

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MODERN MATERIALS SERVICES, INC.
t/d/b/a ARROW MATERIAL SERVICES,

Plaintiff,

v.

SUPERIOR SILICA SANDS, LLC,

Defendant.

CIVIL DIVISION

NO. GD- 19-_____

COMPLAINT IN CIVIL ACTION

Filed on Behalf Of:

**MODERN MATERIALS SERVICES, INC.
t/d/b/a ARROW MATERIAL SERVICES**

COUNSEL OF RECORD FOR THIS PARTY:
James W. Creenan, Esquire
Pa. Id. No. 79213

Creenan & Baczkowski, PC
Town Square Professional Building
Suite 304
3907 Old William Penn Highway
Murrysville, PA 15668
(724) 733-8832

JURY TRIAL DEMANDED

jcreenan@cbattorneys.com

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MODERN MATERIALS SERVICES, INC. CIVIL DIVISION
t/d/b/a ARROW MATERIAL SERVICES,

Plaintiff,

NO. GD-19-_____

v.

SUPERIOR SILICA SANDS, LLC,

Defendant.

NOTICE TO DEFEND

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

LAWYER REFERRAL SERVICE
ALLEGHENY COUNTY BAR ASSOCIATION
11TH FLOOR
KOPPERS BUILDING
436 SEVENTH AVENUE PITTSBURGH, PA 15219
TELEPHONE: (412) 261-5555

IN THE COURT OF COMMON PLEAS OF ALLEGHENY COUNTY, PENNSYLVANIA

MODERN MATERIALS SERVICES, INC. CIVIL DIVISION
t/d/b/a ARROW MATERIAL SERVICES,

Plaintiff,

NO. GD-19-_____

v.

SUPERIOR SILICA SANDS, LLC,

Defendant.

COMPLAINT IN CIVIL ACTION

AND NOW COMES the Plaintiff, MODERN MATERIAL SERVICES, INC., t/d/b/a ARROW MATERIAL SERVICES, by and through its attorneys, Creenan & Baczkowski, PC, and James W. Creenan, Esquire, and files the following Complaint in Civil Action against the Defendant, SUPERIOR SILICA SANDS, LLC, and in support thereof avers as follows:

1. Plaintiff is Modern Materials Services, Inc. d/b/a Arrow Material Services (“Arrow”), a Pennsylvania corporation located at 2605 Nicholson Road, Sewickley, Pennsylvania 15143.
2. Arrow controls and operates materials transloading facilities.
3. Defendant is Superior Silica Sands, LLC, is a Delaware limited liability company with a principal place of business at 600 WESTERN PLACE, SUITE 465, FORT WORTH, TX 76107-4687. Superior is wholly owned by Emerge Energy Services, LP a Delaware Limited Partnership with a principal place of business at 5600 Clearfork Main Street, Fort Worth Texas 76109 and/or Emerge Energy Services Operating, LLC, a Delaware limited liability company with a registered office at 1400 Civic Place, Suite 250, Southlake Texas, 76092.

4. Jurisdiction and venue are proper in Allegheny County, Pennsylvania based on Arrow's contacts with this Commonwealth, its actions in transacting and conducting business, and causing harm in this jurisdiction, as well as one or more transactions or occurrences took place out of which this cause of action arose.

5. Defendant produces, sells, and distributes sand products ("Sand Product") throughout the United States, including sand used in frac operations across this Commonwealth.

6. This claim arises out of Defendant's failure to honor the performance and payment obligations under a written agreement between the parties as set forth herein.

7. As a result of Superior's breaches of the Agreement, Superior is liable to Arrow in an amount in excess of \$ \$24,909,410.73.

8. On January 1, 2015, the Parties entered into a "Transload Facility Management, Warehousing and Transportation Agreement" for transload services of Sand Product (the "Agreement"). A true and correct copy of the Agreement is attached hereto as **Exhibit 1**.

9. The Agreement required Arrow to manage and operate Arrow's San Antonio TX Storage and Transloading Facility, also known as the "Alamo Junction Transload Facility".

10. Pursuant to the terms of the Agreement, Superior committed to transload a volume of 250,000 tons of Sand Product per year, at the rate of \$8.00 per ton using Building 1 and further committed to transload a volume of 120,000 tons of Sand Product per year, at the rate of \$8.00 per ton using Building 2. *See* **Exhibit 1**, Addendum "A".

11. Pursuant to the terms of the Agreement, Superior further committed to reimburse and pay Arrow monthly Base Rent, Expense, and Additional Rental Expenses for the Alamo Junction Transload Facility pursuant to an annual Schedule. *See* **Exhibit 1**, 2.1.3 and Addendum "B".

12. In order for Arrow to perform under the Agreement, with Superior's knowledge and assent, Arrow entered into lease with the property owner of the Alamo Junction Transload Facility.

