Garcia  
 Assistant City Attorney

APPROVED AS TO CONTENT:   
 for Emma Acosta, Director  
 Solid Waste Management

STATE OF TEXAS )  
 )  
COUNTY OF EL PASO )

**LICENSE AGREEMENT**

**THIS AGREEMENT**, made and entered into this 25th day of February, 2003, by and between **JOBE CONCRETE PRODUCTS, INC.**, and the **CITY OF EL PASO**, hereinafter called "City",

**WITNESSETH:**

**WHEREAS**, the citizens of El Paso have become increasingly aware of the need to recycle and increasingly willing to participate in efforts to recycle; and

**WHEREAS**, residents in the El Paso area currently do not have convenient access to a drop off station for all recyclable materials; and

**WHEREAS**, the City of El Paso and Jobe Concrete Products, Inc. feel that it would be in the best interests of the residents of the El Paso area to have convenient access to a drop off station for recyclables,

**NOW, THEREFORE**, for and in consideration of the following mutual promises, the parties hereby agree as follows:

1. Jobe Concrete Products, Inc. hereby grants to City, a nonassignable right for City to use and occupy a portion of 2492 Harrison Avenue, the exact location is to be mutually agreed upon by the parties.

2. City represents that such premises shall be used as a drop off station for the purpose of collecting recyclable materials and for no other purpose whatsoever, without the prior written consent of the Jobe Concrete Products, Inc., such consent not to be unreasonably withheld. So long as the premises conveyed by Jobe Concrete Products, Inc. to City are used by City as a drop off station and/or uses consistent with the provision of collection of recyclable materials, Jobe Concrete Products, Inc. agrees that there shall be no cost to City for the use of the premises.

3. Under this Agreement, City is entitled to use and occupy the agreed upon parking lot(s) on times and days to be mutually agreed upon by City and Jobe Concrete Products, Inc. Regardless of the date of execution hereof, the term of this Agreement shall commence on previously state date and shall continue for as long as Jobe Concrete Products, Inc. is in possession of the premises, unless terminated earlier as provided hereinafter. This Agreement may be terminated by mutual consent of the parties in writing, or by any party upon thirty (30) days written notice to the other party as follows:

**Notice to the City:**

Mayor  
City of El Paso  
#2 Civic Center Plaza  
El Paso, Texas 79901-1196

Director  
Solid Waste Management  
7969 San Paulo  
El Paso, Texas 79907

**Notice to the Licensee:**

Stanley Jobe, President  
Jobe Concrete Products, Inc.  
1 McKelligon Canyon Road  
El Paso, Texas 79930

4. City will not, without the prior written consent of Jobe Concrete Products, Inc., which consent shall not be unreasonably withheld, cause or permit any permanent changes or alterations to the premises, other than the placing of a suitable sign on the premises indicating what the City's operation is and the hours of operation.

5. City accepts the premises "as is" in its present condition and state of repair, and agrees that, upon completion of its use of the premises, it will vacate and surrender the premises to Jobe Concrete Products, Inc. in the same condition it is now in, normal wear and tear excepted.

6. Each party agrees to be liable for its acts which result in injury to or death of any person or for damage to any property, arising out of or in connection with activities under this Agreement, if such party is liable for such loss under the provisions of the Texas Tort Claims Act. In no event, however, shall either the City or Jobe Concrete Products, Inc. be liable to any party for an amount greater than applicable limitations on the amount of liability under the Texas Tort Claims Act; and further, in no event, shall either the City or Jobe Concrete Products, Inc. be liable for payment for any damages, including but not limited to costs of defense and limitations, where any contract of insurance applies or provides coverage. Nothing in this agreement shall constitute or be construed as a waiver of any rights of sovereign immunity or any other defenses available to the City or Jobe Concrete Products, Inc. by law.

7. City agrees to comply with all valid laws, ordinances, codes, and regulations of any governmental authority having jurisdiction applicable to City's use of the premises.

8. Jobe Concrete Products, Inc. agrees to provide an entrance gate, barricade rails to section the area and provide landscaping for an aesthetic atmosphere.

9. City agrees that any supplies and equipment needed to provide a drop off station for recyclables by City shall be supplied by City, and Jobe Concrete Products, Inc. shall have no responsibility therefore.

10. City agrees to abide by all security precautions and procedures established by Jobe Concrete Products, Inc., or his designated representative, and shall keep the premises in clean condition during its use thereof.

11. If any provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or unenforceable, there will be added as part of this Agreement a provision as similar to such illegal, invalid or unenforceable provision as may be possible and be legal, valid and enforceable, and other provisions of the Agreement shall remain in full force and effect.

12. All signatories to this Agreement warrant that they have authority to execute this Agreement and, upon request of one party to another, shall provide evidence satisfactory to the other party confirming representations of authority.

13. This License Agreement constitutes the entire agreement among the parties and may not be amended or modified except by written agreement signed by the parties.

**WITNESSETH THE FOLLOWING SIGNATURES AND SEALS:**

CITY OF EL PASO



Raymond C. Caballero  
Mayor

ATTEST:



Richarda Duffy Momsen  
City Clerk

JOBE CONCRETE PRODUCTS, INC.



Name Printed: Stanley P. Jobe  
Title: CEO

APPROVED AS TO FORM:



Teresa Garcia  
Assistant City Attorney

APPROVED AS TO CONTENT:



For Emma Acosta, Director  
Solid Waste Management