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WB

City of Fayetteville Staff Review Form

City Council Agenda Items
and
Contracts, Leases or Agreements

7/2/2013
~~6/4/2013~~

City Council Meeting Date
Agenda Items Only

Sharon Waters Parking Management Utilities
Submitted By Division Department

Action Required:

Resolution Approving a Lease Agreement with the University of Arkansas for the City of Fayetteville to operate the West Annex Parking Lot as a revenue producing off-street parking lot.

Est. \$13,000 in revenue	\$ -	Entertainment District Parking
Cost of this request	Category / Project Budget	Program Category / Project Name
2130-0913 (multiple)	\$ -	Parking Revenue
Account Number	Funds Used to Date	Program / Project Category Name
Project Number	\$ -	Parking Fund
	Remaining Balance	Fund Name

Budgeted Item Budget Adjustment Attached

[Signature] 21 Feb 13 Previous Ordinance or Resolution # _____
Department Director Date

[Signature] ~~2-22-13~~ Original Contract Date: _____
City Attorney Date

Original Contract Number: _____

Paul A. Beck 2-22-2013
Finance and Internal Services Director Date

Don Man 2-22-13
Chief of Staff Date

Frank Jordan 2/25/13
Mayor Date


Received in City Clerk's Office
02-21-13 P03:35 RCVD
King J.


Received in Mayor's Office
ENTERED 2/22/13 ENTERED 6/11/13 BAP

Comments:

CITY COUNCIL AGENDA MEMO

To: Mayor Lioneld Jordan and City Council

Thru: Don Marr, Chief of Staff
David Jurgens, Utilities Director 

From: Sharon Waters, Parking & Telecom Manager 

Date: February 21, 2013

Subject: Approval of *Lease* Agreement with the University of Arkansas for the City of Fayetteville to Operate the West Annex Parking Lot as a Revenue Producing Off-Street Parking Lot

RECOMMENDATION

Staff recommends approval of a Lease Agreement with the University of Arkansas for the City to operate the West Annex parking lot located at 346 N. West Avenue as a revenue producing off-street parking lot. This lot has 63 numbered parking spaces.

BACKGROUND

The City currently provides parking services for other Off Street Parking District lots and the Dickson Street Improvement District lot. These entities currently have the same Lease Agreements in place for this service. The contracts provide that the City agrees to collect the revenues from the parking meters and/or pay stations located on the leased premises; and the City agrees to police the leased premises to ensure that motorists parking thereon are paying the required usage fees as are now, or as may hereafter, be established by the City.

The City then pays back to the property owner the "net operating revenues" on a quarterly basis. Net operating revenues is defined as gross revenues less all costs of maintaining and operating the lease premises as an off-street parking lot. Therefore, the City would retain approximately \$10,000.00 annually to cover operating expenses, which is approximately 15% of the gross revenues generated from the lot. The City would also retain 100% of all citation revenues generated from the lot.

DISCUSSION

The City has been providing this type of service to other parking lot entities since 1992. Staff feels this is a very good service that the City provides in order to ensure continuity in parking rules, regulations, rates, citation amounts, etc., as well as eliminating the towing and booting methods on these lots. In addition, the pay machine already provided by the U of A in this lot already matches the pay stations the City already has in place, and will be integrated into the City's overall system. This will provide a seamless integration of these 63 spaces into the City's parking program and offer all the same convenient features.

BUDGET IMPACT

Projected annual revenues for the Agreement are \$10,000.00 in parking revenues and an additional \$3,000.00 in citation revenues.

RESOLUTION NO. _____

A RESOLUTION APPROVING A LEASE AGREEMENT WITH THE UNIVERSITY OF ARKANSAS FOR CITY OPERATION OF THE UNIVERSITY'S WEST ANNEX PARKING LOT AS A REVENUE PRODUCING OFF-STREET PARKING LOT UPON ADOPTION AND INCLUSION OF THE LOT WITHIN THE DICKSON STREET ENTERTAINMENT DISTRICT

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, attached as Exhibit "1", with the University of Arkansas for City operation of the University's West Annex parking lot as a revenue producing off-street parking lot, only upon the adoption and inclusion of the lot within the Dickson Street Entertainment District by appropriate Code amendments.

PASSED and APPROVED this 2nd day of July, 2013.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

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

**LEASE AGREEMENT -
University Parking Lot 53**

This Lease Agreement ("Agreement") for Parking Lot Enforcement is entered into by and between the Board of Trustees of the University of Arkansas ("University"), acting for and on behalf of the University of Arkansas, Fayetteville and the City of Fayetteville, Arkansas (the "City").

