



RESOLUTION NO. 20241022-02

A RESOLUTION AUTHORIZING THE EXECUTION OF A TRANSLOAD SERVICE AGREEMENT AND ADDENDUM WITH SPRING CREEK HOLDINGS, LLC; AND PROVIDING FOR AN EFFECTIVE DATE

WHEREAS, TexAmericas Center is a political subdivision of the State of Texas with the powers and authorities specified in Chapter 3503 of the Special District Local Laws Code of the State of Texas; and

WHEREAS, TexAmericas Center has initiated its transload service operation; and

WHEREAS, Spring Creek Holdings, LLC has requested that TexAmericas Center provide transload services and storage services which include terms that are not standard terms of TexAmericas Center transload operations including but not limited to heavier than normal load specifications due to its contract to provide materials used in the reconstruction of Interstate Hwy. 30 in Bowie County, Texas; and

WHEREAS, the staff of TexAmericas Center has reviewed the request of Spring Creek Holdings, LLC and has determined that TexAmericas Center transload operation can accommodate these special requests of Spring Creek Holdings, LLC;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of TexAmericas Center that TexAmericas Center enter into a Transload Service Agreement with Spring Creek Holdings, LLC in substantially the form of the proposed Transload Service Agreement attached to this Resolution as EXHIBIT "A", including the terms of Addendum No. 1 attached to said Agreement.

BE IT FURTHER RESOLVED, that Scott Norton, Executive Director/CEO of TexAmericas Center shall be and he is hereby authorized to execute said Transload Service Agreement and Addendum No. 1 in substantially the form attached hereto.

BE IT FURTHER RESOLVED, that Scott Norton, Executive Director/CEO shall be and he is hereby also authorized to extend the term of said Transload Service Agreement for such additional terms as he deems necessary and in the best interest of TexAmericas Center provided that the financial terms of said extensions are not less than those specified in the original Transload Service Agreement and Addendum No. 1.; and

BE IT FURTHER RESOLVED, that this Resolution shall be effective as of the date of its passage and approval by the Board of Directors.

PASSED and APPROVED this 22nd day of October, 2024.



Jim Roberts, Chairman of the Board

ATTEST:


Justin Powell, Secretary

ATTACHMENT: TRANSLOAD SERVICE AGREEMENT AND ADDENDUM NO. 1

TEXAMERICAS CENTER TRANSLOAD SERVICE AGREEMENT

This Agreement (“the Agreement”) is made on **November 1, 2024**, by and between TexAmericas Center (“Storage Facility”), with its principal business address at 107 Chapel Lane, New Boston, Texas 75570 and Spring Creek Holdings, LLC (“Customer”), with its business address at P.O. Box 580, Atlanta, Texas 75551.

Recitals:

A. Storage Facility operates a rail car facility in Hooks, Texas (the “Facility”). TexAmericas Center has contracts with Customer to perform transload operations on the foot print of TexAmericas East Campus. Customer will be loading and unloading rail cars for various customers.

B. Storage Facility shall allow Customer access to various customer rail cars while on the Facility for the purposes of loading and unloading and unloading such rail cars pursuant to the terms of this Agreement.

Now, Therefore, the parties agree as follows:

1. Storage Facility hereby agrees to provide inbound and outbound rail car services for Customer’s rail cars being delivered to the Storage Facility (“Services”) and shall allow Customer access to the portion of the Storage Facility leased by Customer during Storage Facility’s normal business operations to load and unload the Customer’s Rail Cars on site at the Facility pursuant to the terms of this Agreement. Customer hereby agrees to load and unload customers rail cars within two (2) business days of the date of inbound deliver to the Storage Facility. If Customer fails to load or unload any such rail cars within such two business days for any reason other than Storage Facility’s breach of its obligations under this Agreement, then Customer shall be liable for daily storage charges as provided in Section 4 in addition to the inbound and outbound fees provided for in this Agreement. In no event shall Storage Facility be liable to any party for Car Hire or Demurrage Charges with respect to the rail cars and Customer hereby agrees to indemnify Storage Facility with respect to any such liability.