13. The Agreement obligated Superior to these financial terms for a ten (10) year term.

14. The Agreement has not been terminated.

15. The Agreement specifies the application of Texas law to matters controlling this dispute.

16. Superior has failed and refused to pay Arrow's invoiced sums totaling \$389,578.77, further entitling Arrow to prejudgment interest, including all or part of the following invoices set forth on the attached trial balance report:

- a. Invoice 72422;
- b. Invoice 72519;
- c. Invoice 72520;
- d. Invoice 72527;
- e. Invoice 72693;
- f. Invoice 72817;
- g. Invoice 72821;
- h. Invoice 72822;
- i. Invoice 72843;
- j. Invoice 72844;
- k. Invoice 72864; and,
- l. Invoice 72899.

See, Exhibit 2.

17. To date, Superior has failed to pay to Arrow the minimum tonnage rates per Schedule A and the rental obligations per Schedule B as follows:

- a. Annual Minimum Tonnage of \$2,960,000.00 for a total remaining AMT obligation of \$17,760,000.00; and,
- b. Remaining Rental Obligations of \$6,759,831.96.

18. Superior has further willfully breached this agreement and has stated its intent to refuse to honor the financial terms of the Agreement.

19. In addition to the contractual damages recoverable under the Agreement, Texas law affords Arrow the right to recover as damages its legal fees and costs resulting from Superior's breach of its obligations.

20. Upon information and belief, Superior has in its possession each of the writings that form the basis for these claims.

COUNT I
BREACH OF CONTRACT
MODERN MATERIAL SERVICES, INC.,
t/d/b/a ARROW MATERIAL SERVICES
v.
SUPERIOR SILICA SANDS, LLC

21. Arrow incorporates each of the preceding averments as if set forth at length herein.
22. The Agreement and its terms are valid, enforceable and binding on Superior.
23. Superior has no defense to the non-payment of the amounts due to Arrow.
24. To date, Superior has failed to pay Arrow the sum of \$389,578.77.
25. As a result of Superior's statement that it will not pay Arrow, Arrow should be awarded all sums due on the remaining term of the Agreement as follows:

- a. Annual Minimum Tonnage of \$2,960,000.00 for a total remaining AMT obligation of \$17,760,000.00; and,
 - b. Remaining Rental Obligations of \$6,759,831.96.
26. As a result of the breach, Arrow is entitled to recover the following sums:
- a. Remaining transloading obligations for Building 1;
 - b. Remaining transloading obligations for Building 2;
 - c. Remaining Base Rent;
 - d. Remaining Rental Expenses;
 - e. Remaining Additional Rental Expenses;
 - f. Attorney Fees;
 - g. Costs.

WHEREFORE, Plaintiff Modern Material Services, Inc., t/d/b/a Arrow Material Services, respectfully demands judgment be entered against Defendant Superior Silica Sands, LLC, in an amount in excess of this Honorable Court's compulsory jurisdiction limits, for the amounts pled herein, plus its costs, prejudgment interest, exemplary damages, and such other relief as this Honorable Court deems fair and just.

Respectfully submitted,

CREENAN & BACZKOWSKI, PC

By: 

James W. Creenan
Attorney for Plaintiff
Pa. ID. No. 79213

TRANSLOAD FACILITY MANAGEMENT, WAREHOUSING AND TRANSPORTATION AGREEMENT

This TRANSLOAD FACILITY MANAGEMENT, WAREHOUSING AND TRANSPORTATION AGREEMENT (this "Agreement") is entered into effective as of the 1st day of January, 2015 (the "Effective Date"), by and between Superior Silica Sands LLC and Modern Materials Services, Inc., a Pennsylvania corporation doing business as Arrow Material Services. ("Arrow").

WHEREAS, Superior Silica Sands produces, sells and distributes sand products (collectively, the "Sand Product");

WHEREAS, Arrow controls and has the expertise to operate a storage and transloading facility in San Antonio, TX; and

WHEREAS, Superior Silica Sands desires to contract with Arrow to manage and operate Arrow's San Antonio, TX Storage and Transloading Facility ("Alamo Junction Transload Facility") and Arrow desires to contract with Superior Silica Sands to manage and operate the Alamo Junction Transload Facility; and

NOW, THEREFORE, Superior Silica Sands and Arrow desire to enter into an agreement defining their respective rights, duties and liabilities relating to the management of the Alamo Junction Transload Facility and transportation of the Sand Product all on the following terms and conditions;

1. RELATIONSHIP OF THE PARTIES

1.1 General. By this Agreement Superior Silica Sands employs Arrow to perform the duties set forth in Section 3. Arrow shall perform its duties under this Agreement using its best skill and prudent business judgment in the most expeditious and economical manner consistent with the interests of Superior Silica Sands. Arrow agrees that during the term of this Agreement, Arrow shall not, and shall not authorize or permit any of its directors, officers, employees, agents and other representatives or any third party to, directly or indirectly, without Superior Silica Sands' prior written consent use the Premises (as defined in the Lease (as defined below)) for any purpose other than to provide the Services (as defined below) to Superior Silica Sands.

