



Date: October 25, 2023

To: Weber County Board of County Commissioners

From: Bill Ross
Assistant Director, Community Development Department

Subject: **Request for approval of a Real Property Lease Agreement by and between Weber County and Staker & Parson Companies**

Agenda Date: October 31, 2023

Documents: Exhibit A: Lease Agreement
Exhibit B: Memorandum of Lease Agreement

Summary:

Weber County has leased approximately 3.5 acres at the County Roads facility to Staker & Parson Companies since 2018. The previous lease agreement has expired and both parties would like to enter into a new lease agreement. The new agreement is very similar to the previous agreement, with the following changes:

- The lease term is five years, from November 1, 2023 to October 31, 2028.
- The lease amount is \$4,000 per month or \$48,000 per year (previous amount was \$2,000 per month).
- Stake and Parson Companies shall have the right of first refusal to purchase the property if Weber County decides to sell it.

Upon approval of the new lease agreement, Weber County will record a “Memorandum of Real Property Lease Agreement”, which memorializes the terms of the agreement for the benefit of both parties.

Exhibit A

REAL PROPERTY LEASE AGREEMENT BY AND BETWEEN WEBER COUNTY AND STAKER & PARSON COMPANIES

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 Staker & Parson Companies, with its principal place of business located at 2350 S. 1900 W., Ogden, UT, hereinafter referred to as "Lessee."

WHEREAS, County owns a parcel of land ("the Parcel"), identified as parcel 15-068-0025, adjacent to the property owned by Lessee in West Haven, Utah; and

WHEREAS, the Parcel is more fully described in Exhibit "A," which is hereby incorporated into this agreement; and

WHEREAS, Lessee desires to lease approximately 3.5 acres of the Parcel for certain business related activities; and

WHEREAS, the portion of the Parcel that Lessee desires to lease ("the Property") is more fully described in Exhibit "B," which is hereby incorporated into this agreement; and

WHEREAS, County is willing to lease said Property to Lessee; and

WHEREAS, County and Lessee have determined that this agreement is mutually beneficial:

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 Lessee, and Lessee hereby leases from County, the Property.

SECTION TWO TERM

Lessee shall have and hold the Property for a 5-year term commencing on November 1, 2023, and ending on October 31, 2028. Either party may terminate this agreement at any time by providing written notice at least six months in advance to the other party.

**SECTION THREE
LEASE PAYMENT**

- A. Monthly Base Lease Amount. The Monthly Base Lease Amount to be paid by Lessee to County at County's office as designated from time to time by County, shall be the sum of Four Thousand Dollars (\$4,000.00) payable monthly or Forty-Eight Thousand Dollars payable annually (\$48,000.00) in advance on or before the first day of each month or year, beginning November 1, 2023.
- B. Operating Expenses. In addition to the monthly lease payment, Lessee shall also be required to pay any utilities upon occupation of the Property if any are present.
- C. Late Payments. If Lessee shall fail to pay the lease payment when due, then Lessee shall pay interest on such past due amount at the rate of twelve percent (12%) per annum from the date that the payment was due and payable until it is paid.
- D. Taxes and Insurance. Lessee shall have the obligation to pay any taxes on the Property unless otherwise specified in this agreement. Lessee shall also be responsible for both real and personal property losses on the Property and shall provide insurance for the same as provided in Section Four of this agreement.

**SECTION FOUR
COVENANTS OF LESSEE**

- A. Payments. Lessee shall pay all lease payments due hereunder to the Department of Community Development, 2380 Washington Blvd, Ogden, UT 84401, unless and until County designates a different address in writing to Lessee.
- B. Use of Property: Lessee shall use and occupy the Property in a lawful, careful and proper manner and only for stock piling of rock, sand, and other similar materials. Lessee shall not store any environmentally damaging products, equipment, or vehicles on the Property. Lessee shall not create or permit any nuisance or disturbance, nor commit any waste, nor shall it use the premises for any unlawful purpose, and Lessee 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 Property.

County shall have the right to enter upon the Property at reasonable hours to inspect the same, provided County shall not thereby unreasonably interfere with Lessee's business on the Property.

- C. Assignment and Subletting: Lessee shall not have any right, power or authority to assign or sublet the Property.

- D. Fencing. Lessee agrees at its sole expense to fence the leased Property or relocate existing fences separating adjacent properties to secure the area leased.
- E. Detention Basin. Lessee agrees at its sole expense to create a detention basin on the Property in accordance with and pursuant to County ordinances and regulations if necessary.
- F. Canal Protection. Lessee agrees that it shall not conduct any activity on the Property that would be injurious to the canal, canal bank, or riparian habitat along the canal. Lessee agrees to repair and restore to the original condition any such damage as directed by County.
- G. Liability Insurance and Indemnification. Lessee agrees 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 Lessee, its agents, contractors, employees or business invitees. Lessee's insurance must provide no less than \$1,000,000 combined single limit coverage of bodily injury, property damage, or combination thereof. Lessee shall indemnify, defend and hold County harmless from any and all claims resulting from Lessee's use or activity on the Property, regardless of whether or not Lessee's insurance covers such claims. Lessee shall not indemnify, defend, and hold County harmless from claims to the extent arising from the negligent acts or omissions of the County.
- H. Termination and Surrender. Upon termination of this agreement, Lessee agrees 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 Lessee as approved by County. Further, if the Property is not restored to the condition specified herein or if such improvements are damaged, Lessee shall pay costs incurred by County in cleaning or restoring said premises and property to good condition.

