

THE CITY OF



OWATONNA

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TO: Mayor, City Council, and City Administrator
FROM: Mark M. Walbran, City Attorney
DATE: March 27, 2020
RE: Temporary Lease of future Cemstone Site

Purpose:

Council to approve Resolution 51-20 authorizing the execution of a Temporary Lease from the City to Cemstone Concrete Materials, LLC to the site of its future plant located at 315 32nd Avenue Northwest, Owatonna, Minnesota and legally described as follows:

Lot 2, Block 1, Viracon CurvLite Addition

Background:

The City and Cemstone Concrete Materials, LLC have negotiated for an exchange of properties whereby Cemstone will convey to City its current site located at North Riverside Avenue and North Street and the City will convey to Cemstone the new site located at 315 32nd Avenue Northwest where it will build its future plant. The closing on the above transaction is now scheduled on May 8, 2020. Cemstone desires to enter onto the new site under a Temporary Lease for the purpose of installation of certain tenant improvements including a driveway, concrete pad, installation of electric and water services, and relocating a temporary plant in anticipation of going into service shortly after the closing on May 8th. No production operations will commence until after the closing. Cemstone will provide a Certificate of Liability Insurance with the same limits as provided in the Purchase Agreement between City and Cemstone.

Budget Impact:

None.

Recommendation:

City staff recommends approval of Resolution 51-20.

RESOLUTION NO. 51-20

A RESOLUTION FOR AUTHORIZATION TO EXECUTE
TEMPORARY LEASE AGREEMENT WITH
CEMSTONE CONCRETE MATERIALS, LLC

WHEREAS, Resolution 50-20 approved by City Council on April 7, 2020, approves a Development Agreement and Lease Agreement with Cemstone Concrete Materials, LLC effective May 8, 2020 after transfer of the property; and

WHEREAS, Cemstone Concrete Materials, LLC currently requires use the site of its future plant located at 315 32nd Avenue Northwest.

BE IT RESOLVED by the City Council of the City of Owatonna, Minnesota, as follows:

1. That the Temporary Lease Agreement is hereby accepted.
2. That the Mayor and City Administrator are hereby authorized to execute this Agreement and any amendments on behalf of the City of Owatonna.

Passed and adopted this ___ day of _____, 2020, with the following vote:

Aye ___; No ___; Absent ___.

Approved and signed this ___ day of _____, 2020.

Thomas A. Kuntz, Mayor

ATTEST:

Kris M. Busse, City Administrator/City Clerk

TEMPORARY LEASE AGREEMENT

Owatonna, Minnesota

THIS TEMPORARY LEASE AGREEMENT (hereinafter called "Lease") is made and effective as of the 7th day of April, 2020, by and between City of Owatonna, a Minnesota municipal corporation (hereinafter "Landlord") and Cemstone Concrete Materials, LLC, a Iowa limited liability company, (hereinafter "Tenant") for Property located in the City of Owatonna, County of Steele, State of Minnesota.

WITNESSETH:

FOR AND IN CONSIDERATION of the sum of One and No/100 Dollar (\$1.00) in hand paid by each of the parties to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

DATA SHEET

(1) **Property.** The tract of land located in the City of Owatonna, Minnesota, described on Exhibit A attached hereto. The Landowner owns the Property. The Property does not include the Tenant Improvements (hereafter defined) which are owned by the Tenant.

(2) **Premises.** For purposes of this Lease, the Premises is the Property.

(3) **Improvements.** There are no Landlord Improvements on the Premises.

The Tenant Improvements are the following:

- Grading and installation of a driveway
- Construction and installation of a concrete pad for placement of a temporary ready mix concrete plant
- Stripping of soil for the driveway and pad
- Placement and erection of a temporary ready mix concrete plant
- Electrical hook-up
- Water hook-up
- Loading of the temporary ready mix concrete plant with materials such as cement, sand and gravel
- Stockpiling of sand and gravel

Tenant Improvements do not include the use or operation of the temporary ready mix concrete plant.

(4) **Commencement Date.** This Lease shall commence on April 7, 2020.

(5) **Base Term.** The Base Term or Term means the time period from April 7, 2020 through May 10, 2020, inclusive.

(6) **Base Rent.** During the Base Term, the Base Rent shall be \$1.00, the receipt and sufficiency of which is acknowledged by the Landlord.

(7) **Notices.** Any notice desired or required to be given under this Lease shall be personally served or sent postage-paid by certified mail, return receipt requested to:

Tenant: Cemstone Concrete Materials, LLC
Attention: Tim Becken
2025 Centre Point Boulevard, Suite 30
Mendota Heights, Minnesota 55120

With a copy to: Timothy J. Kuntz
LeVander, Gillen & Miller, P.A.
633 South Concord Street, Suite 400
South St. Paul, MN 55075
Telephone: (651) 451-1831

Landlord: Kris M. Busse
City Administrator
City of Owatonna
540 West Hills Circle
Owatonna, MN 55060

All notices shall be deemed delivered either upon: (1) receipt in case of personal service, or (2) mailing in case of certified mail.