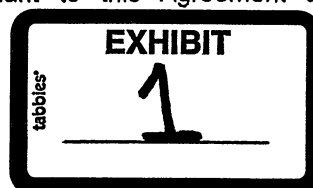
1.2 Independent Contractor. Anything in this Agreement to the contrary notwithstanding: (a) the relationship of Arrow to Superior Silica Sands shall be and remain that of independent contractor; (b) no agent, employee or servant of Arrow shall be the agent, employee or servant of Superior Silica Sands; (c) except as otherwise provided herein, Arrow shall have sole direction and responsibility for Arrow's agents, employees and servants; (d) nothing contained in this Agreement is intended to create a partnership or joint venture between Superior Silica Sands and Arrow; and (e) any action taken by Arrow which is not permitted by and pursuant to the express provisions of the this Agreement shall not bind Superior Silica Sands, and Arrow covenants not to take any action in the name of, or by holding itself out as the agent of Superior Silica Sands except as expressly authorized by this Agreement.

1.3 Bailee/Bailor. Arrow may from time to time hold Sand Product or other items owned by Superior Silica Sands (collectively, the "Products") as well as bills of lading, railcar tickets, and other shipment documents and documents of title relating to the Sand Product (collectively, the "Documents"). Arrow confirms and agrees that shall possess such Products and Documents only as a bailee and it holds no right or title to and claims no interest in the Products, Documents, or any proceeds thereof.

2. DUTIES OF Superior Silica Sands

2.1 Compensation of Arrow:

2.1.1 Transloading Charges. Superior Silica Sands shall pay to Arrow for all Sand Product transloaded pursuant to this Agreement and the Pricing Schedule detailed in



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Addendum "A" attached hereto and incorporated herein by reference. Superior Silica Sands will pay all valid invoices within 30 days from the date of receipt of the invoice and supporting detail. Any invoice not paid when due shall bear interest at the rate of 10% per annum. The parties agree that there will be no right of set off for any disputed charges

- 2.1.2 Extra Service Charges. Shall be negotiated prior to the services being provided and will be agreed upon by the parties in writing. In the event that services are provided that have not been agreed to in writing the parties agree that Arrow will be compensated at a rate that is prevailing in the market place.
- 2.1.3 Additional Rental Expenses. Superior Silica Sands agrees to reimburse Arrow for the Base Rent and all Expenses (as both terms are defined in that certain Lease Agreement (the "Lease"), dated as of even date herewith, between Arrow and Rail Logix Alamo Junction, LLC ("Landlord")) actually paid to Landlord, not to exceed the Base Rent and Expenses set forth on Addendum "B" attached hereto and incorporated herein by reference; provided, that Superior Silica Sands shall not be required to reimburse Arrow for any late fees, fines, penalties, interest or other charges incurred by Arrow due to Arrow's failure to comply with the terms of the Lease.

3. AUTHORITY AND DUTIES OF ARROW

3.1 Operation of the Alamo Junction Transload Facility

- 3.1.1 General. Arrow shall receive railcars and trucks containing Sand Product and shall provide transloading, storage and other services for the Sand Product as described herein (collectively, the "Services").
- 3.1.2 Hours of Operation. Arrow shall provide the Services twenty-four (24) hours per day, seven (7) days per week, 365 days per year as needed by Superior Silica Sands.
- 3.1.3 Inspection. Arrow shall inspect the railcars or trucks containing the Sand Product upon receipt and shall immediately notify Superior Silica Sands and the delivering carrier of any damage to or irregularities in the shipment. Leaking railcars indicating loss of Sand Product will be identified to Superior Silica Sands immediately upon discovering defective railcar or loss of any Sand Product.
- 3.1.4 Scales; Measurements. Arrow shall provide and utilize certified scales or other suitable equipment capable of accurately measuring the weight, volume or other appropriate measurement of the Sand Product unloaded from railcars or trucks and loaded from storage to truck. All scales utilized by Arrow shall have a controller system capable of integration into programmable logic controllers and other digital interfaces. Arrow shall, at its sole cost and expense: (i) ensure that such scales and equipment remain in good working order and are properly calibrated within applicable state and federal specifications and (ii) maintain and keep such scales and equipment in good repair.
- 3.1.5 Delivery, Unloading and Handling of Railcars. A railcar shall be deemed delivered and in Arrow's custody, control, and possession when it has been constructively placed within the Alamo Junction Transload Facility. Arrow shall unload each railcar within the time period prescribed by the delivering railroad but in no event shall such period of time exceed forty-eight (48) hours from the time of constructive placement of such railcar at the Alamo Junction Transload Facility by the delivering railroad. For purposes of this Agreement, a railcar shall be considered constructively placed within the Alamo Junction Transload Facility when it is delivered by the delivering railroad, regardless of whether Arrow has actually accepted such railcar from the delivering railroad. Following delivery of a railcar to, Arrow shall coordinate the unloading and switching of

such railcar until the railcar is released by Arrow to Superior Silica Sands or the local railroad service provider.