2. Customer agrees and represents and warrants that all rail cars shall be free of any hazardous materials, hazardous waste commodities and/or any hazardous waste residuals. Hazardous materials may be transloaded, but only with Storage Facility prior written approval. Customer further agrees and represents and warrants that it shall (i) load or unload rail cars using its personnel and cranes and other equipment provided solely by Customer and will do so in a safe and secure manner, complying with all applicable safety and workplace laws and regulations, and (ii) load or unload the rail cars and store the materials loaded or unloaded at the Customer site in such a manner so that Storage Facility’s rail lines shall not be obstructed, impaired, or damaged and so that Storage Facility’s business operations shall not be impaired or adversely affected. Storage Facility shall have no obligation to provide any services with respect

to the loading or unloading of the rail cars except for provided Customer assess to such cars as is reasonably necessary for Customer to perform such unloading services for various customers. Customer agrees and represents and warrants that all rail cars will have a maximum of four axels. Customer agrees and represents and warrants that all rail cars will be sixty (60) feet in length or less. Customer agrees and warrants that all rail cars will have a maximum total weight of 268,000 pounds or less.

3. Storage Facility shall have the right to deny service and access if there is a current payment dispute between Storage Facility and Customer.

4. The Services will be provided by Storage Facility to the Customer at the rates listed below.

Loaded Car Movement Fee per Car	\$325.00
Internal Car Movement Fee per Car	\$325.00
Per Car Daily Storage Rate	\$20.00

5. Storage Facility shall provide outbound services for loaded and unloaded rail cars subject to carrier availability and such rail cars being in good repair and passing all required tests and inspections to be released (i.e., air brake tests). In no event shall Storage Facility be responsible for any delays caused by carrier unavailability or restrictions, or failure of rail cars to pass all tests or inspections.

6. This Agreement shall be effective on **December 1, 2024** (the "Effective Date") and shall remain in effect until **September 30, 2025**. Upon official documented notification from Spring Creek of official **HWY 82 aggerate project award** to Spring Creek, Notwithstanding the foregoing, this Agreement may be terminated at any time during the Term in accordance with Sections 11 and 12.

7. Storage Facility shall invoice Customer monthly for Storage Facility Services provided during the applicable month. Customer shall pay all invoices by check within ten (10) business days from the date of valid invoice sent to Customer. Payment will be sent to TexAmericas Center Attn: Accounting Department, 107 Chapel Lane, New Boston, Texas 75570. If Customer is required to pay any federal, state, county, local or value-added tax based on the Services provided. Storage Facility shall include such taxes on the invoice and Customer shall be responsible for payment of all such taxes. In all events, Customer shall be responsible for all personal property taxes assessed and owing on all of Customer's rail cars held in storage by Storage Facility. Nothing in this Agreement, however, shall require Customer to pay any property tax on the Facility or any payroll, franchise, corporate, partnership, succession, transfer, income, excise profits or income tax of Storage Facility or Storage Facility's personnel or subcontracts. Neither Storage Facility nor Customer is responsible for taxes on the other party's income or the income of the other party's personnel or subcontractors. Should either party realize that any tax included or omitted as a result of the transactions here under was made in error, the parties shall cooperate to resolve such overpayment or underpayment and to further assist in refunding or charging of any mistaken payments.

8. In the event of any natural disaster (fire, flood, earthquake, tornado, lightning strike, now), war, insurrection, government seizure or requisition, riot, civil disturbance, or unrest (a "Force Majeure Event") which impacts the ability of Storage Facility to provide uninterrupted Services, Storage Facility shall notify Customer promptly upon becoming aware of the occurrence of a Force Majeure Event, and Storage Facility shall furnish Customer a notice describing the particulars of the occurrence, including an estimate of its expected duration and probable impact on the performance of Storage Facility's obligations under this Agreement. After such notice is given, Storage Facility's obligation to provide Services shall be suspended, solely to the extent that the Force Majeure Event prevents or delays the performance by Storage Facility of such Services, for the duration of the Force Majeure Event. In such event, Customer obligation to pay the charges for such Services, to the extent prevented or delayed, shall be suspended for the duration of the Force Majeure Event. Storage Facility shall use all commercially reasonable efforts, and Customer, as applicable, shall provide reasonable cooperation, to end the Force Majeure Event.

9. Customer at its own cost and expense, shall obtain and keep in full force for the Term of this Agreement, and for so long as any rail cars remains at the Facility, all insurance and/or bonds required by law or this Agreement covering its employees and its subcontractors, including the following insurance, which shall be issued by insurers licensed to provide insurance in the jurisdiction where services shall be provided:

- (i) Workers' Compensation with statutory limits as prescribed by the law of the state in which work is performed; and
- (ii) Commercial general liability insurance with a minimum limit of \$3,000,000 per occurrence (\$6,000,000 Aggregate), which shall include the following provisions: insurer shall have the duty to defend, bodily personal injury and property damage coverage, contractual liability coverage, products/completed operations liability coverage, environmental impairment liability insurance, and "all risk" physical liability damage insurance.