**SECTION FIVE
RIGHT OF FIRST REFUSAL**

- A. Right of First Refusal ("ROFR"). Provided that Lessee is not in default at the time of exercise, Lessee shall have the right of first refusal to purchase the Property or the Parcel on the following terms and conditions:
 - 1. First Refusal Notice. If, during the term of this lease, County decides to sell the Property or the Parcel (a "Proposed Transfer"), then Lessee shall have a right of first refusal to purchase the Property or the Parcel (whichever is proposed to be sold) in accordance with this Section Five. The triggering event for this right shall be County's receipt of either a

firm offer from a third party to purchase the Property or the Parcel, with all material terms agreed to, or a signed purchase agreement from a third party. In either case, County shall promptly deliver to Lessee a notice (the "First Refusal Notice") setting forth (a) the identity of the proposed purchaser (the "Offeree") and (b) the sale price and each of the material financial terms of the proposed transaction (the "Purchase Terms").

2. Response Period. Lessee shall, for the 30-day period commencing upon receipt of the First Refusal Notice (the "ROFR Response Period"), have the exclusive right to purchase the Property or the Parcel (whichever is proposed to be sold) on the terms set forth in the First Refusal Notice, by so notifying County in writing before 5:00 p.m. on the last day of the ROFR Response Period, whereupon Lessee shall be bound to purchase from County, and County shall be bound to sell to Lessee, the Property or the Parcel on the Purchase Terms. County and Lessee shall promptly execute a purchase and sale agreement to sell the Property or the Parcel to Lessee on the Purchase Terms and upon other terms typical to commercial real estate transactions in Weber County, Utah. If the Offeree has executed or agreed to a form of contract, then Lessee must accept and execute that form of contract.
3. Waiver of ROFR. If Lessee shall either (a) deliver written notice of rejection of the First Refusal Notice to County, or (b) fail to deliver written notice of acceptance of the First Refusal Notice within the ROFR Response Period, or if Lessee delivers a notice of acceptance, but County and Lessee, through no fault of County, fail to agree on and execute a purchase and sale agreement within 60 days after the date of County's receipt of Lessee's notice, then Lessee's right of first refusal hereunder shall conclusively be deemed to be waived with respect to the sale disclosed in the First Refusal Notice. If this happens, then County shall be free to complete the Proposed Transfer to the Offeree on the Purchase Terms, and the Offeree shall acquire the Property or the Parcel free and clear of the Lessee's right of first refusal (which shall be extinguished, null, void, and of no further force or effect upon such sale). If, however, County does not complete the Proposed Transfer, then Lessee's right of first refusal shall once again apply, and County shall not complete a subsequent proposed sale without first giving a new First Refusal Notice to Lessee in compliance with the terms of this Section Five.
4. Sale Under ROFR. A sale pursuant to Lessee's right of first refusal shall be conducted in accordance with the following provisions:
 - a. Lessee shall purchase the Property or the Parcel (whichever is proposed to be sold) on the Purchase Terms;
 - b. County shall deliver to Lessee or its designee a quit claim deed, together with any ancillary documents necessary for the recordation thereof and any other required documents;

- c. The closing shall be held in accordance with local custom in Weber County, Utah, or as otherwise agreed to by the parties;
 - d. County shall deliver to the title company closing the transaction evidence of authority to transfer the Property or the Parcel to Lessee, and any other customary affidavits, indemnities, or documentation reasonably required by any title insurance company insuring the fee interest in the Property or the Parcel; and
 - e. All title insurance premiums, and other costs, fees, and expenses (including reasonable attorneys' fees and expenses) incurred in connection with the transfer of the Property or the Parcel to Lessee shall be paid in accordance with the terms of the relevant First Refusal Notice, or agreed form of contract (or, if not specified therein, in accordance with local custom for commercial real estate transactions in Utah).
5. Lease Termination. Upon the completion of a purchase by Lessee pursuant to the ROFR, this Lease and all obligations and liabilities of County and Lessee hereunder shall terminate, except for those obligations which by their terms survive the termination hereof.
6. Other Conditions.
- a. This ROFR is personal to Lessee only and shall not be transferred or assigned to and cannot be exercised by any other third party.
 - b. If Lessee's ROFR is waived, and County sells the Property to a third party before the expiration of the term of this lease, then notwithstanding anything to the contrary contained herein, and for the avoidance of doubt, Lessee hereby acknowledges and agrees that this lease shall remain in full force and effect until the end of the lease term, and Lessee's rights and obligations under this lease shall remain unchanged, and Lessee shall recognize the purchaser of the property as the County under this Lease for all purposes.
 - c. The parties shall execute and record a memorandum of lease, to put third parties on notice regarding the ROFR.

