

LAKE HAVASU UNIFIED SCHOOL DISTRICT #1

**AGENDA ACTION ITEM**

**TOPIC:** APPROVAL OF LEASE AGREEMENT WITH ABC ASPHALT, LLC

**SUBMITTED BY:** Michael Murray, Director of Business Services

**DATE FOR BOARD CONSIDERATION:** March 14, 2017

**RECOMMENDATION:**

It is recommended the Governing Board approve a lease agreement between the Lake Havasu Unified School District #1 and ABC Asphalt, LLC.

**RATIONALE:**

ABC Asphalt L.L.C. has made a request to use land owned by the Lake Havasu Unified School District #1, for approximately two months (not to exceed five months), starting in March of 2017. The company would like to store machinery and supplies on the lot during a water main replacement project by Lake Havasu City. The site proposed for use is the Hidden Valley property, located on Gatewood Drive, and the payment to the Lake Havasu Unified School District #1 would be \$150.00 per month.

The lease agreement has been reviewed by legal counsel and approved as to form. That agreement is attached for your review.

Approved for Transmittal to Governing Board

  
Superintendent

## LEASE AGREEMENT

DATE: March 15, 2017

LESSOR: Lake Havasu Unified School District No. 1 ("School District")  
2200 Havasupai Blvd.  
Lake Havasu City, AZ 86403

LESSEE: ABC Asphalt, LLC  
4010 South 30th Street  
Phoenix, AZ 85040

PROPERTY: One vacant parcel with the following legal descriptions:

Tract 2229 Blk 8 Lot 11  
Parcel I.D. No. 112-07-233B  
Parcel size approximately 10.030 acres

PURPOSE: Lessor believes that this Lease is in the public's interest, as it facilitates water main replacements in the Northern and Southern areas of Lake Havasu City, Arizona. Such will collaterally benefit the Lessor and, in that, it will not interfere with the use of School District property for School District purposes. The parties agree that the Property will be used primarily as a site for storage of materials and equipment.

### WITNESSETH:

The School District, as Lessor, is authorized to enter into this Lease pursuant to A.R.S. §15-342(9).

In consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree as follows:

### COVENANTS:

1. **Term and Renewal**

This Agreement shall commence on March 15, 2017 and continue in effect until August 15, 2017.

- (a) Following the initial lease term, the lease will resort to a month-to-month agreement, which shall automatically renew each month unless the Lessor or Lessee provides the other party with a thirty (30)-day written notice to vacate.
- (b) Lessee shall provide Lessor with a thirty (30) day written Notice of Intent to Vacate prior to vacating the property, and will coordinate the scheduling of an

inspection to be done with representatives of Lessor, to ensure the condition of the property.

2. **Minimum Rental**

Lessee agrees to pay Lessor as minimum rent, without notice or demand, at such place as may be designated from time to time by Lessor, the monthly sum of one hundred fifty and No/100 Dollars (\$150.00) in advance, on or before the first day of each and every successive calendar month during the term hereof, except the first month's rent shall be paid upon the execution of this Lease.

3. **Lessee's Default**

(a) The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Lessee:

(i) Vacating or abandonment of the Property by Lessee.

(ii) The failure by Lessee to make any payment of rent or any other payment required to be made by Lessee hereunder, as and when due.

(iii) The making by Lessee of any general assignment or general arrangement for the benefit of creditors (or the filing by or against Lessee of a petition to have Lessee adjudged a bankrupt, or a petition or reorganization or arrangement under any law relating to bankruptcy (unless, in the case of the petition filed against Lessee, the same is dismissed within sixty (60) days); of the appointment of a trustee or a receiver to take possession of substantially all of Lessee's assets located at the parking spaces or of Lessee's interest in this Lease, where possession is not restored to Lessee within thirty (30) days; or the attachment, execution or other judicial seizure of substantially all of Lessee's assets located at the adjacent parking spaces or of Lessee's interest in this Lease; where such seizure is not discharged within thirty (30) days.

