



Weber County Community & Economic Development Department

Date: October 24, 2017

To: Weber County Board of County Commissioners

From: Sean Wilkinson, AICP 
Department Director, Community & Economic Development

Agenda Date: October 31, 2017

Subject: **Request for Approval of a Lease Agreement by and between Weber County and Summers & Summers LLC and Western Landscaping, Co.**

Documents: Exhibit A - Leased Property Boundary
Exhibit B - Draft Lease Agreement

Weber County has leased property west of the Ogden Valley Road Shop to Summers & Summers LLC since 2007 (Contract 2007-167). The most recent agreement was approved in 2013 and expired in June 2017. Prior to expiration of the agreement, Curt Summers approached the County about entering into a new lease agreement and bringing on an additional tenant, Western Landscaping, Co. A month to month lease option contained in the agreement has been in place while the new agreement was prepared. The new lease term would run from November 1, 2017 to October 31, 2018 with the option for three additional one year renewals (through October 2021).

The draft agreement lists both Summers & Summers LLC and Western Landscaping, Co. as lessees and doubles the previous lease payment from \$200 to \$400 per month. The other provisions of the agreement remain the same.

The County does not currently need the leased property for its operations and it is adjacent to the MV-1 Zone (Manufacturing) which provides a good location for stockpiling and storage of landscaping materials. Upon termination of the agreement, Weber County retains the improvements that have been made to the property including fencing, gates, detention basins, etc.

Exhibit A



Exhibit B

REAL PROPERTY LEASE AGREEMENT BY AND BETWEEN WEBER COUNTY AND SUMMERS & SUMMERS LLC AND WESTERN LANDSCAPING, CO.

This Agreement is made and entered into by and between Weber County, a body politic, corporate and political subdivision of the State of Utah, hereinafter referred to as "County," with its principal place of business located at 2380 Washington Blvd., Ogden, UT 84401, and Summers & Summers LLC, with its principal place of business located at 5402 E 2200 N, Eden, UT 84310, and Western Landscaping, Co. with its principal place of business located at PO Box 793 Eden, UT 84310 hereinafter collectively referred to as "Lessees."

WHEREAS, County owns a parcel of land more fully described in Exhibit "A," ("Property") which is attached hereto and hereby incorporated into this Agreement; and

WHEREAS, County is willing to lease said property to Lessees for certain business related activities; and

WHEREAS, County and Lessees have determined that this agreement is mutually beneficial to both;

NOW THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

SECTION ONE LEASED PREMISES

County for and in consideration of the lease payment hereinafter specified, does lease to Lessees, and Lessees hereby lease from County the Property.

SECTION TWO TERM

Lessees shall have and hold the Property for a term commencing on November 1, 2017, and ending on October 31, 2018. Upon written amendment hereto, which amendment may be a letter acknowledged by both parties, Lessees may renew this agreement for three additional one year terms. Such renewal shall be completed thirty (30) days prior to termination or this agreement shall be terminated and be of no further effect except for Lessees obligations at termination and surrender.

**SECTION THREE
LEASE PAYMENT**

- A. Monthly Base Lease Amount. The monthly lease payment to be paid by Lessees to County at County's office as designated from time to time by County, shall be the sum of Four Hundred Dollars (\$400) payable monthly in advance on or before the first day of each month, beginning November, 2017.
- B. Operating Expenses. In addition to the monthly lease payment, Lessees shall also be required to pay any utilities upon occupation of the Property.
- C. Late Payments. If Lessees shall fail to pay the lease payment when due, then Lessees shall pay interest on such past due amount at the rate of twelve (12%) percent per annum.
- D. Taxes and Insurance. Lessees LLC shall have the obligation to pay any taxes on the Property unless otherwise specified in this Agreement. Lessees shall also be responsible for both real and personal property losses on the Property and shall provide insurance for the same.

**SECTION FOUR
COVENANTS OF LESSEES**

- A. Payments. Lessees shall pay all lease payments due hereunder to the Department of Community and Economic Development, 444 24th Street, Ogden, UT 84401, unless and until County designates a different address in writing to Lessees.
- B. Use of Property: Use and occupy the Property in a lawful, careful and proper manner and only for lawful purposes. Lessees shall not create or permit any nuisance or disturbance, nor commit any waste, nor shall it use the premises for any unlawful purpose, and Lessees shall conform to and comply with all present or future laws, ordinances, rules, regulations, requirements, and orders of governmental authority respecting the use and occupancy of the Leased Premises.
- C. Assignment and Subletting: Lessees shall not have any right, power or authority to assign or sublet the Property.
- D. Use of Property. Lessees agree that the Property shall only be used for stockpiling of rock, sand, soil, and other landscaping materials, and Lessees shall not store any environmental damaging products, equipment or vehicles on the property.
- E. Fencing. Lessees agree at their sole expense to fence the leased Property and install an access gate on the north corner of the Property at a location agreed to by the Parties. Such access gate shall front 2650 North Street.

