City of Fayetteville Staff Review Form

2021-0566

Legistar File ID

8/17/2021

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

Leif Olson	7/21/2021	SUSTAINABILITY/RESILIENCE (631)
Submitted By	**Submitted Date**	**Division / Department**

Action Recommendation:

Sustainability staff recommends the City Council approval of a 3-year lease agreement with the Northwest Arkansas Land Trust (NWALT) to develop and manage the Woolsey Working Farm (approximately 4.3-acres of land located east of Broyles Road) and approval of a budget adjustment transferring funds from Sales Tax Capital Fund to Water & Sewer Fund for the purchase of the land.

Budget Impact:

1010.631.6310-5315.00	General Fund
Account Number	Fund
Project Number	Project Title

Budgeted Item?	Yes	Current Budget	$	6,000.00
		Funds Obligated	$	-
		Current Balance	**$**	**6,000.00**
Does item have a cost?	Yes	Item Cost	$	5,521.30
Budget Adjustment Attached?	Yes	Budget Adjustment	$	-
		Remaining Budget	**$**	**478.70**

V20210527

Purchase Order Number:

Previous Ordinance or Resolution #

Change Order Number:

Approval Date:

Original Contract Number:

Comments:

CITY OF FAYETTEVILLE ARKANSAS

CITY COUNCIL MEMO

MEETING OF AUGUST 3, 2021

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Tim Nyander, Utilities Director

FROM: Peter Nierengarten, Environmental Director

DATE: July 30, 2021

SUBJECT: **Woolsey Working Farm land lease with the Northwest Arkansas Land Trust.**

RECOMMENDATION:
Sustainability staff recommends City Council approval to enter into a 3-year lease agreement with the Northwest Arkansas Land Trust (NWALT) on an approximately four-acre portion of land located east of Broyles Road and approval of a budget adjustment transferring funds from the Sales Tax Capital Fund to the Water and Sewer Fund for the purchase of the land.

BACKGROUND:
Sustainability staff began working on the concept of developing a working farm on a six-acre plot of land east of Broyles Ave. in 2016 in conjunction with the work to preserve the historic Woolsey Farmstead across Broyles Ave. In that year staff developed and advertised a Request for Proposals (RFP) "intended to attract applications from qualified individuals, businesses and/or nonprofit organizations who would like to develop an urban farm on all, or a portion, of a six-acre piece of underutilized City property with the goal of producing healthy food for personal consumption and/or sale."

The City did not receive any applications from this RFP, so Sustainability Staff began having conversations with non-profit organizations that were doing sustainable farming work to understand why the RFP did not generate interest. Commonly cited reasons included upfront infrastructure costs, lease length terms, land preparation, etc. Several organizations expressed interest in the working farm concept over the ensuing years but due to changes in leadership and/or changes in mission these partnerships were never completed.

DISCUSSION:
In 2020 Sustainability staff began working with the NWALT on a working farm concept that the NWALT would manage to provide community benefit and increased food security for Fayetteville. The NWALT proposes focusing on subleasing farm plots to fruit and vegetable farmers to advance the primary goal of the NWALT to "increase the availability of fresh and healthy fruits and vegetables in the larger regional food system." The NWALT will assist farm tenants through their occupancy by providing support through NWALT's regional food system and partnership network. NWALT will also support the farmer tenants by creating individual farm

management plans and follow best practices for sustainable agricultural practices and ensure lease terms through regular inspections.

The City crew will make necessary improvements to the existing gravel road. Additionally, the City will coordinate reconnecting electrical and water service. The future fence construction along Broyles Ave will be coordinated with the historic farm restoration. The City will advise and assist NWALT and farm tenants with any possible applications or permits that may be necessary to ensure compliance with all City regulations.

The working farm site is envisioned to compliment the restoration of the historic Woolsey Farmstead located across Broyles Ave. to the west. Current 5-year CIP funding for the Woolsey Farmstead restoration only includes improvements to the structures and grounds on the west side of Broyles Ave and does not including funding for a future education center or parking lot east of Broyles Ave.

Sustainability staff anticipates working with the NWALT on identifying and securing additional funding sources, grants or gifts to help pay for capital improvements to the working farm as this project progresses. Anticipated additional capital improvements include; deer prevention fencing, irrigation systems, hoop houses, cleaning stations, etc.