(8) **Use.** The Premises shall be used by the Tenant only for the installation, placement and construction of the Tenant Improvements. The use does not include the use or operation of the temporary ready mix concrete plant.

(9) **Termination Date.** Termination Date means May 10, 2020.

(10) **Incorporation of Data Sheet.** Each reference in this Lease to any of the data contained in this Data Sheet shall be constructed to incorporate the data stated herein.

Schedule of Exhibits:

Exhibit A- Legal Description of Property

ARTICLE 1 – PREMISES

Landlord hereby leases to Tenant and Tenant hereby takes from Landlord, subject to the terms and conditions of this Lease and for the Base Term, the Premises.

ARTICLE 2 – UTILITIES

Tenant is responsible for payment of all operating expenses for utilities which serve the Premises, including, but not limited to sanitary sewer, water, storm sewer, gas and electrical for the Premises.

ARTICLE 3 – TERM

A. **Base Term.** The term of this lease shall be for the Base Term.

ARTICLE 4 - BASE RENT

The rent for the Base Term shall be the Base Rent, the receipt and sufficiency of which is acknowledged by Landlord.

ARTICLE 5 - USE

The Premises shall be used by Tenant for the Use set forth above in the Data Sheet and for no other purpose, in compliance with all applicable federal, state and local laws, ordinances, codes, rules, regulations and orders. Tenant shall procure at its sole cost and expense any and all necessary permits, certificates, licenses or other authorizations.

ARTICLE 6 - ACCEPTANCE OF PREMISES

Tenant acknowledges that it has inspected the Premises and accepts them "AS IS" in their present condition.

Tenant further acknowledges that Landlord has no responsibility to alter, remodel or improve the Premises, or their suitability.

ARTICLE 7 – MAINTENANCE AND REPAIRS

A. **Maintenance of Premises.** Landlord has no responsibility for maintenance, repair, or upkeep of Tenant Improvements.

ARTICLE 8 - INDEMNITY

Landlord, and Landlord's agents and employees, shall not be liable to Tenant, or those claiming through or under Tenant, for injury, death, property damage, burglary, theft or disappearance occurring in, on or about the Premises.

Tenant shall indemnify and hold Landlord, and Landlord's agents and employees harmless from any claim, damage, cost and expense (including attorneys' fees) or liability arising out of any injury, death, or property damage, burglary, theft or disappearance occurring in, on or about the Premises to Tenant or any agent, employee, or invitee of Tenant unless due to the negligence or willful misconduct of Landlord, its agents or employees.

Tenant's obligations and liabilities under this Article shall survive the expiration of the Lease term and shall survive the termination of the Lease.

ARTICLE 9 - INSURANCE

Tenant, at the Tenant's sole cost and expense, shall maintain:

Comprehensive general public liability insurance with contractual liability coverage insuring Tenant and Landlord covering the Premises and the Business operated by Tenant in which the per occurrence combined single limit of liability shall not be less than \$3,000,000. The above-described limits of liability shall be adequate so long as Tenant also maintains an umbrella policy of insurance with per occurrence limits of liability of

not less than \$5,000,000. Tenant's liability insurance coverage may be subject to a reasonable deductible.

Landlord shall be listed as an additional insured on the comprehensive general public liability insurance policy.

All policies of insurance shall be in form and substance reasonably satisfactory to the Landlord, shall be written with companies reasonably satisfactory to the Landlord, and shall provide for at least ten (10) days written notice to Landlord prior to cancellation or reduction in coverage. Such policies, or certificates thereof, shall be delivered to Landlord prior to the commencement of the Lease Term; and evidence of renewal of such insurance shall be delivered to Landlord not less than ten (10) days prior to the expiration of such coverage.

ARTICLE 10 – INTENTIONALLY OMITTED

Intentionally omitted.

ARTICLE 11 – SPECIAL ASSESSMENTS

During the Base Term, Landlord is responsible to pay any installments of special assessments levied against the Property payable in such time period.

ARTICLE 12 – TAXES

During the Base Term, Landlord will be responsible to pay real estate taxes payable during that time period.