WITNESSETH

WHEREAS, the City seeks to utilize University Parking Lot 53 (the "Lot" or "Premises"), more particularly described as located directly south and east the West Avenue Annex which is located at 346 West Avenue, from 5:00 pm to 2:00 am on weekdays and from 5:00 pm on Fridays until 2:00 am on Mondays, excluding federal holidays, to serve the City's public parking needs; and

WHEREAS, the University is willing to grant a limited, exclusive lease to the City for usage and enforcement of said University parking lot as more particularly described herein;

NOW THEREFORE, in consideration of the mutual promises of the parties contained herein, the parties agree to the Agreement under the following terms and conditions:

- 1. LIMITATION OF LIABILITY.** The University shall not assume any liabilities or responsibilities for enforcement of the parking lot pursuant to this Agreement.
- 2. SCOPE OF LIMITED LEASE:** This Agreement is a limited lease and shall not be considered deeded access. The University's property is not to be subrogated by this lease. The term of this Agreement shall be for a period of five (5) months, with an automatic annual renewal for up to five (5) additional one-year periods, commencing on the date of execution hereof, subject to all other terms and conditions of this Lease. This limited lease is revocable by the University at any time, in whole or in part, in the sole discretion of the University, upon thirty days' written notice to the City or by the City at any time, in whole or in part, in the sole discretion of the City, upon thirty days' written notice to the University.
- 3. OWNERSHIP PRIVILEGES:** University is not transferring or relinquishing any of its rights and privileges of property ownership or use. Notwithstanding any other provision of this Agreement, the City covenants and agrees that the University shall have the absolute and unconditional right to use the Lot for such purposes as the University deems necessary in its sole discretion. Except under extraordinary circumstances to be determined at the sole discretion of the University, University agrees to notify the City at least twenty-four (24) hours in



advance of its intent to use the Lot for any special event. During these special events, the City will not provide any enforcement services. University agrees to return the Lot to the City following the event in the same condition as it was prior to the event.

4. CITY OF FAYETTEVILLE OBLIGATIONS: The City hereby agrees that during the term of this Agreement, or any extension thereof, the City shall operate the Lot as a revenue producing off-street parking lot, with the City receiving the revenues generated from the parking meter, and the City receiving the revenues generated from enforcement of the Lot. The City agrees to patrol the Lot from 5:00 pm to 2:00 am weekdays, from 5 pm Fridays until 2 am Saturdays, from 2 pm Saturdays until 2 am Sundays, and from 2 pm Sundays until 2 am Mondays, excluding federal holidays, or as determined by the City, to insure that motorists parking thereon are paying required usage fees as are now, or as may hereafter, be established by the City. The City shall issue parking citations under the same policies as other city controlled parking lots.

5. PROPERTY OWNER OBLIGATIONS: The University agrees to purchase and install all revenue collection equipment with the University retaining ownership of the equipment and covering all maintenance costs on such equipment, including replacement, if necessary, during the term of this Agreement.

6. PARKING RATES: The City will charge the same parking meter rates as the City rates for the area. The University reserves the right to exempt specific University-issued parking permits from the parking meter payment requirements during the City enforcement period set forth in Section 4 above.

7. COMPENSATION: The City agrees to pay to the University, during the term of the lease, or any extension thereof, the net operating revenues derived from the leased premises. The term "net operating revenues" shall mean gross revenues less all costs to provide parking patrol and enforcement. Gross revenues shall not be deemed to include fines or penalties paid to the City as a result of enforcement actions by the City. Estimated patrol and enforcement costs are \$840 per month. Said revenues shall be paid to the University quarterly.

8. ASSIGNMENT: The rights granted in this Agreement may not be assigned or otherwise conveyed to any other party or individual for any reason whatsoever; provided, however, that the University may assign its rights as part of any merger or other reorganization.

9. SIGNS: Solely as a matter of contract, pursuant to this Agreement, the parties agree that all signs on the Lot shall be consistent in their appearance with the standards established by the University for University operating hours and by the City for City operating hours.

c. The parties covenant and agree that time is of the essence with respect to the performance of their respective obligations under this Agreement.

d. The University and the City are and shall remain independent parties at all times and for all reasons. This Agreement does not create a joint venture or partnership, and neither party has the authority to bind the other with respect to any third party.

e. The parties covenant and agree that the rule of construction that ambiguous provisions of an agreement are construed against the drafting party shall have no application or effect with respect to this Agreement. This Agreement shall be interpreted as if both parties participated equally in its preparation and drafting.

f. This Agreement is entered into by both parties based upon the facts set forth herein and each party acknowledges that it has consulted independent legal counsel of its choice with respect to the meaning, application, purpose and construction of this Agreement or voluntarily chose not to do so.

g. The parties agree that, in carrying out the terms and conditions of this Agreement, neither party may discriminate against any individual on any basis prohibited by the United States Constitution, the Arkansas Constitution, or federal or state law, including, but not limited to, the Americans with Disabilities Act ("ADA") and the Rehabilitation Act ("Act"). In its sole discretion, the University may, if necessary, modify and/or reduce the number of parking spaces in the Lot to create the required amount of accessible parking space(s), which fully comply with the ADA, the Act, and any applicable federal or state regulations as the same may be amended from time to time.

h. This Agreement may be executed concurrently in one or more counterparts, each of which shall be an original, but all of which together shall constitute one and the same.

i. Notwithstanding any term of provision to the contrary, nothing in this Agreement shall be deemed or construed as a waiver of jurisdiction or of the sovereign immunity of the University of Arkansas, or any immunities to suit available to its trustees, representatives, officials, and employees.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, City of Fayetteville and the Board of Trustees of the University of Arkansas, acting for and on behalf of the University of Arkansas, Fayetteville, have hereunder set their hands, by their respective officers, duly authorized on this _____ day of _____, 2013.

