

City Council Agenda Items
and
Contracts, Leases or Agreements

n/a 6-19-12

City Council Meeting Date
Agenda Items Only

Ray Boudreaux
Submitted By

Aviation
Division

Transportation
Department

Action Required:

Action Required: Request approval for a Lease with the Arkansas Air and Military Museum, Inc., 4290 S. School Ave., Fayetteville, AR 72701, phone 479-521-5947. The two museum at the airport have merged creating a need for a new lease. The attached Staff Review Memo explains actions in lieu of compensation.

Cost of this request	\$ -	Category / Project Budget	Program Category / Project Name
n/a	\$ -	Funds Used to Date	Program / Project Category Name
Account Number			
Project Number	\$ -	Remaining Balance	n/a
			Fund Name

Budgeted Item

Budget Adjustment Attached

Ray Boudreaux
Department Director

5-30-12
Date

Previous Ordinance or Resolution # _____

Original Contract Date: _____

Ray Boudreaux
City Attorney

6-1-12
Date

Original Contract Number: _____

Paul A. Barker
Finance and Internal Services Director

6-1-2012
Date

Received in City Clerk's Office 05-31-12 P03:20 RCVD
Kim J.

Don Man
Chief of Staff

6-4-12
Date

Received in Mayor's Office
ENTERED
6/4/12
7/5

Lionel Jordan
Mayor

6/4/12
Date

Comments:

CONTRACT REVIEW MEMO

TO: LIONELD JORDAN, MAYOR
THRU: DON MARR, CHIEF OF STAFF
THRU: CONTRACT REVIEW COMMITTEE
THRU: TERRY GULLEY, TRANSPORTATION DIRECTOR *TJG*
FROM: RAY M. BOUDREAUX, AVIATION DIRECTOR *RMB*
DATE: MAY 3, 2012
SUBJECT: APPROVE LEASE
(Arkansas Air and Military Museum, Inc.)

RECOMMENDATION: Approve a Lease with Arkansas Air and Military Museum, Inc., 4290 S. School Avenue, Fayetteville, Arkansas 72701, phone 479-521-4947, with the City Clerk and Mayor's signatures. Lease is for ten years beginning on May 1, 2012, any extension(s) of lease to be negotiated before the end of the lease term.

BACKGROUND: The two museums located on the airport, Arkansas Air Museum, and the Ozark Military Museum, have merged making it necessary to have a new lease, for the new organization. The museum will be renting two city-owned buildings and adjacent land. A museum-owned building sits on part of the adjacent land. There is no change in the location of the museum. The museum will be responsible for their utilities.

BUDGET IMPACT: The museum agrees, in lieu of rent payments as compensation to the citizens of Fayetteville for the use of public property on the airport, to allow the citizens of Fayetteville free admission to the museum on Veteran's Day and Memorial Day. The museum further agrees to work with the Fayetteville Public Schools to provide to all fourth grade classes free tours and presentations on the history and principles of flight, annually. The museum will vigorously pursue advertising and promotions on behalf on the citizens to attract tourist to the community.

RESOLUTION NO. _____

A RESOLUTION APPROVING A LEASE AGREEMENT WITH ARKANSAS AIR AND MILITARY MUSEUM, INC. FOR FACILITIES AT 4290 S. SCHOOL AVENUE AND 4360 S. SCHOOL AVENUE TO PROVIDE AN AIR MUSEUM AT FAYETTEVILLE EXECUTIVE AIRPORT-DRAKE FIELD

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby approves a lease agreement with Arkansas Air and Military Museum, Inc. for facilities at 4290 S. School Avenue and 4360 S. School Avenue to provide an air museum at Fayetteville Executive Airport-Drake Field. A copy of the lease agreement is attached as Exhibit "A".

PASSED and APPROVED this 19th day of June, 2012.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

LEASE AGREEMENT

ARKANSAS AIR AND MILITARY MUSEUM, INC.

This LEASE AGREEMENT made this 15th day of MAY, 2012, by and between the City of Fayetteville, Arkansas, hereinafter called the "City", and the Arkansas Air and Military Museum, Inc., of 4290 S. School Avenue, Fayetteville, Arkansas 72701, hereafter called the "Museum". Arkansas Air Museum and the Ozark Military Museum have merged and operate with the new name of Arkansas Air and Military Museum, Inc.

