City of Fayetteville Staff Review Form

2015-0340

Legistar File ID

8/18/2015

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Melissa Elmore	7/22/2015	Parking & Telecommunications / Utilities Department
Submitted By	**Submitted Date**	**Division / Department**

Action Recommendation:

A resolution approving Lease Agreements for 4 parking spaces in Municipal Parking Lot 1 of the City of Fayetteville.

Budget Impact:

Account Number	Fund
Project Number	Project Title

Budgeted Item?	No	Current Budget	$	-
		Funds Obligated	$	-
		Current Balance	$	-
Does item have a cost?	No	Item Cost		
Budget Adjustment Attached?	No	Budget Adjustment		
		Remaining Budget	$	-

V20140710

Previous Ordinance or Resolution # 140-05

Original Contract Number:

Approval Date:

Comments:

CITY OF Fayetteville ARKANSAS

CITY COUNCIL AGENDA MEMO

MEETING OF AUGUST 18, 2015

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Melissa Elmore, Parking Management

DATE: July 22, 2015

SUBJECT: **Approval of Parking Lease Agreements in Parking Lot 1**

RECOMMENDATION:
Staff recommends approving Parking Lease Agreements on 4 parking spaces in Lot 1. These spaces are located in the Municipal Parking Lot 1, west of the Campbell Bell Building between Mountain, Church and Center Streets, a/k/a 160 West Mountain Street. The term of each lease will run for one (1) year with the option to renew the lease for four (4) additional one-year terms.

BACKGROUND:
During 2010, the City entered into lease agreements on 4 parking spaces in Parking Lot 1. Fulton Enterprises, Inc. d/b/a Town and Country Shop leased 4 spaces for retail customers. In 2011, Fulton Enterprises requested the cancellation of 2 of the 4 leased spaces. These 2 spaces were subsequently leased to Edward Jones. Each space leases for $50.00 per month.

DISCUSSION:
The City currently holds leases on 18 parking spaces in Municipal Parking Lot 1. Campbell Bell POA leases 14 spaces for the condominium owners located in the Campbell Bell Building on the west side of the Square; Fulton Enterprises, Inc. d/b/a Town and Country Shop and Edward Jones.

BUDGET/STAFF IMPACT:
The 4 spaces generate $2,400.00 per year. The total revenue on all 18 spaces is $10,800.00 per year.

Attachments:
The new leases will be arranged as follows:

- Fulton Enterprises, Inc. – 2 spaces (Space #8, 9)
- Edward Jones – 2 spaces (Space #32, 33)

LEASE

This Agreement, made and entered into this _____ day of _ _____ 2015, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, and Fulton Enterprises, Inc., d/b/a Town and Country Shop, 9 South Block Ave., AR 72701, **Witnesseth:**

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by Fulton Enterprises, Inc., d/b/a Town and Country Shop as obligations to the City of Fayetteville, the City of Fayetteville lets, leases and demises unto Fulton Enterprises, Inc., d/b/a Town and Country Shop, subject to the terms and conditions contained herein, the following described property situated in Washington, County, Arkansas:

> Two (2) parking spaces, as set forth on Exhibit ▪A• attached hereto, located in the Fayetteville Municipal Parking Lot 1, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a/ 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto Fulton Enterprises, Inc., d/b/a Town and Country Shop for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. **Term.** This term shall commence on August 1, 2015, and shall extend for a term of one (1) year, ending at midnight on July 31, 2016. Fulton Enterprises, Inc., d/b/a Town and Country Shop shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to City of Fayetteville at least 30 days prior to expiration of this lease.

3. **Rent.** Fulton Enterprises, Inc., d/b/a Town and Country Shop agree to pay to City of Fayetteville as rental for the first year of this lease the sum of $50.00 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due <u>in advance</u> and payable on or before the <u>first</u> of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by City of Fayetteville within five (5) business days from the due date.

4. **Use.** Fulton Enterprises, Inc., d/b/a Town and Country Shop agree to use the lease premises only for the purpose of vehicle parking for use of Fulton Enterprises, Inc., d/b/a Town and Country Shop. However, it is understood that the City of Fayetteville will not provide enforcement for restrictive parking spaces identified in this lease.