ARTICLE 13 - TENANT'S RESPONSIBILITY REGARDING HAZARDOUS SUBSTANCES

- A. The term "Hazardous Substances," as used in this Lease, shall include, without limitation, medical waste, flammables, explosives, radioactive materials, asbestos, polychlorinated biphenyls (PCBs), chemicals known to cause cancer or reproductive toxicity, pollutants, contaminants, hazardous wastes, toxic substances or related materials, petroleum and petroleum products, and substances declared to be hazardous, toxic or a pollutant or a contaminant under any law or regulation now or hereafter enacted or promulgated by any governmental authority.
- B.
 - (i) Tenant shall, at Tenant's own expense, comply with all laws regulating the use, generation, storage, transportation, or disposal of Hazardous Substances ("Laws").
 - (ii) Tenant shall, at Tenant's own expense, make all submissions to, provide all information required by and comply with all requirements of all governmental authorities (the "Authorities") under the Laws.
- C. Tenant shall not cause or permit to occur on the Premises:
 - (i) Any violation of any federal, state, or local law, ordinance, or regulation now or hereafter enacted, related to environmental conditions on, under, or about the Premises, or arising from Tenant's use, alteration or occupancy of the Premises, including, but not limited to, soil and ground water

conditions; or

- (ii) The use, generation, release, manufacture, refining, production, processing, storage, or disposal of any Hazardous Substance on, under, or about the Premises, or the transportation to or from the Premises of any Hazardous Substance, except in strict conformity with all laws and proper and lawful permit by all Authorities.
- D. Should any Authority or any third party demand that a clean-up plan or environmental remediation plan be prepared and that a clean-up or remediation be undertaken because of any deposit, spill, discharge, or other release of Hazardous Substances that occurs during the term of this Lease, at or from the Premises, or which arises at any time from Tenant's use, alteration or occupancy of the Premises, then Tenant shall, at Tenant's own expense, prepare and submit the required plans and all related bonds and other financial assurances; and Tenant shall carry out all such clean-up plans and remediation plans.
- E. Tenant shall promptly provide all information regarding the use, generation, release, storage, transportation, or disposal of Hazardous Substances that is requested by Landlord. If Tenant fails to fulfill any duty imposed under this Article within a reasonable time, Landlord may do so; and in such case, Tenant shall cooperate with Landlord to prepare all documents Landlord deems necessary or appropriate to determine the applicability of the laws to the Premises and Tenant's use thereof, and for compliance therewith, and Tenant shall execute all documents promptly upon Landlord's request. No such action by Landlord and no attempt made by Landlord to mitigate damages under any Law shall constitute a waiver of any of Tenant's obligations under this Section.
- F. Tenant shall indemnify, defend, and hold harmless Landlord, and its respective officers, directors, beneficiaries, shareholders, partners, agents, and employees from all fines, suits, procedures, claims, and actions of every kind, and all costs associated therewith (including attorneys' and consultants' fees) arising out of or in any way connected with any deposit, spill, discharge, or other release of Hazardous Substances that occur during the term of this Lease, at or from the Premises, or which arise at any time from Tenant's use, alteration or occupancy of the Premises, or from Tenant's failure to provide all information, make all submissions, and take all steps required by all Authorities under the Laws and all other environmental laws.
- G. Tenant's obligations and liabilities under this Article shall survive the expiration of Lease term and shall survive the termination of the Lease.
- H. Notwithstanding the foregoing, Tenant shall not be obligated or liable under this Article if Landlord negligently or intentionally causes the release.

ARTICLE 14 - ASSIGNMENT

- A. Tenant may assign its interest in the Lease to a third party only if Landlord consents in writing to the assignment.
- B. Landlord may sell or mortgage its interest in the Premises without the Tenant's consent.

ARTICLE 15 - MECHANICS' LIENS

Tenant will not permit any mechanics', laborers' materialmen's or other liens to stand against the Premises or any part thereof for any labor, skill, material or equipment furnished or claimed to be furnished to or an account of Tenant in connection with any work in or about the Premises, including the construction of the Improvements. Tenant shall give Landlord immediate notice of the filing of any such lien and shall cause the lien to be discharged within 10 days of its filing.

ARTICLE 16 - SURRENDER

Upon the Termination Date or earlier termination of this Lease, Tenant shall comply with the following obligations:

- A. Tenant shall remove all trade fixtures from the Premises and repair any damage caused by such removal
- B. Tenant shall remove the Tenant Improvements; provided, however, if Tenant purchases the Premises from Landlord, Tenant shall have no obligation to remove the Tenant Improvements.
- C. Tenant shall leave and restore the Premises in substantially the same condition as existed at the beginning of the Lease, except for reasonable wear and tear that occurred during the term of the Lease; provided, however, if Tenant purchases the Tenant from Landlord, Tenant has no obligation to restore the Premises.

Upon the Termination Date, or earlier termination of this Lease, Tenant shall peaceably surrender the Premises.