BUDGET/STAFF IMPACT:
The Sustainability Department will pay the NWALT an annual management fee not to exceed the amount of $5,521.30 for the first year of the lease term. The management fee shall increase by three percent (3%) in each subsequent year.

Attachments:
Northwest Arkansas Land Trust – Land Lease Agreement - Woolsey Working Farm
Site Map of the Woolsey Working Farm
NWALT – Authority to Sign Document
Woolsey Working Farm Survey Document
Woolsey Working Farm Site Map

NORTHWEST ARKANSAS LAND TRUST - LAND LEASE AGREEMENT – WOOLSEY WORKING FARM

This Agreement to lease an approximately four acre portion of land located east of Broyles Road to the Northwest Arkansas Land Trust as shown on the map attached to this Agreement as Exhibit "A" is entered into by and between the **City of Fayetteville** (hereinafter the "City") as landlord and **the Northwest Arkansas Land Trust** (hereinafter "Northwest Arkansas Land Trust") as tenant on this _____ day of _____ 2021.

WHEREAS, the NWALT is an Arkansas 501(c)(3) non-profit corporation whose mission is "to preserve and enhance the quality of life in Northwest Arkansas through the permanent protection of land" which reinforces the City Council's strategic plan focus area #7: Sustainability by supporting the local food economy; and

WHEREAS, in 2019 the NWALT launched NWA Farm-Link, a website resource dedicated to addressing farmland succession and increasing local food supplies by connecting farm seekers with farmland owners and providing them with information and resources to access farmland; and

WHEREAS, the NWALT will focus on subleasing farm plots to fruit and vegetable farmers to advance a primary goal of the Northwest Arkansas Land Trust to increase the availability of fresh and healthy fruits and vegetables in the larger regional food system; and

WHEREAS, the NWALT will assist farm tenants through their occupancy by providing support through NWALT's regional food system and partnership network; and

WHEREAS, the NWALT will support farmer tenants to create individual farm management plans and follow best practices for sustainable agricultural practices and will ensure lease terms through regular inspections; and

NOW, THEREFORE, the **City of Fayetteville** and **NWALT** hereby mutually covenant and agree as follows:

1. <u>Leased Premises</u>

The City of Fayetteville agrees to lease the 4.307 acres of land shown on the survey attached hereto as Exhibit A to the NWALT which agrees to accept such leased premises to be used for the purposes normally associated with a working farm and as set forth in later provisions of this lease.

2. Use of Leased Premises

NWALT agrees that it will, as a nonprofit charitable corporation, operate, maintain, improve, and promote a working farm on the leased property.

3. City's Obligations to NWALT

City agrees to:

A. Construct a gravel access road and parking area for tenant(s) and guests with secured gate suitable for access by farm vehicles and other equipment.

B. Reconnect electric service and outlets including up to five 110 volt and two 50-amp outlets for a variety of possible uses.

C. Install agricultural water line and meter to property in a location best suited for irrigating crops pending farm tenant(s) input.

D. Advise and assist NWALT and farm tenant(s) through application process for conditional use permits, if necessary, for operation of approved and desired farm business which may include guest parking and you-pick and/or farm stand operations or agritourism.

E. Pay a management fee not to exceed the amount of $5,521.30 for the first year of the lease term. The management fee shall increase by three percent (3%) in each subsequent year. Payments shall be made no later than thirty (30) days after the beginning of a lease year.

F. Construct and maintain a fence along the Broyles Ave. frontage of the property.

4. Consideration for the Lease

As consideration for the three-year lease and any extensions thereof of about four acres of City of Fayetteville land to the Northwest Arkansas Land Trust, NWALT agrees to:

A. Prepare the Woolsey Farm site in 2021 and establish farm plots for lease.

B. Work with partner organizations to disseminate applications for incubator farm plots during fall/winter of 2021-2022. Receive and process applications in 2021 and select three qualified beginning farmers to be placed on farm plots at the Woolsey Incubator Farm in the fall/winter of 2021-2022.