5. **Improvements.** Fulton Enterprises, Inc., d/b/a Town and Country Shop may

make the following improvements: Install private parking notices on meter poles. Design for all improvements shall be approved by the City of Fayetteville. Any such improvement shall be solely at Fulton Enterprises, Inc., d/b/a Town and Country Shop' expense.

6. **Assignment.** Fulton Enterprises, Inc., d/b/a Town and Country Shop shall not assign this lease or sublet the leased premises without prior written consent of the City of Fayetteville. Consent for any assignment or subletting shall only be considered at the same rates as established in Paragraph 3. above. Any such assignment or subletting shall in no way relieve Fulton Enterprises, Inc., d/b/a Town and Country Shop from liability for the obligation imposed by this lease. Fulton Enterprises, Inc., d/b/a Town and Country Shop may only be released from liability by a specific written release executed by City of Fayetteville.

7. **Holdover.** Fulton Enterprises, Inc., d/b/a Town and Country Shop hereby agree that upon termination of this lease by expiration or by earlier termination for any reason whatsoever, Fulton Enterprises, Inc., d/b/a Town and Country Shop will peaceably deliver possession of the leased premises to City of Fayetteville. In the event Fulton Enterprises, Inc., d/b/a Town and Country Shop shall be permitted by City of Fayetteville to hold over after the expiration or termination of this lease, said holding over, in the absence of any written agreement to the contrary, shall be construed as a tenancy from calendar month to calendar month at a monthly rental equal to the rental for the last month paid under this lease, or as may be amended on the anniversary of the term set forth in Paragraph 2. above. A month-to-month tenancy arising by Fulton Enterprises, Inc., d/b/a Town and Country Shop's holding over under this paragraph may be terminated by written notice from either party to the other party on or before the day on which any monthly rent is due with termination not becoming effective until the day on which the next following monthly rental would have otherwise become due. In the event it should become necessary for City of Fayetteville to institute any action at law to recover possession at the time of termination, whenever and however termination may occur, Fulton Enterprises, Inc., d/b/a Town and Country Shop agree that it will pay all costs and expenses of such action, including reasonable attorney's fees.

8. **Termination.** City of Fayetteville hereby reserves the right to terminate this Lease at any time during the term of this Lease if it is determined by the Fayetteville City Council that the leased premises is needed for a valid public purpose. If City of Fayetteville terminates the lease prior to expiration of the term in Paragraph 2., City of Fayetteville shall compensate Fulton Enterprises, Inc., d/b/a Town and Country Shop on a prorated basis of the actual cost to make improvements to the premises.

9. **Compliance with Laws.** Fulton Enterprises, Inc., d/b/a Town and Country Shop agree not to violate any law, ordinance, rule or regulation of any government authority having jurisdiction of the leased premises.

10. **Non-Waiver.** It is agreed that the failure of City of Fayetteville to invoke any of

the available remedies under this lease or under law in the event of one or more breaches or defaults by Fulton Enterprises, Inc., d/b/a Town and Country Shop under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent City of Fayetteville from invoking such remedies in the event of any future breach or default.

11. **Insurance.** Fulton Enterprises, Inc., d/b/a Town and Country Shop shall be solely responsible for maintaining insurance on any improvements made to the leased premises, as well as for general public liability insurance.

12. **Succession.** This lease agreement shall inure to the benefit of and be binding upon the parties hereto and their respective heirs, successors and assigns.

13. **Severability.** Each paragraph of this lease agreement is severable from all other paragraphs. In the event any court of competent jurisdiction determines that any paragraph or subparagraph is invalid or unenforceable for any reason, all remaining paragraphs and subparagraphs will remain in full force and effect.

14. **Interpretation.** This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas.

15. **Entire Agreement.** This lease agreement contains the entire agreement of both parties hereto, and no other oral or written agreement shall be binding on the parties hereto. This lease agreement supersedes all prior agreements, contracts and understandings of any kind between the parties relating to the subject matter hereof. This agreement may be executed in all or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands and seals on the date first written above.

