

**City of Fayetteville Staff Review Form**

**2018-0650**

**Legistar File ID**

**12/4/2018**

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

Justin Clay

11/14/2018

PARKING MANAGEMENT (430)

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

A resolution approving a lease agreement renewal with the University of Arkansas for City operation of the University's West Annex Parking Lot as a revenue-producing off-street parking lot within the Dickson Street Entertainment District

**Budget Impact:**

|  |   |
|--|---|
| Account Number                               | Fund  |
| Project Number                               | Project Title                                   |
| <b>Budgeted Item?</b> <u>NA</u>              | <b>Current Budget</b>                           |
|  | <b>Funds Obligated</b> \$                    -  |
|  | <b>Current Balance</b> \$                    -  |
| <b>Does item have a cost?</b> <u>No</u>      | <b>Item Cost</b>                                |
| <b>Budget Adjustment Attached?</b> <u>NA</u> | <b>Budget Adjustment</b>                        |
|  | <b>Remaining Budget</b> \$                    - |

V20180321

**Purchase Order Number:** \_\_\_\_\_

**Previous Ordinance or Resolution #** \_\_\_\_\_

**Change Order Number:** \_\_\_\_\_

**Approval Date:** \_\_\_\_\_

**Original Contract Number:** \_\_\_\_\_

**Comments:**



**MEETING OF DECEMBER 4, 2018**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff

**FROM:** Justin Clay, Parking Manager

**DATE:** November 14, 2018

**SUBJECT:** **A resolution approving a lease agreement renewal with the University of Arkansas for City operation of the University's West Annex Parking Lot as a revenue-producing off-street parking lot within the Dickson Street Entertainment District**

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**RECOMMENDATION:**

Staff recommends renewing the lease agreement with the University of Arkansas authorizing the City to continue to operate the West Annex parking lot located at 346 N. West Avenue as a revenue producing off-street parking lot. This lot contains 63 numbered parking spaces.

**BACKGROUND:**

For the past five (5) years, the University of Arkansas and the City have been under contract to authorize the City to operate this lot during nights and weekends at the rates and regulations for the Entertainment District. The lot is restricted to University permit parking on weekdays between the hours of 7 a.m. – 5 p.m. The contract provides that the City agrees to collect the parking pay station revenues located on the leased premises and the City agrees to police the leased premises to ensure that motorists parking thereon are paying the requisite usage fees established by the City. The City then pays back to the University of Arkansas the net operating revenues on a quarterly basis. Net operating revenues is defined as gross revenues less all costs of maintaining and operating the leased premises as an off-street parking lot. Fees collected for the issuance of citations are maintained by the City.

**DISCUSSION:**

Staff feels that this shared parking agreement serves the public interest as it makes publicly available otherwise restricted parking and ensures continuity in parking rules, regulations, rates, and enforcement methods found in other City-managed parking facilities throughout the Entertainment District. This agreement has resulted in an average of over \$21,000 in annual disbursements to the University.

**BUDGET/STAFF IMPACT:**

Staff anticipates no budget or staff impact resulting from this lease renewal.

**Attachments:**

Lease Agreement

**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 of 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 one (1) year, 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 ensure 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. Excluding standard University business hours, the parties agree that the City may adjust its enforcement periods, consistent with its general operation of parking in the area, without revising this Agreement.

**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. Said revenues shall be paid to the University quarterly. From time to time, upon request, City shall make available to University a copy of its calculations and related records for determining net operating revenues.

**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. The City shall be responsible for any costs of updating signage due to its adjustment of parking enforcement periods.

**10. NON-WAIVER:** The failure of either party to exercise any of its rights under this Agreement for a breach thereof shall not be deemed a waiver of such rights, nor shall be deemed a waiver of any subsequent breach, either of the same provision or otherwise.

**11. GOVERNING LAW:** This Agreement is entered into in the State of Arkansas and shall be governed by the laws of the State of Arkansas without regard to its choice of law principles.

**12. WARRANTY OF AUTHORITY:** The City warrants and represents to University that the City has the full power and authority to execute this Agreement and perform all obligations herein set forth. The University warrants and represents to the City that the University has the full power and authority to execute this Agreement and perform all obligations herein set forth.

**13. VEHICLE TOWING AND RELOCATION:** The University reserves the right to tow, relocate, or immobilize at the owner's expense, any vehicle that is parked illegally, parked in violation of University policy, or that must be moved for special events or maintenance. The University nor the City shall be responsible for damage to a vehicle resulting from towing, relocating, or immobilization.

**14. NO RIGHT TO HOLDOVER:** The City has no right to possession of the Premises or any part thereof beyond the expiration or termination of this Lease. Nothing contained herein shall be construed as consent by the University to any holding over by the City.

**15. MISCELLANEOUS PROVISIONS:**

a. Rights and restrictions in this Agreement may be exercised and shall be applicable only to the extent they do not violate any applicable laws and are intended to be limited to the extent necessary, so they will not render this Agreement illegal, invalid or unenforceable. In the event that any provision of this Agreement or the application of this Agreement to any circumstance should be held by any competent legal authority to be invalid, the application of such provision to other circumstances shall not be affected hereby, and the remainder of the Agreement shall remain in full force and effect.

b. This Agreement contains the entire agreement between the parties and no statement, promise or inducement made by any party, or agent of either party, which is not contained in this Agreement, shall be valid or binding upon either party. This Agreement supersedes all prior agreements, whether written or verbal, regarding its subject matter. Any amendment hereof must be in writing and signed by both parties.

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 \_\_\_\_\_, 2018.

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

By:   
Donald R. Bobbitt  
President

**CITY OF FAYETTEVILLE:**

By: \_\_\_\_\_  
LIONELD JORDAN, Mayor

**ATTEST:**

By: \_\_\_\_\_  
SONDRA SMITH, City Clerk