C. Provide one-on-one technical support to each participating farmer to ensure successful start-up and establishment at the Woolsey Working Farm throughout the duration of this lease agreement.

D. Require farm tenants to create individual farm management plans and follow best practices for sustainable agricultural practices, as will be outlined in their sublease agreements. NWALT will ensure lease terms and stewardship standards are being met through regular inspections.

E. Draft a sublease template for farm tenant(s) in consultation with an attorney licensed to practice in the state of Arkansas. The sublease template will follow applicable state law, city-specific standards, and local ordinances as appropriate. The sublease template will be presented to the City for review and approval.

F. Submit an annual progress report to the City no earlier than thirty (30) days before the end of each lease year along with an invoice for the next year's management fee.

G. Pay or require sub-lessees to pay all utility costs associated with the use of the Leased Premises.

5. Lease Term

This lease term shall commence upon the approval and execution by both the Northwest Arkansas Land Trust and the City. It shall continue for three years, unless sooner terminated pursuant to this Agreement or by mutual consent of the parties. At the end of the initial three-year term, the Agreement shall automatically renew for

up to three additional one-year terms. If either party wishes to terminate this Agreement at the end of the initial term or any renewal term, notice shall be given in writing at least ninety days prior to the end of the initial term or renewal term.

6. Woolsey Working Farm Operating Policies

The operating policies shall be designed to preserve and maintain the integrity of all buildings, grounds and improvements on the property. NWALT may construct, alter, and remove temporary, removable improvements necessary for farm operations such as, but not limited to, high tunnels, greenhouses, farm stands, interior fencing, farm sheds, temporary waste receptacles, porta-potties, and non-residential mobile trailers to provide rest and food shelter for farm tenants and laborers.

No permanent structure shall be constructed on the Leased Premises without the prior written approval of the City. No approved permanent structure shall be removed without the prior written approval of the City and any permanent attachment or fixture on the Leased Premises at the expiration of the lease term or any extension thereto shall remain property of the City.

7. Woolsey Working Farm Rules and Regulations

To the extent permitted by law, either the City or the NWALT may exclude objectionable uses, or abusive or offensive persons from all premises subject to this agreement.

8. Woolsey Working Farm Operation and Supervision

NWALT shall exercise sole operational and supervisory authority over all grounds, buildings and personnel of the Woolsey Working Farm and over all such matters, including but not limited to, safety, insurance, planning, plant acquisitions, displays and gardens, and the purchase, exchange, or acquisition of additional items to be added to the collection, except as otherwise provided in this agreement. NWALT at its expense will be responsible for all maintenance and security associated with the operation of the working farm, including equipment, parking areas, and other improvements, except for the gravel access driveway which will be maintained by the City

NWALT shall be authorized to sublet any portion of the leased property in any configuration according to the policies which shall be approved by the City prior to the assignment of any plot.

9. The Northwest Arkansas Land Trust is an independent entity

The parties agree that NWALT is an independent entity and nonprofit 501(c)(3) Arkansas corporation and will maintain that status and remain in good standing throughout the lease term. The City of Fayetteville has no authority to hire, fire or supervise any NWALT employee. NWALT has the sole authority for selecting, engaging, terminating, fixing compensation, supervising and otherwise directing all its personnel, farm tenants, contractors and volunteers.

10. Operations and Development must comply with Federal, State and City requirements and restrictions

NWALT agrees to always be in full compliance with all applicable Federal, State or City requirements and restrictions. Specifically, the NWALT agrees to always use best management practices including obeying all State and City laws and regulations governing the use of pesticides, herbicides and fertilizers.

11. Insurance

NWALT agrees to obtain and maintain through the duration of the lease at its own expense, general liability, workers compensation and automobile insurance a copy of which shall be provided to the City.

NWALT agrees to defend, indemnify and hold the City, its officers, employees, agents and representatives harmless against all damages, expenses, loss or liability from any claim or suit arising or alleged to have risen from any act or omission of NWALT, its officers, employees, agents or representatives by reason of the operation of the incubator farm under this agreement, including, but not limited to, damage to or destruction of property or injuries to or death of a person or persons.