WHEREAS, the City is the owner of an airport known as the Fayetteville Executive Airport Drake Field, herein referred to as the "Airport"; and

WHEREAS, the City is the owner of 4290 S. School Avenue and 4360 S. School Avenue and adjacent land on the Fayetteville Executive Airport; and

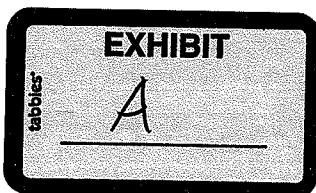
WHEREAS, the Museum desires to lease 4290 and 4360 and adjacent land considered the Museum complex.

NOW, THEREFORE, the parties, in consideration of the mutual covenants contained herein, hereby agree as follows:

1. The City leases to the Museum, and the Museum leases from the City, 3.6 acres plus or minus of land and buildings in the museum complex, including two City owned buildings at 4290 and 4360 S. School Avenue, and a museum owned building at 4350 S. School Avenue; all locations are shown on Exhibit "A", attached hereto and made a part hereof. Ownership of the museum owned building will revert to the City at the end of this Lease term on April 30, 2022, as referenced in the previous lease with Ozark Military Museum.

2. The Museum is granted the use, without charge, in common with others similarly authorized, of the airport, together with all facilities, equipment, improvements, and services which have been or may hereafter be provided at or in connection with the Airport from time to time including, but not limited to, the landing field, and any extensions hereof or additions thereto, roadways, runways, ramps, aprons, taxiways, flood lights, landing lights, beacons, control tower, signals, radio aids, and all other conveniences for flying, landings and take-offs.

3. The Museum shall have at all times the full and free right in ingress to and egress from the demised premises and facilities referred to herein for the Museum, its employees, customers, passengers, guests, and other invitees. Such rights shall also extend to persons or organizations supplying materials or furnishing services to the Museum.



4. Subject to earlier termination as hereinafter provided, the initial term of this Agreement shall be for ten (10) years, commencing on the 1st day of May, 2012, and ending on the 30th day of April, 2022. At least One-Hundred-and-Twenty (120) days prior to the termination date, the Museum shall give the City written notice if the Museum desires to extend the Lease. Negotiations between the Airport and the Museum shall determine whether further extension(s) shall be granted and at what monthly rental rate. Should further extension(s) not be granted, all real property improvements to the City of Fayetteville owned property shall remain the property of the City of Fayetteville.

5. The Museum agrees, in lieu of rent payments as compensation to the citizens of Fayetteville for the use of public property on the airport, to allow the citizens of Fayetteville free admission to the Museum on Veteran's Day and Memorial Day. The Museum further agrees to work with the Fayetteville Public Schools to provide to all fourth grade classes free tours and presentations on the history and principles of flight, annually. Finally, the Museum will vigorously pursue advertising and promotions on behalf of the citizens to attract tourist to the community.

6. The City shall maintain and keep in good repair so much of the Airport premises as are not under the exclusive control of the Museum. The Museum shall, at the termination, surrender or forfeiture of this lease, return said premises in same, or better, condition premises were at the beginning of the lease, normal wear and tear excepted.

7. The Museum shall provide for and supply at its expense all janitor service with respect to the demised premises, and shall pay for all utilities serving the demised premises, including, but not limited to heat, light, gas, electricity, and water, sewer and trash removal.

8. Improvements: The Museum shall bear the cost of all improvements or additions made to the interior or exterior of the City owned buildings on the leased premises. No improvements or additions to any part of the leased premises shall be made by the Museum without the prior written approval of the Airport Director, whose consent will not be unreasonably withheld. Any signs or antennas to be erected on, or attached to, the leased premises must have the prior written approval of the Airport Director and conform to all City Ordinances.

