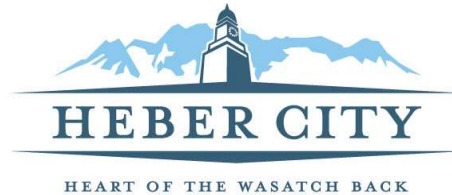


# City Council Staff Report



**MEETING DATE:** 11/19/2019  
**SUBJECT:** Heber City/ Wasatch  
County School District Land  
Swap and Lease  
**RESPONSIBLE:** J. Mark Smedley and Matt  
Brower  
**DEPARTMENT:** Legal and City Manager's  
Office  
**STRATEGIC RELEVANCE:** Community & Economic  
Development

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## SUMMARY

**This is a cursory summary of what is included in the proposed Real Property Lease Agreement, and the Real Estate Exchange Agreement. It is not exhaustively detailed, but meant to be very general. Copies of both Agreements are included herein for a more individual detailed review.**

**Real Property Lease Agreement:** This Agreement addresses land that the City is acquiring from the District and leasing back to the District. The land is currently being used by the District as a staging area for school buses and storage of other District personal property. It is anticipated that the District desires to continue to use the property for these purposes, and therefore is interested in leasing back the land from the City.

The first sections of the Lease provide definitions, context and the purpose of the Agreement.

The Term (duration) of the Agreement is proposed to be Five Years (5), to the 30<sup>th</sup> of September or October, 2024, with an option to renew for an additional 5 years.

The District would be allowed under certain conditions, to remove any of their improvements erected or left on the premises during the lease term, and would also be required to restore the land to its original condition upon leaving.

The rental amount is proposed to be \$3,500.00 per year, plus additional amounts calculated pursuant to the current Western CPI.

The Agreement proposes that the District maintain insurance to cover its anticipated uses on the property.

The District is required to obtain and maintain all permits, licenses and certificates which may be required for the use and improvement of the property.

The District cannot assign the lease without prior written approval of the City.

The City shall have the right to adopt and enforce reasonable rules and regulations regarding other use or uses of the property because the property is on, or associated with an airport, and therefore the District's use of the property is subject to any FAA or Federal regulations and laws. The City reserves the right to take whatever action it considers necessary to protect the airport against obstructions, or that would in the City's discretion, an obstructive use of the airport or constitute a hazard to aircraft.

The Contract addresses the City's right to cancel the agreement for default occurrences, or if the City has need of the property for other public purposes.

**Real Estate Exchange Agreement:** This Agreement addresses the actual land exchange between the District and the City.

As with the previous Agreement, the first sections of the Agreement provide definitions, context and the general purpose of the Agreement.

Notwithstanding the City and District anticipated and attempted to have a land exchange without any money changing hands, because there is a difference in the acreage between the two parcels to be exchanged, the District will pay the City \$60,000.00. The different anticipated values are as follows:

- The Property Values. The value of the WSCD Property is TWO HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$270,000.00) (the "**WSCD Property Value**"). The value of the HC Property is THREE HUNDRED THIRTY THOUSAND AND NO/100 DOLLARS (\$330,000.00) (the "**HC Property Value**").

The Agreement contains all the generally accepted boiler plate provisions in a land exchange/ sale agreement. In addition to such provisions, both parties agree to pursue in good faith and with all diligence, HC Council, and WSCD approvals as soon as possible after the effective date of the Agreement.

There is a unique provision in this Agreement that the properties will be exchanged, "As Is":

11. ACCEPTANCE. SUBJECT TO THE EXPRESS TERMS OF THIS AGREEMENT, THE ACQUIRING PARTY ACKNOWLEDGES FOR THE ACQUIRING PARTY AND ACQUIRING PARTY'S SUCCESSORS AND ASSIGNS, THAT THE ACQUIRING PARTY WILL BE ACQUIRING THE PROPERTY BASED SOLELY UPON THE ACQUIRING PARTY'S OWN INVESTIGATION AND INSPECTION THEREOF. CONVEYING PARTY AND ACQUIRING PARTY AGREE THAT THE PROPERTY SHALL BE CONVEYED AND THE ACQUIRING PARTY SHALL ACCEPT TITLE TO AND POSSESSION OF THE PROPERTY ON THE CLOSING DATES "AS IS, WHERE IS, WITH ALL FAULTS", AND THAT SUCH EXCHANGE SHALL BE WITHOUT REPRESENTATION, CERTIFICATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, ORAL OR WRITTEN, STATUTORY OR OTHERWISE, AND THE CONVEYING PARTY DOES HEREBY DISCLAIM AND RENOUNCE ANY SUCH REPRESENTATION, CERTIFICATION OR WARRANTY.

All other provisions are written to be mutually binding and advantageous to each party inasmuch as this is a mutual land exchange agreement. The City and District are substantially in agreement with these forms, except for the wording of two provisions dealing with indemnification and the amount of late fees imposed. But other than these two issues, the Parties appear to be in agreement with the proposed forms of both Agreements.

## RECOMMENDATION

Adoption of the Agreements.

## BACKGROUND

See above.

## DISCUSSION

See above.

## FISCAL IMPACT

N/A

## CONCLUSION

See above.

## ALTERNATIVES

N/A

## POTENTIAL MOTIONS

N/A

**Departments:** Legal and City Manager  
**Staff Members:** J. Mark Smedley and Matt Brower

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## EXHIBITS

**Real Property Lease Agreement**

**Real Estate Exchange Agreement.**