(b) Remedies in Default. In the event of any such default or breach by Lessee, Lessor may, at any time thereafter, in its sole discretion, with or without notice or demand, and without limiting Lessor in the exercise of a right or remedy which Lessor may have by reason of such default or breach:

(i) Terminate Lessee's right to possession of the premises by any lawful means, in which case this Lease shall terminate and Lessee shall immediately surrender possession of the premises to the Lessor. In such event, the Lessor shall be entitled to recover from Lessee all damages incurred by Lessor by reason of Lessee's default including, but not limited to, the cost of recovering possession of the premises; expenses for necessary renovation and alteration of the premises; and reasonable attorneys' fees. Unpaid installments of rent or other sums shall bear interest from the date due at the maximum legal rate; or

(ii) Maintain Lessee's right to possession, in which case this Lease shall continue in effect whether or not Lessee shall have abandoned the premises. In such event, Lessor shall be entitled to enforce all of Lessor's rights and remedies under this Lease, including the right to recover the rent and any other charges and adjustments as may become due hereunder; or

(iii) Any other remedy now or hereafter available to Lessor under the laws or judicial decisions of the State of Arizona

(iv) If Lessee shall fail to pay rent or otherwise default, then Lessor, besides other rights or remedies it may have, shall have the immediate right of re-entry and may remove all persons and property from the premises, without liability, to any person for damages sustained by reason of such removal. Such property may be removed and stored in a public warehouse or elsewhere at the cost of and for the account of Lessee. No such re-entry or taking possession of the premises by Lessee shall be construed as an election on its part to terminate this Lease unless a written notice of such intention be given to Lessee.

#### **4. Conduct of Business**

The Property is leased to Lessee solely for the purposes of storing materials and equipment, operating a temporary office, and utilizing a screening operation of the material removed during the construction. Any change in the nature of the business requires the Lessor's written consent. Lessor reserves the right to terminate this Lease, if there is a change in the type or nature of Lessee's conduct on the Property.

#### **5. Use of Premises**

(a) Lessee shall not commit, or suffer to be committed, any waste upon the premises or any nuisance or other act or thing against public policy, including any advertising or promotional medium which can be heard or experienced outside the leased premises.

(b) Prior to commencement of activity on the property, Lessee will notify those neighbors adjacent to the property that there will be activity, including basic information about the hours of operation, expected duration of the project, and contact information of the appropriate representative of Lessee who will address any neighbor concerns or complaints.

(c) Lessee shall comply with all statutes, ordinances, rules, regulations and laws of all municipal, state and federal authorities now enforced or which may hereafter be enforced pertaining to the condition, use or occupancy of the premises, as well as those governing equal employment opportunity, immigration, and nondiscrimination. Lessee shall not use or permit the premises to be used in whole or in part for any purposes or use in violation of any of the laws, ordinances, regulations or rules of any public authority at any time applicable thereto.

(d) No goods, merchandise or materials shall be kept, stored or sold by Lessee on or about the premises which are in any way hazardous without Landlord's prior written approval. Lessee, at its sole expense, shall comply with any and all requirements of any insurance organization or company necessary for the maintenance of reasonable fire and public liability insurance covering the premises or the building of which the premises are a part.

(e) Lessee shall not conduct or permit any auction sale to be held on or about the premises, whether such auction be voluntary or involuntary.

**6. Maintenance and Repairs**

(a) Lessee shall, during the Lease term, and at its sole expense, keep and maintain and return the Property in the same condition, as when this Lease began. Any repair or maintenance to asphalt, striping and/or curbs shall be at Lessee's expense.

(b) If Lessee shall fail, neglect, or refuse to do so, Lessor may after five (5) days notice to Lessee, make such repairs and alterations as it may in its sole discretion deem advisable. Lessee shall, therefore, pay Lessor's costs for making such repairs plus twenty percent (20%) for overhead immediately upon presentation of a bill therefor. Failure of Lessee to pay such amount immediately shall constitute a default by Lessee.

(c) Lessee shall not permit an accumulation of graffiti, waste, vandalism or other refuse.