- 3.1.6 Unloading and Loading of Trucks: Arrow agrees to accept delivery of trucks at the Alamo Junction Transload Facility immediately upon arrival, and shall have a period of forty-five (45) minutes to coordinate the unloading of such trucks owned, leased or contracted for by Superior Silica Sands, its designees or customers into storage ("Unloading Time"). Where more than one truck is delivered to and is scheduled to be unloaded by Arrow consecutively, the Unloading Time shall commence from the time the truck is parked in the unloading zone, as designated by signage at the Alamo Junction Transload Facility, and shall end when the truck is unloaded and exits the unloading zone. Arrow shall have a period of forty-five (45) minutes to coordinate the loading of trucks owned, leased or contracted for by Superior Silica Sands, its designees or customers ("Loading Time"). Where more than one truck is delivered to and they are scheduled to be loaded by Arrow consecutively, the Loading Time for each truck shall commence from the time the truck is parked in the loading zone, as designated by signage at the Alamo Junction Transload Facility, and shall end when the truck is loaded and exits the loading zone.
- 3.1.7 Personnel, Equipment, Tools, Maintenance and Repair: Arrow will provide sufficient personnel with appropriate qualifications, equipment and tools necessary to perform the Services.
- 3.1.8 Bills of Lading: Arrow shall prepare and transmit all (i) bills of lading, (ii) loaded truck scale tickets and (iii) other shipping papers in connection with the performance of the Services as Superior Silica Sands may reasonably specify from time to time using Superior Silica Sands' internal terminal shipment software. Arrow shall keep all records relating to Superior Silica Sands' inventories for a period of at least two (2) years. Superior Silica Sands shall have the right at any reasonable time to inspect and copy the books and account records of Arrow relating to the Services. Bills of lading and receipts shall be input into Superior Silica Sands' internal terminal shipment software or otherwise made available electronically to Superior Silica Sands (as directed by Superior Silica Sands) by no later than 12:00 p.m. Central Time on the business day (Monday through Friday) following the date of shipment of any Sand Product.
- 3.1.9 Sand Storage: Arrow shall make available and provide to Superior Silica Sands at all times storage space for the Sand Product at the Alamo Junction Transload Facility ("Product Storage Space"). Arrow shall maintain all Product Storage Space in a manner sufficient to service Superior Silica Sands' requirements as set forth herein. It is further understood and agreed that Arrow shall provide Superior Silica Sands with segregated storage for each grade of Sand Product. No grade or type of Sand Product shall be comingled with any other grade or type of Sand Product without the prior written consent of Superior Silica Sands.
- 3.1.10 Railcar Storage: Upon arrival at the Alamo Junction Transload Facility, Arrow shall store railroad cars at the sidetrack facility pending unloading. Arrow shall at all times provide storage space for a minimum of 135 Superior Silica Sands controlled railcars at the Alamo Junction Transload Facility. Once a railcar has been emptied it shall be removed from the facility. Empty railcars shall not be used for the storage of Sand Product without the prior written consent of the Operator's management.
- 3.1.11 Shrinkage: Arrow shall be responsible for shrinkage in Superior Silica Sands' inventory located at the Alamo Junction Transload Facility if such shrinkage is caused by Arrow or its agents. Arrow shall unload every railcar completely. Arrow shall weigh all Sand Product on its belt scale (i) upon the unloading of such Sand Product and (ii) at truck load out. Arrow shall also have the capability to measure the weight of Sand Product in storage. If Arrow determines, based on the weight of the Sand Product set out on the

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bill of lading for a railcar and the weight of the Sand Product measured by Arrow's belt scale upon unloading such railcar, that there is a weight loss due to defective rail equipment, it shall notify Superior Silica Sands in writing within 24 hours of becoming aware of such problem. Arrow shall be responsible for Shrinkage exceeding one (1%) percent and shall pay to Superior Silica Sands within thirty (30) days of the end each calendar quarter an amount equal to market value for the grade(s) of Sand Product subject to such Shrinkage. For purposes of this Agreement the term "Shrinkage" shall mean the difference between the weight of the Product measured by Arrow's belt scale upon unloading the Product and the weight of the Product measured by Arrow's belt at truck load out minus the weight of the Sand Product remaining in storage. Arrow shall provide all documentation reasonable required to support calculation of the quarterly Shrinkage.