Coverage shall be written on an "occurrence" basis: provided that if any coverage is provided on a "claims-made" basis, any retroactive date must precede the effective date of this Agreement and Customer must maintain continuity of coverage for two (2) year following expiration or termination of this Agreement. All such insurance policies shall name Storage Facility "Additional Insured" for any purposes arising or related to this Agreement. Customer shall secure endorsements to this effect from insurers of such policies. Upon execution of this Agreement, Customer shall furnish to Storage Facility certificates of insurance affecting coverage required by this clause. Storage Facility reserves the right to require complete, certified copies of all required insurance policies, at any time. For the duration of the Term and any mutually agreed upon extended period of time, Customer shall provide Storage Facility with Certificates of Insurance prior to each subsequent renewal of the evidenced insurance outlined above. Failure by Storage Facility to review and/or retain a copy of Customer certificate of insurance will not be considered a waiver by Storage Facility of Customer contractual requirement to provide insurance. Customer shall be solely responsible for satisfying any policy

deductibles under all insurance policies required to be maintained hereby. Self-insured retentions shall not be permitted.

10. Customer agrees to indemnify, release, defend and hold harmless Storage Facility and its affiliates, together with their respective directors, officers, employees, agents, representatives, customers, successors and assigns (each, an "indemnitee"), from and against any and all suits, actions, and proceedings, at law or in equity, and from any and all claims, allegations, demands, judgments, liabilities, settlement awards, costs, losses, expenses (including fines and penalties and attorney's fees), liabilities and damages (collectively "Losses"), to which an Indemnitee may become subject (including, without limitations, Losses relating to injury or death of any person or damage, destruction, theft or compromise of any property, real or personal that may have been caused, or that may be alleged to have been caused, directly or indirectly, by Customer, its employee or agents) arising out of, resulting from or in any way connected with (i) any fraud, negligence acts or omissions or willful misconduct of Customer or Customer employees, personnel, contractors or agents (ii) any actions or inactions by Customer or Customer employees, personnel, contractors or agents while at the Storage Facility or while loading or unloading rail cars; or (iii) any breach by Customer of any of the terms, covenants, representations, warranties or other provisions contained in this Agreement.

11. Any party shall have the right, at such party's option, to terminate this Agreement and any or all Purchase Orders outstanding under this Agreement, in each case in whole or in part upon written notice, if a party determines that, with respect to this Agreement or any Purchase Order or any portion thereof.

- (i) any of the other party's representations, warranties, certifications, undertakings or covenants are untrue, not performed or incomplete, as applicable; or
- (ii) the other party has otherwise materially breached this Agreement or the terms of any Purchase Order,

provided, however, that in each case, the terminating party shall first give the other party written notice of the breach and opportunity to cure such breach within thirty (30) days of delivery of such notice. The other party may request to extend the cure period, the terminating party's consent shall not be unreasonably withheld, so long as the other party has commenced a cure within the thirty (30) day cure period and the other party, in terminating party's sole determination, is in good faith diligently pursuing an expeditious cure of the breach.

12. Any party may terminate this Agreement without further notice to the other party if:

- (i) The other party ceases to conduct its operations in the normal course of business, including inability to meet its obligations as they mature; or
- (ii) any proceeding under the bankruptcy or insolvency laws is brought by or against the other party; or

- (iii) a receiver for the other party is appointed or applied for; or
- (iv) an assignment for the benefit of creditors is made by the other party.

13. Upon termination or otherwise resulting from a breach of this Agreement, a party shall have all rights and remedies available against the other party for breach of this Agreement and/or to enforce any obligations set forth in this Agreement. The remedies set forth herein shall be cumulative and in addition to any other remedies provided to a party in law or equity.

14. Customer on the one hand, and Storage Facility, on the other hand, are independent contractors and not partners, joint venturers or agents. Each party's personnel performing services under this Agreement shall remain employees of such party subject to its right of direction, control and discipline and shall neither become employees of the other party nor be entitled to any rights, benefits or privileges of the other party's employees.

15. Customer may not assign, in whole or in part, including by operation of law, this Agreement or any interest herein or therein or any aspect of performance or payment hereunder or thereunder without the prior Written consent of Storage Facility, and any attempt to do so shall be void.