- F. Detention Basin. Lessees agree at their sole expense to create a detention basin on the Property in accordance with and pursuant to County ordinances and regulations.
- G. River Protection. Lessees agree that they shall not conduct any activity on the Property that would be injurious to the river, riverbank, or riparian habitat along the river. Lessees agree to repair and restore to the original condition any such damage as directed by County.
- H. Liability Insurance. Lessees agree to maintain sufficient personal injury and property damage liability insurance to adequately protect County from liability for personal injuries or property damage occurring on or about the Property to the extent caused by the negligence or wrongful acts of Lessees, their agents, contractors, employees or business invitees. Lessees shall indemnify and defend County from any and all claims associated claims resulting from Lessees use or activity on the property.
- I. Termination and Surrender. Upon termination of the Agreement, Lessees agree to remove any stockpiled materials and restore the property to the condition it was in prior to the effective date of this Agreement. Any improvements to the Property shall at that time become the property of County, including fencing, gates, detention basin or other improvements made by Lessees as approved by County. Further, if the Property is not restored to the condition specified herein or if such improvements are damaged, Lessees shall pay costs incurred by County in cleaning or restoring said premises and property to good condition.

SECTION FIVE MISCELLANEOUS

- A. Applicable Law. This Lease shall be interpreted in accordance with Utah Law.
- B. Default: If Lessees shall at any time be in default in payment of rent herein reserved, or in the performance of any of the covenants, terms, conditions or provisions of this Lease, and Lessees shall fail to remedy such default within ten days after written notice thereof from County, County may in any such case, at its option, terminate this Lease and re-enter upon said Leased Premises and repossess and enjoy same as in its first and former estate and thereupon this Lease and everything herein contained on the part of County to be done and performed shall cease and determine, without prejudice to the rights of County to recover from Lessees all rent due up to the time of such entry. In case of any such default and entry by County, County may relet said premises for the remainder of said term for the highest rent obtainable and may recover from the rent herein reserved. It is agreed that each and every of the rights, remedies and benefits provided by this Lease shall be cumulative and shall not be exclusive of any other of said rights, remedies and benefits, or of any other rights, remedies and benefits allowed by law.

- C. Entire Agreement. This Lease Agreement shall constitute the entire agreement between the parties and shall supersede all oral understandings and agreements. Alterations or amendments to such agreement must be in writing, executed by both County and Lessees.
- D. Headings and Paragraph Numbers: Headings and paragraph numbers are for convenience only, and are not to be considered limitations or modifications of provisions set forth in the body of this Lease.
- E. Holding Over: Any holding over after the expiration of the original term of this Agreement or any extension thereof without the written permission of County shall be construed as a tenancy from month-to-month, and in such case provisions of this Lease, other than those relating to its term, shall be considered in full force and effect except that the Monthly Lease Payment shall be increased to 200% of the monthly lease amount.
- F. Indemnification. Each of the parties agrees to indemnify the other against and hold it harmless from, all liabilities arising from any other claims (including, without limitation, the cost of attorney's fees in connection therewith).
- G. Notices. Any notices or request to be made under this Lease shall be by United States Mail, registered or certified with return receipt requested, postage prepaid, or by express mail as follows:

COUNTY: Weber County Operations
444 24th Street
Ogden, UT 84401

LESSEES: Summers & Summers LLC:
PO Box 85
Eden. UT 84310

Western Landscaping, Co.
PO Box 793
Eden, UT 84310

Until such time as either County or Lessees shall specify in writing a different address. Personal service of written notice shall also be deemed proper notice. Notice shall be effective when received. Notwithstanding, if said Notice is undeliverable at the address specified therefor, then notice shall be deemed effective on the day delivery is attempted.

- H. Severability. The provisions of this Lease are severable, and should any provisions hereof be void, voidable, unenforceable, or invalid, such void, voidable, unenforceable, or invalid provision shall not affect any other portion or provision of this Lease.
- I. Time of Essence: Time is of the essence of this Lease and every term, covenant, and condition herein contained.
- J. Waiver: No waiver of the right to forfeiture of this Lease or re-entry upon breach of any of the conditions thereof shall be deemed a waiver of such right upon any subsequent breach of such or any other condition.

IN WITNESS WHEREOF, said parties have executed this Agreement as of the ____ day of October, 2017.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
James Ebert, Chair

Commissioner Ebert voted _____
Commissioner Gibson voted _____
Commissioner Harvey voted _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

SUMMERS & SUMMERS LLC

By _____

STATE OF UTAH)
 :ss
COUNTY OF WEBER)

On the ____ day of _____, 2017, personally appeared before me _____, the signer of the within instrument and who duly acknowledged to me that they executed the same.

Notary Public

WESTERN LANDSCAPING, CO.

By _____

STATE OF UTAH)
 :ss
COUNTY OF WEBER)

On the ____ day of _____, 2017, personally appeared before me _____, the signer of the within instrument and who duly acknowledged to me that they executed the same.

Notary Public

Exhibit A

