



DeSoto ISD

Board Agenda Item Overview

Meeting Type		Meeting Date	
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Policy Reference:

Related Board Goal: Select a Goal(s) or type in specific Goals
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Recommendation:	
Justification:	

Funding	Cost: N/A	
	Funding Source:	
	Currently Budgeted	

Vendor	
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Does this item require a Competitive Bid?	N/A
Purchasing Mechanism	
Contract Term	
Finance Department Review By:	N/A
Purchasing Manager:	
Comptroller Signature:	

Name		Title	
Department		Phone#	

Legal Review		Date	
Department Review			
District Approval			

GROUND LEASE AND TEMPORARY USE AGREEMENT

This Ground Lease and Temporary Use Agreement ("Agreement") is entered into by and between DeSoto Independent School District ("District" or "Lessor") and McMahon Contracting & Construction, LLC ("Lessee"). The District and Lessee may be referred to herein individually as a "Party" and collectively as the "Parties."

1. Premises - District leases approximately three (3) acres located at the northeast corner of Westmoreland Road and W. Parkerville Road, DeSoto, Texas, as depicted on Exhibit A. No other District property may be occupied or used.
2. District Representative. The District shall designate a representative who shall serve as the primary point of contact for administration of this Agreement. Lessee shall coordinate all activities under this Agreement with the District Representative and shall promptly comply with all reasonable directions regarding access, safety, scheduling, and protection of District operations.
3. Term - This Agreement shall become effective only upon approval by the DeSoto ISD Board of Trustees and execution by both Parties. Lessee shall have no right to occupy the Premises before the Effective Date. The Agreement shall continue for up to twenty-two (22) months unless earlier terminated. Any extension requires prior written approval by the District and, if required, Board approval.
4. Rent - Lessee shall pay rent to the District in the amount of Three Thousand Dollars (\$3,000.00) per month payable to the District. The first monthly payment shall be due on or before the Commencement Date, and each subsequent monthly payment shall be due in advance on or before the first day of each month during the Term of this Agreement. Holdover rent shall be 150% of the monthly rent unless otherwise approved.
5. Permitted Use - The Premises may be used solely for the City of DeSoto Westmoreland Road Improvements Project RFB-DEA-2503 as a temporary laydown yard, field office, material storage area, temporary fencing area, SWPPP control area, and portable concrete batch plant operation. Lessee shall install and maintain any temporary fencing and SWPPP measures required for its use of the Premises. Upon request by District, Lessee shall provide Safety Data Sheets for all materials stored or used on the Premises in connection with the portable concrete batch plant operation. Lessee shall not use the Premises for any other purpose, sublease the Premises, or permit unrelated third parties to use or occupy the Premises without the District's prior written consent.
6. Prohibited Uses - No subleasing, assignment, hazardous waste disposal, burning, unlawful activity, unrelated storage, or permanent improvements. No public access.
7. Permits and Compliance - Lessee shall obtain and maintain all required federal, state, county, city, TCEQ and other permits and comply with all applicable laws.
8. Environmental Protection - Lessee is solely responsible for environmental compliance, spill prevention, stormwater management, dust suppression, washout containment, hazardous material handling, and remediation of any contamination caused by Lessee. Lessee shall immediately report spills to the District contact and restore the property.

9. Traffic and Safety - All ingress and egress shall occur only through the approved construction entrance. Lessee shall comply with District directions regarding traffic, school operations, and safety. See Exhibit D.
10. Hours of Operation - Operations shall not unreasonably interfere with District activities. The District may impose reasonable operational restrictions necessary to protect students and staff.
11. Insurance - Prior to occupancy, Lessee shall provide certificates evidencing the types and levels of Insurance as provided in Exhibit B.
12. Indemnification - To the fullest extent permitted by law, Lessee shall defend, indemnify, and hold harmless the District, its trustees, officers, employees, and agents from all claims, damages, liabilities, losses, fines, penalties, costs, and attorney's fees arising from or related to Lessee's use of the Premises, including environmental claims and contractor activities.
13. Inspection - District may enter the Premises at any reasonable time, with or without prior notice in the event of an emergency, to inspect the Premises and determine Lessee's compliance with this Agreement.
14. Restoration - Upon expiration or termination, Lessee shall restore the Premises in accordance with Exhibit C.
15. Environmental Default - Any violation of Exhibit E or any release of hazardous materials, unauthorized discharge, permit violation, or regulatory enforcement action arising from Lessee's operations shall constitute an immediate Event of Default under this Agreement and shall entitle the District to terminate this Agreement immediately upon written notice if the District determines that the violation presents a threat to student safety, District property, or the environment or if the District reasonably determines that continued operations present an imminent risk to persons, property, or the environment.
16. Default and Termination - District may terminate for breach after notice and opportunity to cure, or immediately for safety, environmental, or legal compliance concerns. District may also terminate if the property is needed for District purposes upon thirty (30) days' notice.
17. Miscellaneous - Texas law governs. Venue lies in Dallas County.

Nothing in this Agreement shall be construed as a waiver of any governmental immunity, sovereign immunity, official immunity, or other defense or limitation of liability available to the District under the Constitution and laws of the State of Texas.

This Agreement, together with all exhibits incorporated herein by reference, constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior negotiations, discussions, representations, and agreements, whether oral or written.

This Agreement may be amended or modified only by a written instrument executed by authorized representatives of both Parties and, where required by law or District policy, approved by the DeSoto ISD Board of Trustees.

If any provision of this Agreement is determined to be invalid, illegal, or unenforceable by a court of competent jurisdiction, the remaining provisions shall remain in full force and effect to the fullest extent permitted by law.