3.1.12 Contamination. After accepting any railcar or Sand Product delivered to the Alamo Junction Transload Facility by or on behalf of Superior Silica Sands, its affiliates or designees, Arrow shall be responsible for storing and maintaining such railcar or Sand Product until such time as the railcar or Sand Product has been transferred to Superior Silica Sands or its designees or customers. Arrow shall take prudent measures to provide proper security for the Sand Product while such Sand Product is in the custody, possession or control of Arrow or while such Sand Product is on the property of Arrow. Arrow shall not cause or permit the contamination (including, without limitation, any cross contamination between different grades of Sand Product) of any Sand Product at any time while such Sand Product is located at the Alamo Junction Transload Facility or otherwise in the custody, possession or control of Arrow. Arrow shall maintain an auditable outgoing product sampling program reasonably acceptable to Superior Silica Sands for the purpose of validating and ensuring that contamination of Sand Product at the Alamo Junction Transload Facility has not occurred. The sampling program shall at all-times represent a minimum period of 60 days Alamo Junction Transload Facility activity. Absent Arrow's negligence or willful misconduct, in no event shall Arrow be responsible for any costs, expenses, delays, demurrage, charges, fees or damages resulting from or related to contamination of any Sand Product at the Alamo Junction Transload Facility.

3.1.13 Inventory Statement: Arrow shall provide an inventory statement (the "Inventory Statement") to Superior Silica Sands reflecting the following (as applicable): (i) total tons (of each Sand Product shipped from the Alamo Junction Transload Facility, grade of Sand Product (if applicable), purchase order number, trucking company name, truck number or driver's full name, destination city and state, consignee, and date; (ii) total tons of each Sand Product unloaded at the Alamo Junction Transload Facility, railcar numbers, and date; and (iii) total tons of each Sand Product in storage at each Facility. The Inventory Statements shall be faxed, emailed, or otherwise made available electronically to Customer by no later than 12:00 p.m. Central Time on the business day (Monday through Friday) following the receipt or shipment, as applicable, of any Sand Product.

3.2 Insurance.

3.2.1 Coverage. Arrow shall procure, pay for and maintain throughout the term of this Agreement the following types of insurance in the amounts specified below:

General Liability - Commercial Form	\$2,000,000/minimum
Automotive Liability covering all owned, hired and non-owned vehicles	\$1,000,000/minimum

Workers' compensation

- Benefits

Set by State Law

- Employer's Liability

\$1,000,000/minimum

- 3.2.2 Proof of Insurance. Arrow shall provide certificate of insurance to Superior Silica Sands upon the execution of this Agreement and, at any time after the date hereof, within thirty (30) days after Arrow receives a written request from Superior Silica Sands for proof of insurance.
- 3.4.1 Waiver of Subrogation. Arrow will obtain a waiver of subrogation on the general liability, auto liability, and cargo liability insurance and Arrow waives its rights of recovery against Superior Silica Sands for injury or loss due to hazards covered by such insurance. Such waivers of subrogation shall release Superior Silica Sands from any claims by the applicable insurers. The existence of such waiver, clause or endorsement, shall be noted in the certificate of insurance delivered to Superior Silica Sands pursuant to Section 3.4.
- 3.3 Delays; Demurrage. Arrow shall be responsible for all demurrage and private lease car storage charges incurred by Arrow or Superior Silica Sands from the delivering railroad to the extent caused by Arrows failure to fulfill its obligations hereunder. Notwithstanding the foregoing, in no event shall Arrow be responsible for any demurrage or private lease car storage to the extent such charges are caused by any failure by Superior Silica Sands to fulfill its obligations under this Agreement or by the actions or inactions of the delivering railroad or any purchaser of Sand Product (other than Arrow and its affiliates).
- 3.4 Title to Sand Product; Liens. Title to all Sand Product shall at all times remain with Superior Silica Sands or its designees until such time as title passes to a purchaser of the Sand Product. Arrow shall not permit any liens whatsoever to attach to the Sand Product or any of Superior Silica Sands' equipment, whether owned, leased or otherwise contracted for by Superior Silica Sands.
- 3.5 3.5 Indemnity and Exculpation. Arrow shall defend, indemnify, hold harmless, and render whole Superior Silica Sands, its subsidiaries and affiliates, and their respective officers, directors, employees and agents, from and against any and all loss, damage, liability, cost or expense (including, but not limited to, reasonable attorneys' fees and expenses incurred in defense of Superior Silica Sands, its officers, directors, employees and/or agents) incurred or suffered by Superior Silica Sands, its subsidiaries and affiliates, and their respective officers, directors, employees and agents, as a result of any claim, demand, suit or cause of action of any kind, including, but not limited to claims for personal injury, bodily injury, illness or death or the loss of or damage to real or personal property arising out of, or resulting from, directly or indirectly, a breach of this Agreement by Arrow or a wrongful or negligent act or omission by Arrow, its employees, agents, or invitees; except to the extent that such loss, damage, liability, cost or expense is caused by the negligence of Superior Silica Sands or its employees or agents. Superior Silica Sands agrees that nothing in this Agreement shall be construed to make Arrow liable for any environmental contamination on the property or facility, except to the extent caused by Arrow, its employees, agents, or invitees. Notwithstanding anything herein to the contrary, Superior Silica Sands hereby waives and specifically disclaims any right to special, incidental, consequential or indirect damages (including, but not limited to, lost profits, costs of administration and/or overhead) pursuant to the foregoing indemnity obligation or otherwise in relation to any breach of this Agreement, whether sounding in contract, warranty or tort (including, but not limited to, negligence) and whether or not Arrow has been informed of the potential for such damages.
- 3.6 Books and Records.
- 3.6.1 Accounting. Arrow shall maintain detailed and accurate records of shipments to and from the Alamo Junction Transload Facility in accordance with this Agreement. Such records shall be and remain the exclusive properties of Superior Silica Sands and may