ARTICLE 17 - DEFAULT OF TENANT AND REMEDIES

- A. Events of Default and Remedies. If Tenant fails to pay any monies within thirty (30) days when due hereunder or to perform within thirty (30) days after notice from Landlord any other of the terms, covenants, conditions or obligations of this Lease to be performed by Tenant, or if any proceeding is commenced by or against Tenant for the purpose of subjecting the assets of Tenant to any law relating to bankruptcy or insolvency or for an appointment of a receiver of Tenant or any of Tenant's assets, or if Tenant makes a general assignment of Tenant's assets for the benefit of creditors, then in any such event, Tenant shall be in default hereunder and Landlord may at its option, in addition to any other rights and remedies it may have hereunder or at law or in equity or by statute or otherwise, terminate this Lease as to all future rights of Tenant, and/or regain, repossess and enjoy the Premises.
- B. Right of Landlord to Cure Default of Tenant. Landlord may, at its option, instead of exercising any other rights or remedies available to it under this Lease or otherwise, enter into the Premises and perform such acts or spend such sums of money as is reasonably necessary to cure any default of Tenant herein, and the amount spent and cost incurred, including reasonable attorneys' fees, in curing such default shall be paid by Tenant as additional rent upon demand.
- C. Legal and Other Expenses. If suit is brought for recovery of possession of the Premises, for the recovery of any amount due under the provisions of this Lease, or because of the breach of any other covenant herein contained on the part of Tenant to be kept or performed, Tenant shall pay Landlord all expenses incurred therefor or, including reasonable attorneys' fees.

- D. Cumulative Remedies. No remedy herein or elsewhere in this Lease or otherwise by law, statute or equity conferred upon or reserved to Landlord shall be exclusive of any other remedy, but shall be cumulative, and may be exercised from time to time and as often as the occasion may arise.

ARTICLE 18 - HOLDING OVER

If Tenant remains in possession of the Premises after the expiration or termination of this Lease, it shall be deemed to be occupying the Premises as a tenant at sufferance, subject to all the conditions, provisions and obligations of the Lease insofar as the same can be applicable. No unauthorized holding over shall operate to renew or extend this Lease and Tenant shall indemnify Landlord against all claims for damages of any kind resulting from the holdover.

ARTICLE 19 – INTENTIONALLY OMITTED

Intentionally omitted.

ARTICLE 20 - SUCCESSORS AND ASSIGNS

The terms, covenants and conditions hereof are binding upon and inure to the benefit of Landlord, and any of its successors and assigns. The terms, covenants and conditions hereof are binding upon and inure to the benefit of Tenant, and any of its successors and assigns approved by Landlord or otherwise permitted under this Lease.

ARTICLE 21 - QUIET ENJOYMENT

Tenant, on performing its obligations under this Lease, shall peacefully have, hold and enjoy the Premises subject to the terms of this Lease.

ARTICLE 22 - GENERAL

- A. No waiver of any default hereunder shall be implied from any failure by the non-defaulting party to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the express waiver and that only for the time and to the extent therein stated. One or more waivers by Landlord or Tenant shall not be construed as a waiver of a subsequent breach of the same covenant, term or condition.
- B. This Lease sets forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant affecting the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth or referenced.
- C. The singular of all terms used herein shall include the plural, the plural shall include the singular, and the use of any gender herein shall include all other genders, where the context so requires.
- D. Landlord and Tenant disclaim any intention to create a joint venture, partnership, or agency relationship.
- E. This Lease is a Minnesota contract and all of its terms shall be construed according to the laws of Minnesota.

F. Time is of the essence of each obligation of this Lease in which time is a factor.

ARTICLE 23 – SURVIVAL OF OBLIGATIONS

Notwithstanding anything to the contrary contained in this Lease, the obligations and liabilities of Tenant under the following Articles survive expiration of the Lease Term and survive termination of this Lease:

Article 8 – Indemnity

Article 13 – Tenant’s Responsibility Regarding Hazardous Substances

Article 15 – Mechanics’ Liens

Article 16 – Surrender

Article 18 – Holding Over

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IN WITNESS WHEREOF, Landlord and Tenant have duly executed this Lease as of the date set forth above.

**LANDLORD:
CITY OF OWATONNA**

By: _____
Tom Kuntz
Its: Mayor

ATTEST:

Kris Busse, City Administrator

**TENANT:
CEMSTONE CONCRETE MATERIALS, LLC**

By: _____
Tim Becken
Its: Chief Manager and President

EXHIBIT A
LEGAL DESCRIPTION OF PROPERTY

Real property in the City of Owatonna, County of Steele, State of Minnesota, legally described as follows:

Steele County Tax Parcel: 17-577-0102

Lot 2, Block 1, Viracon Curv-lite Addition.

315 32nd Avenue Northwest, Owatonna, Minnesota.