Board of Trustees of the
University of Arkansas,
Acting for and on behalf
Of the University of Arkansas,
Fayetteville

By: _____
Donald O. Pederson

Title: _____
Vice Chancellor for Finance
and Administration

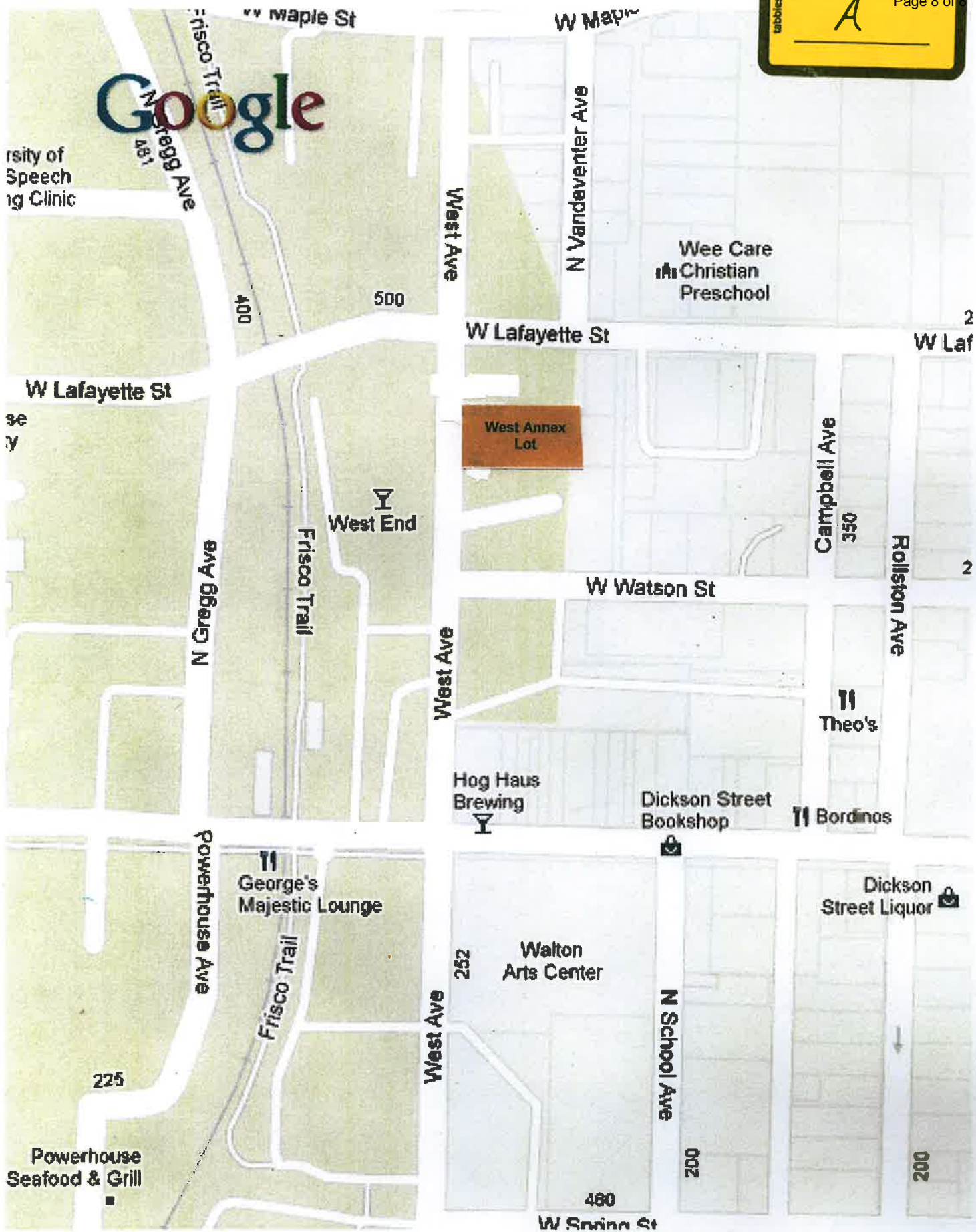
City of Fayetteville, Arkansas

APPROVED:

By: _____
Lioneld Jordan, Mayor

ATTEST:

By: _____
Sondra E. Smith, City Clerk/Treasurer



University of
Speech and
Hearing Clinic



Wee Care
Christian
Preschool

West Annex
Lot

Hog Haus
Brewing

Dickson Street
Bookshop

George's
Majestic Lounge

Powerhouse
Seafood & Grill

Walton
Arts Center

Dickson
Street Liquor