9. Maintenance of 4290 and 4360 S. School Avenue: The City shall be responsible only for major maintenance of the existing equipment, i.e. replacement of heating unit and other equipment in place in the facilities which includes, roof, hangar door motors, exterior walls, exterior plumbing, paved ramp and paved parking lot. The City agrees that if the roof or any part of the exterior walls or exterior plumbing of said building thereof shall become defective or damaged at any time during the term due to ordinary wear and tear and not due to negligence of the Museum, or the Museum's agents or invites, upon notice from the Museum, the City will immediately cause repairs to be made and restore the defective portions to good condition. If the damage is so extensive as to render such building untenable, the rent payable hereunder shall be proportionally paid up to the time of such damage and shall thenceforth cease until such time as the premises shall be fully restored. If the

demised premises are completely destroyed, the City may reconstruct the facility at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or the City may, at its option, cancel this agreement, such cancellation to be effective as of the date the facility was destroyed, and the rent adjusted as set forth above.

10. Maintenance of 4350 S. School Avenue: The Museum shall be responsible for maintenance on the Museum owned facility.

11. The Museum agrees to observe and obey the City's Ordinances and Regulations with respect to use of the demised premises and Airport; provided, however, such Ordinances and Regulations shall be consistent with safety and with all city, county, and state rules, regulations, including all current fire codes, and orders of the Federal Aviation Administration with respect to aircraft operations at the Airport, and provided further, such Ordinances and Regulations shall be consistent with the provisions of this agreement or the procedures prescribed or approved from time to time by the Federal Aviation Administration with respect to the operation of the Museum's aircraft at the Airport.

"The Minimum Standards for Fayetteville Executive Airport Drake Field" herein referred to as Airport Minimum Standards at Fayetteville Executive Airport are made part of this lease by reference as if included word for word.

12. The Museum agrees that it shall use the premises only for the display, maintenance and repair of historic memorabilia and for the storage of airplanes and materials and equipment necessarily related to the operation of said airplanes. The Museum further agrees not to store any flammable material other than a limited supply of oils and agents necessary for current aircraft operations on the premises or in any way endanger or violate the provisions of the City's property insurance policy or the requirement of same. Such violations shall constitute a material breach of this agreement.

13. If the demised premises at 4290 and 4360 S. School Avenue are partially damaged by fire or other casualty which is not due to the negligence or fault of the Arkansas Air and Military Museum, Inc., said premises shall be repaired with due diligence by the City at the City's expense. If the damage is so extensive as to render such building untenable, the rent payable hereunder shall be proportionally paid up to the time of such damage and shall thenceforth cease until such time as the premises shall be fully restored. If the demised premises are completely destroyed, the City may reconstruct the facility at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or the City may, at its option, cancel this agreement, such cancellation to be effective as of the date the facility was destroyed, and the rent adjusted as set forth above. The hangar facility located at 4350 S. School Avenue shall revert to the City at the end of this Lease Agreement. The provisions of this paragraph do not apply to the Museum owned hangar until it becomes the property of the City of Fayetteville.

14. The Museum shall procure and maintain in force during the term, and any extended term, of this agreement fire and extended coverage insurance on the Museum's displays, aircraft and vehicles in an amount equivalent to the replacement cost thereof. The Museum shall procure and maintain in force during the term, and any extended term, of this agreement insurance to meet the requirements in the Minimum Standards for the Museum's business operation on the Airport. The Museum shall also be required to insure any contents within the facilities. The City of Fayetteville shall be named Additional Insured and a copy of the policy material on file in the Airport Administration Office. The City shall procure and maintain in force during the term of this agreement fire and extended coverage on the facilities at 4290 and 4360 S. School in an amount equivalent to the replacement cost thereof. The Museum shall procure and maintain in force during the term, and any extended term, of this agreement, insurance required by the Airport's Minimum Standards for the Museum owned facility at 4350 S. School Avenue.

15. The Museum agrees to indemnify the City against any liability for injuries to persons or damage to property caused by the Museum's use or occupancy of the lease premises; provided, however, that the Museum shall not be liable for any injury, damage or loss occasioned by the negligence of the City or its agents or employees; and provided further, that the City shall give to the Museum prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly affects or might affect the Museum, and the Museum shall have the right to compromise and defend the same to the extent of its own interest. This clause shall not be construed to waive that tort immunity as set forth under Arkansas Law.