**7. Arbitration**

In the event of any dispute under the provisions of this Lease, the controversy shall be settled by arbitration. Within five (5) days after a request for arbitration by either party hereto, each party shall select an arbitrator and the two arbitrators so selected shall appoint a third arbitrator within five (5) days thereafter, or, if said two arbitrators shall be unable to agree upon a third arbitrator within said five days, the third arbitrator shall be appointed by the Presiding Judge of the Superior Court of the State of Arizona in and for Mohave County upon application of either party on the time and place of such application. When the three arbitrators have been selected in either of the ways above set forth, they shall forthwith hear and determine the controversy, and the written determination over the signatures of a majority of the three arbitrators shall be final, binding and conclusive upon the parties hereto. However, the prevailing party shall be awarded reasonable attorneys' fees and costs.

**8. Liens**

(a) Lessee shall keep the Property free and clear of all liens arising out of or claimed by reason of any work performed, material furnished, financing secured, or obligations incurred by or at the instance of Lessee, and indemnify and save Lessor and the Property harmless of all such liens or claims of liens and all attorneys' fees and other costs and expenses incurred by reason thereof. Should Lessee fail to fully discharge any such lien or claim of lien, Lessor, at its option, and subject to its right of reimbursement, may pay the same or any part thereof, and Lessor shall be the sole judge of the validity of such lien or claim.

(b) No liens of any character whatsoever created or suffered by Lessee shall in any way, or to any extent, attach to or affect the rights of Lessor in the Property and/or the Lessor's ownership use and enjoyment of the leased premises.

**9. Liability**

Lessee agrees that this Lease is made upon the express condition that Lessor shall not at any time or to any extent whatsoever be liable, responsible or in any way accountable for any loss, injury, death or damage to persons or property, from any cause or causes whatsoever,

which at any time may be suffered or sustained by Lessee, or by any person whatsoever at any time may be using, occupying or working for the Lessee. Lessee agrees to indemnify and save Lessor harmless from any and all claims, liabilities, losses, damages, costs and expenses whatsoever arising out of any such loss, injury, death or damage however occurring, and, as further noted below, Lessee agrees to provide a Certificate of Insurance which lists Lessor as a named insured.

**10. Insurance**

Lessee, at its sole expense, shall procure and maintain in full force and effect public liability insurance, with limits of not less than One Million dollars (\$1,000,000.00) per person, Two Hundred Fifty Thousand dollars (\$250,000.00) for property damage, insuring against any and all liability of Lessee with respect to the Property or arising out of the maintenance, use or occupancy thereof. Such public liability insurance shall specifically insure the performance by Lessee of the indemnity agreement contained in this Lease and shall name Lessor as an additional insured.

All insurance policies shall be issued by companies and in forms satisfactory to Lessor, and shall expressly provide that the insurance company shall notify the Lessor in writing at least thirty (30) days prior to any alteration or cancellation thereof. Each such policy or a duplicate or appropriate evidence thereof shall be delivered to Lessor. Lessee agrees if Lessee does not procure all such insurance and keep same in full force and effect, Lessor, at its option and subject to its right of reimbursement, may take out the necessary insurance and pay the premium therefor. Alternatively, the Lessor can declare a default of this Lease.

**11. Transfer of Lessor's Interest**

Lessor hereby reserves the right to sell, assign or transfer this Lease upon the condition that in such event this Lease shall remain in full force and effect, subject to the performance by Lessee of all the terms, covenants and conditions on its part to be performed, and upon the further condition that assignee or transferee agrees to be bound to perform all the terms, covenants and conditions of Lessor pursuant to this Lease. Upon any such sale, assignment or transfer, other than merely as security, Lessee agrees to look solely to the responsibility of assignee or transferee with respect to all matters in connection with this Lease and Lessor shall be released from any further obligations hereunder. Lessee shall cooperate in signing any subordination agreement or other documents reasonably required by the parties in the event of any such sale, assignment or transfer.

**12. Voluntary Assignment and Subletting**

(a) Lessee shall not assign this Lease without the prior written consent of Lessor, and any such assignment without such consent shall be void and, at the option of Lessor, shall terminate this Lease. Lessee shall not sublet without the prior written consent of Lessor. Lessor has an absolute right to withhold consent to any assignment or sublease. The preceding provision has been freely negotiated as evidence by the initials of the parties in the space below.