16. This Agreement, with each Purchase Order and such other documents as are expressly contemplated by or incorporated herein by reference, is intended by the parties as a final expression of their agreement and is intended as a complete and exclusive statement of the terms of their agreement. No course of prior dealings or performance between the parties and no usage of the trade shall be relevant to determine the meaning of this Agreement or any Purchase Order even though the accepting or acquiescing party has knowledge of the nature of the performance an opportunity for objection.

17. All provisions or obligations contained in this Agreement, which by their nature or effect are required or are intended to be observed, kept or performed after the termination or expiration of this Agreement will survive and remain binding upon and for the benefit of the parties, their successors (including, without limitation, successors by merger) and permitted assigns including, without limitation, Section 7, section 9, Section 10, and this Section 17.

18. No modification or amendment of or to this Agreement shall be valid unless in writing and signed by the duly authorized officers or representatives of both parties.

19. This Agreement shall be construed and enforced in accordance with, and governed by the substantive laws of the State of Texas, United States of America, without regard to the conflict of laws principles thereof, and all actions arising out of or relating to this Agreement must be brought in Bowie County, State of Texas. The application of the United Nations Convention on the International Sale of Goods is hereby excluded.

20. Except as otherwise provided in this Agreement, any notice, request, acknowledgment or other communication which under a Purchase Order, this Agreement or otherwise must or may be given or made in writing will be given or made in writing by personal

delivery or by recognized overnight courier service or by certified or registered mail or by electronic transmittal (including facsimile and email), in each case addressed to the parties as set forth below unless specifically provided otherwise in the Purchase Order or this Agreement. Such communications will be deemed made or given (i) one (1) Business Day after delivery to a recognized national courier service for "next day" or "overnight" delivery, (ii) in the case of certified or registered mail, ten (10) Business Days after the date of placing the same in the United States mail, postage prepaid (iii) if by electronic transmittal, on the date sent, with confirmation of successful transmission, and (iv) if personal delivery, on the date of such delivery.

If to Customer, to:

Spring Creek Holdings, LLC
P.O. Box 580
Atlanta, Texas 75551
Attn: Michael Stringer
Email: mstringer@springcreekholdingsllc.com

If to Storage Facility, to:

TexAmericas Center
107 Chapel Lane
New Boston, Texas 75570
Attn: Scott Norton
Email: Scott.Norton@TexAmericasCenter.com

21. This Agreement may be executed in counterparts, each of which shall be an original, with the same effect as if the signatures thereto and hereto were on the same instrument. Facsimile and electronic signatures shall have the same effect as original signatures for the purpose of executing this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized respective representatives as of the date and year first written above.

SPRING CREEK HOLDINGS, LLC

By: Michael Stringer
Michael Stringer
Title: President

TEXAMERICAS CENTER

By: Scott Norton
Name: Scott Norton
Title: Executive Director & CEO

**SUPPLEMENTAL ADDENDUM NO. 1
TO
TRANSLOAD SERVICE AGREEMENT**

This Addendum No. 1 is made by and between TexAmericas Center ("Storage Facility") and Spring Creek Holdings, LLC ("Customer") to that certain Transload Service Agreement (the "Agreement") between the Parties dated on or about **November 1, 2024**.

The Agreement is hereby modified as follows:

1. For the **Hwy 82 aggregate project**, with the specific period of time commencing at 12:01 a.m. on the 1st day of **December, 2024** and ending at 11:59 p.m. on the 30th day of **September 2025** Customer may import and export from the Facility rail cars having a maximum total weight of up to but not exceeding 286,000 pounds. This period for heavier rail cars can be extended only by written consent of Storage Facility. Upon official documented notification from Spring Creek of official **Hwy 82** aggregate project award to Spring Creek, this agreement **could** extend to **12/31/25**.
2. Spring Creek to Provide TexAmericas Center with a five to seven day notice of train shipment and arrival.
3. The rates for services provided by Storage Facility for heavier rail cars as provided in this Addendum are as follows:

Loaded Car Movement Fee per Car	\$325.00
Internal Car Movement Fee per Car	\$325.00
Per Car Daily Storage Rate	\$20.00

4. All other terms of the Agreement as modified by this Addendum shall apply to the services provided under this Addendum.

SPRING CREEK HOLDINGS, LLC

By: Michael Stringer
Michael Stringer
Title: President

TEXAMERICAS CENTER

By: Scott Nichols
Name: Scott Nichols
Title: Executive Director & CEO