16. Assigning, Subletting and Encumbering. The Museum shall not assign this Agreement in whole, or in part, nor sublease, all or any part of the Leased Premises, nor permit other persons to occupy said Leased Premises or any part thereof, not grant any license or concession for all or any part of said Leased Premises, without the prior written consent of the City, which consent shall not be unreasonably withheld. Any consent by the City to an assignment or subletting of this Agreement shall not constitute a waiver of the necessity of obtaining that consent as to any subsequent assignment. Any assignment for the benefit of the Museum's creditors or otherwise by operation of law shall not be effective to transfer or assign the Museum's interest under this Agreement unless the Airport shall have first consented thereto in writing. Neither the Museum's interest in this Agreement, not any estate created hereby in the Museum nor any interest herein or therein, shall pass to any trustee or receiver or assignee for the benefit of creditors or otherwise by operation of law except as may specifically be provided in the Bankruptcy Code. If any of the corporate shares of stock of the Museum are transferred, or if any partnership interests of the Museum are transferred, by sale, assignment, bequest, inheritance, operation of law, or otherwise, so as to result in a change of the control, assets, value, ownership, or structure of the Museum, same shall be deemed an assignment for the purposes of this Section 16 and shall require the City's prior consent, and the Museum shall notify the City of any such change or proposed change.

17. On the expiration or other termination of this lease the Museum's right to use the demised premises shall cease, and Museum shall vacate the premises without unreasonable delay.

All property installed, erected, or placed by the Museum, in, on, or about the premises leased hereunder shall be deemed to be personalty and shall remain the property of the Museum. The Museum shall have the right at any time during the term of this agreement, or any renewal or extension hereof, and for an additional period of fourteen (14) days after the expiration, or other termination of this agreement, to remove any or all of such property, subject, however, to the Museum's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by the Museum prior to the expiration of the aforesaid fourteen (14) day period shall thereupon become a part of the land on which it is located and title hereto shall thereupon vest in City .

18. The City may enter the premises leased to the Museum at any reasonable time for any purpose necessary or incidental to the performance of its obligations or the Museum's obligations hereunder.

19. The Museum shall maintain the demised premises in a clean and orderly fashion at all times. The Museum shall be responsible for the upkeep and mowing of the leased property.

20. The Museum shall not start or operate aircraft engines within any aircraft hangar and shall not allow such operations by any other person.

21. Any notice or consent required by this Agreement shall be sufficient if sent by Certified Mail, return receipt requested, postage paid, to the following address:

CITY OF FAYETTEVILLE:

Fayetteville Executive Airport
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701
PH: 479-718-7642

**ARKANSAS AIR AND MILITARY
MUSEUM, INC.:**

Arkansas Air and Military Museum, Inc.
4290 S. School Avenue
Fayetteville, Arkansas 72701
PH: 479-521-4947

22. This agreement shall be construed under the laws of the State of Arkansas.

23. All the covenants, conditions, and provisions under this agreement shall extend to and bind the legal representative, successors, and assigns of the respective parties hereof.

The Museum has received a copy of the Airport's Minimum Standards.

M. Jordan
(tenant's initials)

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

CITY OF FAYETTEVILLE, ARKANSAS:

BY: _____
Lioneld Jordan, Mayor Date

ATTEST:
By: _____
Sondra Smith, City Clerk and Treasurer, Date

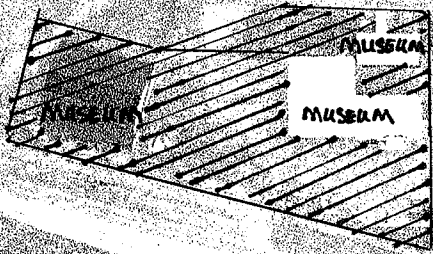
ARKANSAS AIR AND MILITARY MUSEUM, INC.:

BY: *Marc W. Whittlesey* 5-1-2012
Marc W. Whittlesey Date
President
Title

ATTEST: *Richard P. McKinley* 5/1/12
RICHARD P. MCKINLEY Date
SECRETARY
Title

RUNWAY

TAXIWAY



TERMINAL BLDG

U.S. HIGHWAY 71