(b) If Lessee is a partnership, a withdrawal or change, voluntary, involuntary, by operation of law or otherwise, of any of the partners thereof, or if Lessee is composed of more than one person, a purported assignment or transfer, voluntary or involuntary, by operation of law or otherwise, from one thereof unto any other person or persons, or if Lessee is

a corporation or limited liability company, a change in the ownership, voluntary or involuntary, or by operation of law or otherwise, of thirty-three and one-third percent (33 1/3%) or more of its capital stock or membership owned as of the date of execution hereof, shall be deemed an assignment prohibited hereby unless the written consent of Lessor is obtained hereto.

**13. Involuntary Assignment**

(a) Neither this Lease nor any interest of Lessee hereunder in the Property shall be subject to involuntary assignment, transfer or sale or to assignment, transfer or sale by operation of law in any manner whatsoever, and any such attempted involuntary assignment, transfer or sale shall be void and of no effect.

(b) Without limiting the generality of the provisions of the preceding subparagraph, Lessee agrees that in the event any proceedings under the Bankruptcy Act or any amendment thereto be commenced by or against Lessee, and if against Lessee, and if against Lessee, said proceedings shall not be dismissed before either an adjudication in bankruptcy or the confirmation of a composition, arrangement or plan or reorganization, or in the event Lessee be adjudged insolvent or make an assignment for the benefit of its creditors, or if a writ of attachment or execution be levied on the leasehold estate hereby created and be not released or satisfied with fifteen (15) days thereafter, or if a receiver be appointed in any proceeding or action to which Lessee is party with authority to take possession or control of the Property or the business conducted thereon by Lessee and such receiver not be discharged within a period of fifteen (15) days after his appointment, any such event or any involuntary assignment shall constitute a breach of this Lease by Lessee and, at the option of Lessor and without notice of entry or other action Lessor, shall terminate this Lease and also rights of Lessee under this Lease and any and all persons claiming under Lessee, in and to the Property.

**14. Successors and Assigns**

All of the terms, covenants and conditions of this Lease shall be binding upon and inure to the benefit of and shall apply to the respective heirs, executors, administrators, successors, assigns and legal representatives of Lessor and Lessee.

**15. Notices**

All notices, demands or other writings in this Lease provided to be given, made or sent by either party hereto to the other shall be deemed to have been fully given, made or sent when made in writing and deposited in the United States mail, registered and postage prepaid and addressed as follows:

Lessor: Lake Havasu Unified School District #1  
Attn: Director of Business Services  
2200 Havasupai Blvd.  
Lake Havasu City, AZ 86403

Lessee: ABC Asphalt LLC  
4010 South 30th Street  
Phoenix, Arizona 85040  
(602-268-4455)

The address to which any notice, demand or other writing may be given, made or sent to either party may be changed by written notice given by such party as above provided.

16. **Eminent Domain**

If any part of the property shall be taken for public or quasi-public use by the right of eminent domain, or transferred by agreement in connection with such public or quasi-public use, with or without any condemnation action or proceeding being instituted, and a part of the property remains which is reasonably adequate for the conduct of Lessee's business, this Lease, as to the part so taken or transferred, shall terminate as of the date title shall vest in the condemner and the minimum guaranteed rental thereafter to be paid shall be proportionately reduced. However, in the event of such taking or transfer, Lessor shall have the option to terminate this Lease as of the date title shall vest in the condemner, but if this option is not exercised, Lessor, at its sole expense, shall restore the part of the property remaining after such taking or transfer to as near its former condition as circumstances will reasonably permit. If all of the property shall be so taken or transferred, or such part thereof be so taken or transferred that there does not remain a portion reasonably adequate for the conduct of Lessee's business, this Lease shall thereupon terminate. If all or part of the property be so taken or transferred, all compensation or damages awarded upon such taking or transfer shall go to Lessor, and Lessee shall have no claim thereto, and Lessee hereby irrevocably assigns and transfers to Lessor any right to compensation or damages to which Lessee may become entitled during the term hereof by reason of such taking or transfer of all or a part of the property; provided however, that Lessor shall not be entitled to any award made to Lessee for loss or interruption of Lessee's business or for damage to or cost of removal of Lessee's stock and trade fixtures, or for the prorated value of Lessee's leasehold interest in the property.