CITY OF FAYETTEVILLE:

By:_____
LIONELD JORDAN, Mayor

ATTEST:

By:_____
SONDRA SMITH, City Clerk

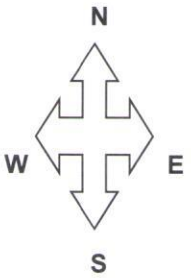
Elizabeth Fulton
Fulton Enterprises, Inc
_____
FULTON ENTERPRISES, INC., D/B/A TOWN AND COUNTRY SHOP

EXHIBIT A - LOT 1

CENTER STREET

CHURCH STREET

90	Handicap	44	21	1	
91	68	45	22	2	
92	69	46	23	3	
93	70	47	24	4	
94	71	48	25	5	
95	72	49	26	6	
96	73	50	27	7	
97	74	51	28	**8 Fulton**	
98	75	52	29	**9 Fulton**	
99	76	53	30	10	
100	77	54	31	Transformer & compactor	
101	78	55	**Edward Jones 32**		
102	79	56	**Edward Jones 33**		
103	80	57	**POA 34**	**11**	**POA**
104	81	58	**POA 35**	**12**	**POA**
105	82	59	**POA 36**	**13**	**POA**
106	83	60	**POA 37**	**14**	**POA**
107	84	61	**POA 38**	**15**	**POA**
108	85	62	**POA 39**	**16**	**POA**
109	86	63	**POA 40**	**17**	**POA**
110	87	64	Handicap	18	
111	88	65	Handicap	19	
112	89	66	Handicap	20	



MOUNTAIN STREET

LEASE

This Agreement, made and entered into this _____ day of _____ 2015, by and between the City of Fayetteville, Arkansas, a Municipal Corporation, 113 W. Mountain, Fayetteville, Arkansas, and Edward Jones, c/o Robert Baker, 15 South Block Ave. Suite 108, Fayetteville, AR 72701, **and Witnesseth:**

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by Edward Jones, c/o Robert Baker as obligations to the City of Fayetteville, the City of Fayetteville lets, leases and demises unto Edward Jones, c/o Robert Baker, subject to the terms and conditions contained herein, the following described property situated in Washington, County, Arkansas:

> Two (2) parking spaces, as set forth on Exhibit ▪A• attached hereto, located in the Fayetteville Municipal Parking Lot 1, west of the Campbell Bell Building between Mountain, Church, and Center Streets, a/k/a/ 160 West Mountain Street, Fayetteville, Arkansas.

To have and to hold said premises unto Edward Jones, c/o Robert Baker for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. **Term.** This term shall commence on August 1, 2015, and shall extend for a term of one (1) year, ending at midnight on July 31, 2016. Edward Jones, c/o Robert Baker shall have the option to renew this lease for 4 additional 1 year terms. The option may be exercised by providing written notice to City of Fayetteville at least 30 days prior to expiration of this lease.

3. **Rent.** Edward Jones, c/o Robert Baker agrees to pay to City of Fayetteville as rental for the first year of this lease the sum of $50.00 per space per month. Thereafter, the rent shall be adjusted each year at the lease anniversary date to an amount charged for comparable lease spaces in this lot. If no comparables exist, rates will be the same as the Town Center parking deck rates. Each monthly payment is due <u>in advance</u> and payable on or before the <u>first</u> of each month. A late fee shall be imposed, at the highest rate allowable by law, on all payments which are not received by City of Fayetteville within five (5) business days from the due date.

4. **Use.** Edward Jones, c/o Robert Baker agrees to use the lease premises only for the purpose of vehicle parking for use of Edward Jones, c/o Robert Baker. However, it is understood that the City of Fayetteville will not provide enforcement for restrictive parking spaces identified in this lease.

5. **Improvements.** Edward Jones, c/o Robert Baker may make the following improvements: Install private parking notices on meter poles. Design for all improvements shall be approved by the City of Fayetteville. Any such improvement shall be solely at Edward Jones, c/o Robert Baker's expense.

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10. **Non-Waiver.** It is agreed that the failure of City of Fayetteville to invoke any of the available remedies under this lease or under law in the event of one or more breaches

or defaults by Edward Jones, c/o Robert Baker under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent City of Fayetteville from invoking such remedies in the event of any future breach or default.

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By:_____
LIONELD JORDAN, Mayor

ATTEST:

By:_____
SONDRA SMITH, City Clerk

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EDWARD JONES, c/o Robert Baker

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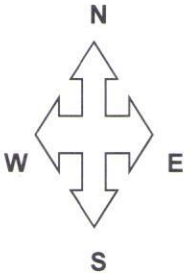

MOUNTAIN STREET