Each individual executing this Agreement represents and warrants that he or she has full legal authority to execute this Agreement on behalf of the Party for whom he or she signs and to bind that Party to the terms of this Agreement.

Any notice required or permitted under this Agreement shall be in writing and shall be deemed given when personally delivered, sent by nationally recognized overnight courier, sent by certified United States Mail, return receipt requested, or transmitted by electronic mail with confirmation of receipt, to the representatives designated by each Party. Either Party may change its notice information by providing written notice to the other Party.

The failure of either Party to insist upon strict performance of any provision of this Agreement or to exercise any right or remedy shall not constitute a waiver of that provision, right, or remedy, nor shall any waiver be effective unless made in writing and signed by the Party against whom the waiver is asserted.

18. Exhibits:

- Exhibit A – Site Map
- Exhibit B – Insurance Requirements
- Exhibit C – Restoration Standards
- Exhibit D – Traffic Control Plan
- Exhibit E – Environmental Compliance Requirements

**** Signature Page Follows ****

Agreed and accepted:

Lessee: **McMahon Contracting & Construction, LLC.**

Signature _____

Date _____

Witness _____

Printed Name _____

Lessor: **DeSoto ISD**

Signature _____

Date _____

Witness _____

Printed Name _____

DeSoto ISD Board Approval Date: _____

EXHIBIT A
SITE MAP



EXHIBIT B
INSURANCE REQUIREMENTS

Prior to entering the Premises, Lessee shall furnish certificates of insurance demonstrating compliance with the following minimum insurance requirements. All policies shall be issued by insurers authorized to do business in the State of Texas and having an A.M. Best rating of A- or better.

1. Commercial General Liability

- Minimum Limits:
 - \$1,000,000 Each Occurrence
 - \$2,000,000 General Aggregate
 - \$2,000,000 Products/Completed Operations Aggregate
- Coverage shall include:
 - Premises/Operations
 - Independent Contractors
 - Contractual Liability
 - Personal and Advertising Injury
 - Broad Form Property Damage

2. Commercial Automobile Liability

- \$1,000,000 Combined Single Limit
- Applies to owned, hired, and non-owned vehicles.

3. Workers' Compensation and Employer's Liability

Workers' Compensation as required by Texas law.

Employer's Liability:

- \$1,000,000 Each Accident
- \$1,000,000 Disease Each Employee
- \$1,000,000 Disease Policy Limit

4. Umbrella/Excess Liability

Minimum Limits:

- \$2,000,000 Per Occurrence
- \$2,000,000 Aggregate

5. Contractors Pollution Liability

Minimum Limit:

- \$2,000,000 Each Incident

6. Additional Insured

The following shall be named as Additional Insureds:

- DeSoto Independent School District

EXHIBIT B
INSURANCE REQUIREMENTS
Page 2

- Board of Trustees
- Officers
- Employees
- Agents

7. Primary Coverage

Insurance shall be primary and noncontributory.

8. Waiver of Subrogation

All policies shall include a waiver of subrogation in favor of the District.

9. Notice of Cancellation

The insurer shall provide at least thirty (30) days' written notice prior to cancellation or material modification.

10. Certificates

Certificates of Insurance shall be provided before occupancy of the Premises.

Failure to maintain insurance constitutes an immediate default.

EXHIBIT C

RESTORATION STANDARDS

Upon expiration or earlier termination of this Agreement, Lessee shall restore the Premises to a condition equal to or better than its condition on the Commencement Date.

Restoration shall include, at a minimum:

1. Site Restoration

- Removal of all equipment
- Removal of portable concrete batch plant
- Removal of fencing
- Removal of field office
- Removal of temporary utilities
- Removal of stockpiled materials
- Removal of debris

2. Surface Restoration

- Restore original grades
- Eliminate ruts
- Repair erosion
- Repair drainage features
- Replace topsoil where necessary
- Restore vegetative cover

3. Environmental Restoration

- Environmental restoration shall be governed by Exhibit E.

4. Pavement

- Repair any damage to:
 - sidewalks
 - pavement
 - curbs
 - driveways
 - construction entrance

5. Utilities

- Repair any damage to District utilities.

6. Fencing

- Repair or replace any District fencing damaged during operations.

7. Trees and Landscaping

- Repair or replace landscaping damaged by Lessee.

EXHIBIT C
RESTORATION STANDARDS
Page 2

8. Final Inspection

- The District shall conduct a final inspection.
- Restoration shall not be deemed complete until accepted in writing by the District.
- If Lessee fails to complete restoration, the District may perform the work and recover all costs from Lessee.

EXHIBIT D

TRAFFIC CONTROL PLAN

Lessee shall conduct all operations in a manner that minimizes impacts on District operations and protects the safety of students, employees, and visitors.

Approved Access - All vehicles shall enter and exit only through the construction entrance identified on Exhibit A. No alternate access routes may be used without prior written approval.

Truck Routes - All trucks shall use only routes approved by the District.

School Operations - Truck traffic shall avoid student arrival and dismissal periods unless specifically approved by the District. The District may temporarily suspend access during emergency response activities, school events, or other operational needs, and shall provide advance written notice when practicable.

Traffic Control - Lessee shall provide, as necessary:

- flaggers
- traffic control devices
- warning signs
- barricades

Speed Limit - Maximum speed on District property is [add #] miles per hour unless otherwise posted.

Parking - Employees, subcontractors, suppliers, and visitors shall park only in areas designated by the District.

Damage - Lessee shall repair any damage caused to District roads, parking lots, sidewalks, curbs, or other improvements.

Emergency Access - Lessee shall not obstruct emergency vehicle access at any time.

District Authority - The District may require modifications to the traffic control plan whenever reasonably necessary to protect students, staff, or District operations. Lessee shall promptly comply with any such direction.