be inspected and/or copied by Superior Silica Sands, or its designated representative, at the office of Arrow at any time during normal business hours.

3.6.2 Inspection Rights. Superior Silica Sands shall have the right to inspect the Alamo Junction Transload Facility as needed and at Superior Silica Sands' discretion during normal business hours upon reasonable prior notice.

4. NOTICES. All notices, requests, demands and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, given by facsimile or other similar instantaneous electronic transmission device (provided that the transmitting device used by the party provides documentary confirmation of receipt) or by overnight delivery services, as follows:

(a) If to Superior Silica Sands, at:
Superior Silica Sands LLC
6000 Western Place, Suite 465
Fort Worth, TX 76107
Attention: Shane Summers
817-841-8087

(b) If to Arrow, at:
Arrow Material Services
2605 Nicholson Road
Sewickley, PA 15143
Attention: Tim Chutz
Facsimile No.: 412 489 4779

Provided that any party may change its address for notice by giving to the other party written notice of such change. Any notice given under this Paragraph 4 shall be effective (i) if delivered personally, when delivered, (ii) if sent by facsimile or other similar instantaneous electronic transmission device, 24 hours after sending and (iii) if mailed, 24 hour overnight delivery service.

5. TERM:

(a) This Agreement shall become effective as of the date hereof and shall continue in effect for a period of ten (10) years from the date hereof (the "Initial Term"). Subject to the provisions contained herein, this Agreement shall automatically be renewed for successive one (1) year periods unless terminated at the end of the Initial Term or any succeeding renewal term by either party by giving at least a ninety (90) days written notice thereof to the other party.

(b) During the period of time between the fifth anniversary of the Effective Date and the tenth anniversary of the Effective Date, Superior Silica Sands may terminate this Agreement for its convenience by giving at least ninety (90) days written notice thereof to Arrow. In the event Superior Silica Sands terminates this Agreement as set forth above, Superior Silica Sands agrees to continue to pay Arrow the Base Rent and Expenses as set forth in Section 2.1.3 until the expiration of the Initial Term; provided, that if Arrow utilizes, or permits any other party to utilize, the Premises (as defined in the Lease) during the time that Superior Silica Sands is paying the Base Rent and Expenses, then such Base Rent and Expenses shall be equitably reduced based on Arrow's, or such third party's use.

(c) Either party may terminate this Agreement at any time upon written notice to the other party if: (a) the other party becomes insolvent, makes an assignment for the benefit of creditors, or a bankruptcy petition is filed by or against it (provided, that if a bankruptcy petition is involuntarily filed, this Agreement may not be terminated unless such petition is released with ninety (90) days after the filing thereof), or a receiver is appointed; or (b) the other party fails in whole or in part to perform its obligations as herein provided, and such failure remains unremedied for fifteen (15) days following notice given to the party in default; or (c) any of the representations and warranties of a party were not true at the time this Agreement was executed or were subsequently breached by the other party.

(d) In the event of termination of this Agreement, the parties agree that Superior Silica Sands will not solicit any Arrow employees with the purpose of hiring them and further will not offer any employment opportunities to any Arrow employees for a period of one year.

