

**FIRST AMENDMENT TO LEASE AGREEMENT**

**THIS FIRST AMENDMENT TO LEASE AGREEMENT** (this “**Amendment**”) is dated as of the \_\_\_\_ day of April, 2009, by and between **CITY OF MILWAUKEE, DEPARTMENT OF PUBLIC WORKS**, as lessor (“**Lessor**”), and **MILLER COMPRESSING COMPANY**, a Wisconsin corporation, as lessee (“**Lessee**”).

**W I T N E S S E T H :**

**WHEREAS**, Lessor and Lessee are parties to that certain Lease Agreement dated as of October 14, 2003 (the “**Lease**”), pursuant to which Lessee leases from Lessor certain real property commonly known as 4025 West Lincoln Avenue, Milwaukee, Wisconsin, as more particularly set forth in the Lease; and

**WHEREAS**, Lessor and Lessee are also parties to that certain Amended and Restated Contract dated as of October 14, 2003 (the “**Contract**”); and

**WHEREAS**, it is the desire of Lessor and Lessee to amend the Lease as more particularly set forth herein.

**NOW, THEREFORE**, in consideration of the terms and provisions contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, it is agreed as follows:

1. **Definitions.** Any capitalized term used in this Amendment and not otherwise defined herein shall have the meaning ascribed to said term in the Lease unless the context otherwise requires.

2. **Amendments.**

a. **Premises.** Section 1 of the Lease is hereby amended and restated in its entirety to read as follows:

**Premises.** Lessor hereby leases to Lessee, and Lessee hereby accepts from Lessor, those certain parcels of land comprising a total of 121,512 square feet, and identified as the “West Lot” and the “East Lot” on **Exhibit A** attached hereto and made a part hereof, together with all other improvements now or hereafter situated thereon (the “**Premises**”), and commonly known as 4025 West Lincoln Avenue, Milwaukee, Wisconsin, subject to the covenants, terms, provisions and conditions of this Lease.

b. **Term.** The first paragraph of Section 2 of the Lease is hereby amended and restated in its entirety to read as follows:

**Term.** The initial term of this Lease (the “**Term**”) shall commence on October 14, 2003 (the “**Commencement Date**”), and shall end on October 14, 2023 (the “**Expiration Date**”), unless sooner terminated as provided herein. Notwithstanding the foregoing, in the event that the Contract, as may be amended from time to time, is terminated for any reason prior to the expiration

of the Term, this Lease shall similarly terminate as of the date of termination of the Contract.

c. Tenant Improvements. Section 4 of the Lease is hereby amended and restated in its entirety to read as follows:

**Tenant Improvements.**

(A) East Lot. Lessee shall make improvements, at its expense, to the East Lot, including site preparation, grading, asphaltting and fluid collection tanks, so that Lessee may perform the following processes in accordance with all environmental regulations and furnish the labor, equipment, and material necessary for the removal of CFC refrigerants, fuel, fluids, batteries and recycling of tires from those vehicles scheduled for recycling at the East Lot. Lessor shall provide new 200 amp 480 3-phase and 100 amp 120-40 single phase electrical service along the North fence line of the East Lot to the West side of the gate. Lessor shall provide an emergency telephone line to the office trailer on the East Lot and a container for excessive vehicle debris.

(B) West Lot. Subject to the terms of Section 7 of this Lease, prior to Lessee's use of the West Lot for parking vehicles, Lessee, at its expense, shall make improvements to the West Lot as a condition precedent to Lessee's use of same for parking vehicles, including, without limitation, site preparation, grading, landscaping, fencing, drainage and asphaltting work and other improvements as required by permit or applicable regulation.

(C) West Lot MMSD Approval Contingency. Lessor and Lessee acknowledge and agree that the West Lot is subject to an easement in favor of the Milwaukee Metropolitan Sewerage District ("MMSD") and that, as a result, any alterations or improvements to the West Lot will require the prior approval of MMSD. In the event MMSD does not consent to the improvements to the West Lot contemplated by Section 4(B) of the Lease, Lessee shall thereafter have the right to terminate the Lease as to the West Lot only, whereupon the Premises shall consist solely of the East Lot and annual Base Rent shall be reduced by an amount equal to the square footage of the West Lot (which is agreed to be 7,800 square feet) multiplied by Three Thousand Sixty-Six Ten-Thousandths of a Dollar (\$0.3666), or Two Thousand Eight Hundred Fifty-Nine and 48/100ths Dollars (\$2,859.48).

d. Quiet Enjoyment. Section 16 of the Lease is hereby amended and restated in its entirety to read as follows:

**Quiet Enjoyment; Snow Emergency Exception**. Lessor hereby covenants that, so long as Lessee shall duly and punctually perform and observe all of its obligations under this Lease, Lessee shall peaceably and quietly have, hold and enjoy the Premises, subject to the terms, covenants and conditions of this Lease and matters of record or otherwise affecting title, free from hindrance by Lessor. Notwithstanding the foregoing covenant, if a snow emergency is declared by the City of Milwaukee Commissioner of Public Works or other

declared emergencies by City of Milwaukee Officials that affect abandoned automobiles, then (a) Lessee shall be required to vacate that portion of the Premises identified in the original Lease as the Expansion Land within 72 hours, and (b) Lessee shall be allowed to reoccupy such area of the Premises when the additional volume of cars stored at the City's Tow Lot has decreased to the level that the City does not require use of that area for its own purposes. Rent will be abated in proportion to the area of the Premises Lessee is unable to occupy for any such period of time.

d. Exhibit A. **Exhibit A** of the Lease depicting the leased Premises is hereby amended and restated and shall be in the form attached to this Amendment as **Exhibit A.**

e. Exhibit B. **Exhibit B** of the Lease setting forth approved Alterations is hereby amended and restated and shall be in the form attached to this Amendment as **Exhibit B.**

3. **Conflict.** In the event of any conflict between the terms and provisions of this Amendment and the terms and provisions of the Lease, the terms and provisions of this Amendment shall govern, control and prevail.

4. **Ratification of Lease.** Except as hereby amended, the Lease is and shall remain in full force and effect in accordance with its terms.

5. **Counterparts; Facsimile Signatures.** This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same instrument. Facsimile signatures shall be deemed to be originals for all purposes.

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IN WITNESS WHEREOF, the parties have executed this Amendment as of the date first set forth above.

**LESSOR:**

**CITY OF MILWAUKEE,  
DEPARTMENT OF PUBLIC WORKS**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Commissioner

**LESSEE:**

**MILLER COMPRESSING COMPANY,  
a Wisconsin corporation**

By: \_\_\_\_\_

Name: John E. Busby

Title: President

**EXHIBIT A**

Depiction of the Premises

[see attached]

## **EXHIBIT B**

### Approved Alterations

#### **East Lot Only**

1. 5 inches of asphalt with a geomat liner placed in a bermed operating area of the site
2. Site to be graded to control stormwater runoff
3. A lined fluid collection sump system to be installed and piped to aboveground storage tanks
4. Electric lines to be run underground to the operating area
5. Site to be graded in area of steel prefabricated building
6. Construction of a steel prefabricated building
7. Installation of a steel framed fiberglass reinforced structure
8. Installation of a concrete pad for automobile flattener
9. Installation of an eight foot high chain link fence with gate to operating area
10. 24 hour security cameras
11. Landscaping

#### **West Lot Only**

1. 6 inches of asphalt on top of a 6 inch compacted stone base
2. Landscaping as required by permit
3. Drainage as required by applicable regulation and permit
4. Fencing , if applicable for security and safety