**SECTION SIX
MISCELLANEOUS**

- A. Applicable Law. This lease shall be interpreted in accordance with Utah Law.
- B. Default: If Lessee shall at any time be in default in payment of rent herein reserved, or in the performance of any other provision of this lease, and Lessee shall fail to remedy such default within ten days after written notice thereof

from County, or begin to remedy such default within ten days after written notice thereof from County, or begin to remedy with commercial diligence if the default cannot be cured within ten days, County may in any such case, at its option, terminate the lease and re-enter upon said Property and repossess and enjoy same as in its first and former estate. If this occurs, then this lease and everything herein contained on the part of the County to be done and performed shall cease and determine, without prejudice to the rights of County to recover from Lessee all rent due up to the time of such entry. In case of any such default and entry by County, County may relet the property for the remainder of the lease term for the highest rent obtainable and may recover from the rent herein owed or paid by the Lessee. It is agreed that each 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 Lessee.
- 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 all 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 Base Lease Amount.
- F. Notices. Any notices or requests 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 Community Development Dept.
2380 Washington Blvd Suite 250
Ogden, UT 84401

LESSEE: Staker & Parson Companies Companies
Attn: Dak Maxfield
2350 S 1900 W
Ogden UT 84401

With Copy to: CRH Americas Law Group
Attn: General Counsel
900 Ashwood Pkwy, Suite 800
Atlanta, GA 30338

These addresses shall remain in effect until such time as either County or Lessee 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 specified address, then notice shall be deemed effective on the day delivery is attempted.

- H. Severability. The invalidity of any provision of this agreement will not and shall not be deemed to affect the validity of any other provisions, and the remainder of the agreement will remain in full force and effect, unless the invalidation of the term materially alters this agreement. If the invalidation of the term materially alters the agreement, then the parties shall negotiate in good faith to modify the agreement to match, as closely as possible, the original intent of the parties.
- 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, which shall take effect on November 1, 2023.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Gage Froerer, Chair

Commissioner Bolos voted _____
Commissioner Harvey voted _____
Commissioner Froerer voted _____

Date _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

STAKER & PARSON COMPANIES

By _____

Printed name _____

Date _____

STATE OF UTAH)
 :ss
COUNTY OF WEBER)

On the ____ day of _____, 2023, personally appeared before me
_____, the signer of the within instrument and who
duly acknowledged to me that they executed the same.

Notary Public

When recorded, return to:
Weber County
Community Development Department
2380 Washington Blvd. Suite 250
Ogden, UT 84401

Exhibit B

MEMORANDUM OF REAL PROPERTY LEASE AGREEMENT BY AND BETWEEN WEBER COUNTY AND STAKER & PARSON COMPANIES

This Memorandum of Real Property Lease 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 Staker & Parson Companies, with its principal place of business located at 2350 S. 1900 W., Ogden, UT, hereinafter referred to as “Lessee.”

County and Lessee hereby acknowledge the following:

1. County owns a parcel of land (“the Parcel”), identified as parcel 15-068-0025, adjacent to the property owned by Lessee at 2350 S. 1900 W., Ogden, UT.
2. The Parcel is more fully described in Exhibit “A,” which is attached hereto.
3. County and Lessee have entered into a “Real Property Lease Agreement by and Between Weber County and Staker & Parson Companies” (“the Lease”) dated the same date as this Memorandum, whereby County leased approximately 3.5 acres of the Parcel to Lessee for certain business related activities.
4. The portion of the Parcel that County has leased to Lessee (“the Property”) is more fully described in Exhibit “B,” which is attached hereto.
5. The term of the Lease commences on November 1, 2023, and ends on October 31, 2028. Either party may terminate the Lease at any time by providing written notice at least six months in advance to the other party.
6. Lessee has the right of first refusal to purchase the Property or the Parcel pursuant to Section Five of the Lease.
7. Any notices or requests to be made with respect to the Lease shall be delivered to the following addresses:

COUNTY: Weber County Community Development Dept.
2380 Washington Blvd Suite 250
Ogden, UT 84401

LESSEE: Staker & Parson Companies
Attn: Dak Maxfield
2350 S 1900 W
Ogden UT 84401

With Copy to: CRH Americas Law Group
Attn: General Counsel
900 Ashwood Pkwy, Suite 800
Atlanta, GA 30338

8. If there is any conflict between this Memorandum and the Lease, the provisions of the Lease shall control.
9. This Memorandum shall terminate automatically when the Lease has expired or otherwise been terminated.

IN WITNESS WHEREOF, the parties have caused this Memorandum to be executed as of the date signed below by the last party to sign.

BOARD OF COUNTY COMMISSIONERS
OF WEBER COUNTY

By _____
Gage Froerer, Chair

Date _____

ATTEST:

Ricky Hatch, CPA
Weber County Clerk/Auditor

(Other signature on next page)

STAKER & PARSON COMPANIES

By _____

Printed name _____

Date _____

STATE OF UTAH)
 :ss
COUNTY OF WEBER)

On the ____ day of _____, 2023, personally appeared before me
_____, the signer of the within instrument, who duly
acknowledged to me that he or she executed the same.

Seal:

Notary Public