7. GOVERNING LAW; SEVERABILITY; WAIVER OF JURY TRIAL.

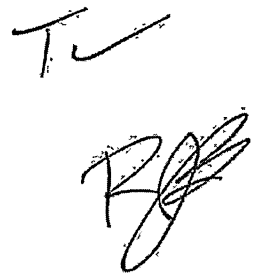
(a) This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas, without regard to its conflict of laws principles. Should any provision of this Agreement be held unenforceable or invalid under the laws of the United States of America or the State of Texas, or under any other applicable laws of any other jurisdiction, then the parties hereto agree that such provision shall be deemed modified for purposes of performance of this Agreement in such jurisdiction to the extent necessary to render it lawful and enforceable, or if such a modification is not possible without materially altering the intention of the parties hereto, then such provision shall be severed herefrom for purposes of performance of this Agreement in such jurisdiction. The validity of the remaining provisions of this Agreement shall not be affected by any such modification or severance, except that if any severance materially alters the intentions of the parties hereto as expressed herein (a modification being permitted only if there is no material alteration), then the parties hereto shall use their best reasonable efforts to agree to appropriate equitable amendments to this Agreement in light of such severance, and if no such agreement can be reached within a reasonable time, any party hereto may seek any remedies available by law.

(b) EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN ANY ACTION, SUIT OR PROCEEDING RELATING TO A DISPUTE ARISING OUT OF OR RELATING TO THIS AGREEMENT AND FOR ANY COUNTERCLAIM WITH RESPECT THERETO. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS PARAGRAPH 7(B).

8. ENTIRE AGREEMENT. This Agreement sets forth the entire agreement and understanding of the parties hereto with respect to the transactions contemplated hereby, and supersedes all prior agreements, arrangements and understandings related to the subject matter hereof. No representation, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party hereto shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. For the avoidance of doubt, the parties hereto agree that certain Transload Facility Management and Transportation Agreement, dated as of February 1, 2014, by and between the parties hereto, is hereby terminated and superseded by this Agreement.
9. FORCE MAJEURE. If either party shall be prevented or delayed from performing any of the obligations on its part to be performed hereunder by reasons of acts of God, strike, lockout, or other labor disruption, fire, flood, war, insurrection or mob violence or requirement or regulation of any government, including any complete or partial road ban, unavoidable casualty, collision or upset or other matter beyond the reasonable control of such party then, and in any such event any failure to perform shall not be deemed a breach of this Agreement, and performance of the aforesaid obligations of the parties under this Agreement shall be suspended during the period of such disability. The party affected by any of the foregoing events shall promptly give written notice of such force majeure event to the other party and take all commercially reasonable steps to overcome the effects of the events which brought about the application of this clause or to mitigate the effects thereof. If a force majeure event materially affects the performance by either party of its obligations hereunder and lasts for forty-five days or more following receipt of notice of such force majeure event by the non-affected party, the non-affected party may terminate this Agreement immediately upon written notice to the affected party. Nothing herein contained in this paragraph shall be deemed to relieve Superior Silica Sands of its obligations to pay any outstanding invoices or statements properly issued by Arrow as hereinbefore provided.

10. SUCCESSORS AND ASSIGNS. All the terms, provisions, covenants and conditions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors and assigns.
11. ASSIGNMENT AND DELEGATION. Except as specifically permitted herein, this Agreement and the rights and obligations of the parties hereto shall not be assigned or delegated by either party hereto without the prior written consent of the other party hereto.
12. AMENDMENTS. This Agreement may be amended, modified, superseded or canceled, and any of the terms, provisions, representations, warranties, covenants or conditions hereof may be waived, only by a written instrument executed by all parties hereto, or, in the case of a waiver, by the party waiving compliance. The failure of any party at any time or times to require performance of any provision hereof shall in no manner affect the right to enforce the same. No waiver by any party of any condition contained in this Agreement, or of the breach of any term, provision, representation, warranty or covenant contained in this Agreement, in any one or more instances, shall be deemed to be or construed as a further or continuing waiver of any such condition or breach, or as a waiver of any other condition or of the breach of any other term, provision, representation, warranty or covenant.
13. EXECUTION IN COUNTERPART. This Agreement may be executed simultaneously in two or more counterparts, including by means of facsimile or portable document format (.pdf), each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement shall be binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of the parties reflected hereon as signatories.
14. SILICA WARNING. Superior Silica Sands' products contain respirable crystalline silica, which is considered by some sources to be a cause of cancer. Breathing excessive amounts of respirable silica dust can also cause a disabling and potentially fatal lung disease called silicosis, and has been linked by some sources with other diseases. During transportation, use, clean-up or handling, follow all NIOSH and MSHA procedures and recommended practices, including wearing properly-fitted, NIOSH-approved or MSHA-approved air supplied protective equipment in accordance with applicable government regulations and manufacturer instructions. For further information, refer to the appropriate Material Safety Data Sheet, a copy of which is available from Superior Silica Sands upon request. Arrow hereby accepts all responsibility to maintain a safe work environment, warn, notify, train and provide all necessary and appropriate NIOSH/MSHA-approved protective equipment to all persons handling or in the presence of Superior Silica Sands products, and enforce the requirement that NIOSH/MSHA-approved protective equipment be used when handling the product.

[Signature page follows.]



IN WITNESS WHEREOF, the parties have executed this Agreement as of the 1st day of January, 2015.