17. **Fraud, Duress, Undue Influence**

This Agreement is not the result of any fraud, duress or undue influence exercised by either Party upon the other, or by any other person or persons upon the Parties, participating in this Agreement.

18. **Integration and Modification**

This Lease contains the entire agreement of the parties with respect to the matters covered by this Lease, and no other agreement, statement, or promise made by any party, or to any employee, officer or agent of any party, which is not contained in this Lease shall be binding or value, such agreement, statement or promise being specifically waived.

It is further covenanted and agreed by and between the parties hereto that this Lease shall not be altered, modified, changed or amended, except by an instrument in writing and executed by the parties hereto. Moreover, all parties, again, acknowledge that any rule of law, which would construe any ambiguity herein against the drafting Party is hereby waived.

19. **Other Representations, Warranties and Conditions**

- (a) The Parties warrant that they have the right, authority and capacity to execute and deliver this Lease.



- (b) The Parties represent and warrant that, except as expressly set forth herein, no improper representations of any kind or character have been made to induce them to execute and enter into this Lease.
- (c) The Parties represent and warrant: (i) that in executing and entering into this Lease, they have each either sought or could have sought legal advice from legal counsel of their choice, or knowingly waived their right to seek counsel; (ii) that they each have read the contents of this Lease; (iii) that each fully understands the terms and consequences of this Lease; and (iv) that hereafter they shall not deny the validity of this Lease on the grounds that each did not have advice of counsel or did not knowingly enter into this Lease.
- (d) This Lease shall be governed by, construed and enforced in accordance with the laws of the State of Arizona. Any action to enforce or interpret this Lease shall be commenced and maintained in the Superior Court for Mohave County, Arizona.
- (e) This Lease shall be deemed prepared equally by all the Parties and no contrary presumption, interpretation or construction shall arise in the event of any ambiguity or uncertainty.
- (f) This Lease may be executed in counterpart by the Parties, each of which shall be deemed an original. But, all of which together shall constitute one Lease upon the signature of all the Parties. Copies of signatures, signatures transmitted by facsimile, as well as copies thereof, shall be deemed original for all purposes.
- (g) This Lease constitutes the entire agreement between the Parties pertaining to the subject matter of this Lease, and fully supersedes any and all prior understandings, representations, warranties and agreements between the Parties, whether oral or written, pertaining to the subject matter of this Lease.
- (h) No provision of this Lease may be altered, modified or amended except by a subsequent writing signed by all the Parties. The Parties agree that they will make no claim at any time that this Lease has been orally altered or modified or otherwise changed by oral communications of any kind or character.
- (i) Should any provision of this Lease be declared or determined by the Mohave County Superior Court to be illegal or invalid, the validity of the remaining parts, terms or conditions shall not be affected. The part, term or provision declared illegal or invalid shall be deemed not to be a part of this Lease.
- (j) This Lease shall inure to the benefit of, and shall be binding upon, the Parties and their respective agents, affiliates, attorneys, trustees, representatives, successors, predecessors, heirs, assigns, affiliated entities, owners, directors, officers, employees, shareholders, heirs, beneficiaries,

legal representatives, insurers and anyone with the legal authority to act for the principals herein, collectively referred to as "the Parties."

- (k) If any legal action or other proceeding is brought to enforce this Lease, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Lease, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action proceeding, in addition to any other relief to which that Party may be entitled.
- (l) Any person executing this Lease in a representative capacity warrants and represents that he or she has the authority to do so and to bind his or her respective entity to the terms and conditions contained herein.
- (m) If within three years after the execution of this Contract, Lessor hires as an employee or agent any Lessee representative who was significantly involved in negotiating, securing, drafting, or creating this Contract, then Lessor may cancel this Contract as provided in Arizona Revised Statutes (ARS) § 38-511. Notice is also given of ARS §§ 41-2517 and 41-753.

IN WITNESS WHEREOF, the parties hereto have executed this instrument on the day and year first above written.

Lake Havasu Unified School District #1

ABC Asphalt, LLC

By \_\_\_\_\_

By  \_\_\_\_\_  
Leo Barraza

Its \_\_\_\_\_

Its Member \_\_\_\_\_