Superior Silica Sands LLC:

By: Richard J. Shearer
Name: RICHARD J. SHEARER
Title: PRESIDENT & CEO

Modern Materials Services, Inc. d/b/a
Arrow Material Services

By: Jim Clutz
Name: Jim Clutz
Title: President

ADDENDUM "A"
PRICING SCHEDULE

Transload Proposal Building 1:

- Volume Commitment: 250,000 tons per year
- Transload Rate Inbound: \$5.00/ton
- Transload Rate Outbound: \$3.00/ton
- Volume incentive rate: \$4.00/ton for all tons through the building >250,000 (The volume incentive rate will be invoiced at \$4.00 inbound , \$0.00 outbound.)

Transload Proposal Building 2:

- Volume Commitment: 120,000 tons per year
- Transload Rate Inbound: \$5.00/ton
- Transload Rate Outbound: \$3.00/ton
- Volume incentive rate: \$4.00/ton for all tons through the building >120,000 (The volume incentive rate will be invoiced at \$4.00 inbound , \$0.00 outbound.)

ADDENDUM "B"

BASE RENT AND EXPENSES

Base Rent:

<u>Lease Months</u>	<u>Monthly Installment of Base Rent</u>
1 - 12	\$82,500.00
13 - 24	\$84,150.00
25 - 36	\$85,833.00
37 - 48	\$87,549.66
49 - 60	\$89,300.65
61 - 72	\$91,086.67
73 - 84	\$92,908.40
85 - 96	\$94,766.57
97 - 108	\$96,661.90
109 - 120	\$98,595.14

Expenses:

Expenses shall not exceed seven cents (\$.07) per rentable square foot of the Premises,

TC
[Signature]

DETAIL HISTORICAL AGED TRIAL BALANCE

Modern Material Services
Receivables Management

Ranges: Customer ID: SUPERIOR SILICA - SUPERIOR SILICA User-Defined 1: First - Last First - Last First - Last State: Telephone: First - Last
Customer Class: First - Last Short Name: First - Last First - Last Telephone: First - Last
Salesperson ID: First - Last Posting Date: First - 3/14/2019
Sales Territory: First - Last Customer: by Class ID Document: by Document Number

Account Type: All
Aging Date: 3/14/2019
Print Currency In: Functional (Z-US\$)
Exclude: Zero Balance, No Activity, Fully Paid Documents, Unposted Applied Credit Documents, Multicurrency Info

* - Indicates an unposted credit document that has been applied.

Document Number	Type	Date	Amount	Discount	Writeoff	Current	31 - 60 Days	61 - 90 Days	91 and Over	Account Type	Open Item
72422	SLS	12/1/2018	\$99,965.73						\$99,965.73	Unlimited	
PYMNT009334		2/20/2019							(\$13,790.23)		
PYMNT009367		3/1/2019							(\$75,000.00)		
72519	SLS	12/8/2018	\$25,355.75						\$25,355.75		
72520	SLS	12/15/2018	\$9,222.50					\$9,222.50			
72527	SLS	1/1/2019	\$99,965.73					\$99,965.73			
72693	SLS	2/1/2019	\$99,965.73				\$99,965.73				
72817	SLS	2/9/2019	\$11,312.94				\$11,312.94				
72821	SLS	2/16/2019	\$10,405.26			\$10,405.26					
72822	SLS	2/16/2019	\$6,462.96			\$6,462.96					
72843	SLS	2/23/2019	\$7,461.69			\$7,461.69					
72844	SLS	2/23/2019	\$9,209.55			\$9,209.55					
72864	SLS	3/1/2019	\$101,682.39			\$101,682.39					
72899	SLS	2/28/2019	\$10,936.02			\$10,936.02					
PYMNT006035	PMT	10/21/2016	(\$19,237.71)						(\$9,313.08)		
PYMNT007697	PMT	1/15/2018	(\$88,484.24)						(\$4,264.17)		
Totals:						\$146,157.87	\$111,278.67	\$109,188.23	\$22,954.00		\$389,578.77

Customer(s)	1	Current	31 - 60 Days	61 - 90 Days	91 and Over	Balance
Grand Totals:		\$146,157.87	\$111,278.67	\$109,188.23	\$22,954.00	\$389,578.77



VERIFICATION

I have read the foregoing Complaint in Civil Action and verify that the statements contained therein are true to the best of my knowledge, information, and belief. I further verify that I am authorized to make this Verification on behalf of Plaintiff. This statement is made subject to the penalties of 18 Pa. C.S.A. Section 4904 relating to unsworn falsification to authorities.

MODERN MATERIALS SERVICES, INC. t/d/b/a
ARROW MATERIAL SERVICES,

Date: 3-27-19

By:



Signature

Brian Ward

Print Name

CEO

Title