12. Nonprofit Corporate Status

NWALT shall file a true and correct copy of its corporate charter, with amendments, if any, and an accurate and complete copy of its Bylaws and any amendments thereto, and a copy of the I.R.S. Letter of Determination of I.R.C. Sec. 501(c)(3) status with the City to be maintained as a public record. In the event of subsequent amendments to such charter or bylaws, true and correct copies of the same shall be timely filed with the City Clerk. If the IRS revokes NWALT's 501(c)(3)

status, NWALT shall immediately notify the City of this occurrence and such revocation shall be grounds for termination of this lease agreement

13. Financial Reports

NWALT shall provide the City a copy of its annual Form 990 every year. The form will be provided within thirty (30) days of its filing.

14. Fees and Taxes

NWALT shall not charge any fees for admission to the incubator farm unless approved by the City in advance. The Woolsey Incubator Farm will not generally be open to the public; however, NWALT may coordinate with NCAT, the Illinois River Watershed Partnership, school groups and other visiting groups or organizations to ensure that the incubator farm provides a free educational resource.

NWALT tenants shall pay promptly all taxes and of whatever nature applicable under municipal, state, and federal law. In addition, the parties agree that NWALT shall indemnify and save the City harmless from and against any liens or similar liabilities claimed or charges against NWALT pursuant to NWALT's operation of the incubator farm.

15. Remedies for Breach or Bankruptcy

A. *Termination of Agreement*. The parties agree that if either party materially breaches or fails to perform its obligations under this agreement, the other party may give notice in writing of intent to terminate. If the breaching or non-performing party fails to commence and effect cure in good faith to the satisfaction of the other party within six months of such notice or such longer period, if agreed in writing by the parties, the agreement shall be deemed terminated at the expiration of the sixth month period or other agreed period. Any request of extension shall not be unreasonably withheld.

B. *Bankruptcy*. In the event NWALT shall be adjudicated bankrupt or insolvent or take the benefit of any reorganization of composition proceedings or insolvency law, or make an assignment for the benefit of creditors, or if NWALT's interest under this agreement shall be levied upon or attempted to be attached or sold under any process of law, or if a receiver shall be appointed for NWALT, then and thereafter the City shall have the right and option to terminate this agreement irrespective of whether or not default exists

hereunder, said determination to be effective immediately upon City's exercise of such option by giving written notice to NWALT.

C. *Acts of God.* The parties agree that neither party shall be liable or responsible to the other for delays or impossibilities of performance caused by force majeure occurrences beyond the control of the parties including, but not limited to, civil disorder, fires, floods, or acts of God.

16. Authorization

Terri Lane, Executive Director of the Northwest Arkansas Land Trust, is authorized by corporate resolution, attached hereto as Exhibit "B", passed by the Board of Directors of the Northwest Arkansas Land Trust on June 15th, 2021 to sign the foregoing lease agreement on behalf of the Northwest Arkansas Land Trust.

In agreement with all the terms, conditions and promises set forth above, we sign our names below:

NORTHWEST ARKANSAS LAND TRUST

By: Terri Lane
Terri Lane, Executive Director

Date: 7/6/2021

Witness: Mikayla Alderson
Mikayla Alderson

CITY OF FAYETTEVILLE

APPROVED:

By: _____
Lioneld Jordan, Mayor

Date: _____

ATTEST:

By: _____
Kara Paxton , City Clerk/Treasurer

Authority to Sign

I, Eileen Jennings, President of the Board of Directors of the Northwest Arkansas Land Trust (NWALT), do hereby certify that (1) I am the duly elected and acting President of NWALT; (2) at the regular meeting of the NWALT Board of Directors held on July 23, 2020 the NWALT Board of Directors voted to authorize Terri Lane, Executive Director/CEO of NWALT to sign or enter into agreements, grant applications, forms and to effectuate any documents which may be necessary to effectuate conservation projects; (3) this authorization has not been revoked, annulled or amended in any manner whatsoever, and remans in full forces and effect so long as Mrs. Lane remains Executive Director/CEO or the authorization is rescinded by the Board.

INTENDING TO BE LEGALLY BOUND, I executed this **Authority to Sign** as the President of the Northwest Arkansas Land Trust on July 23, 2020.

Eileen Jennings, President

Eileen Jennings, President

State of Arkansas
County of Washington

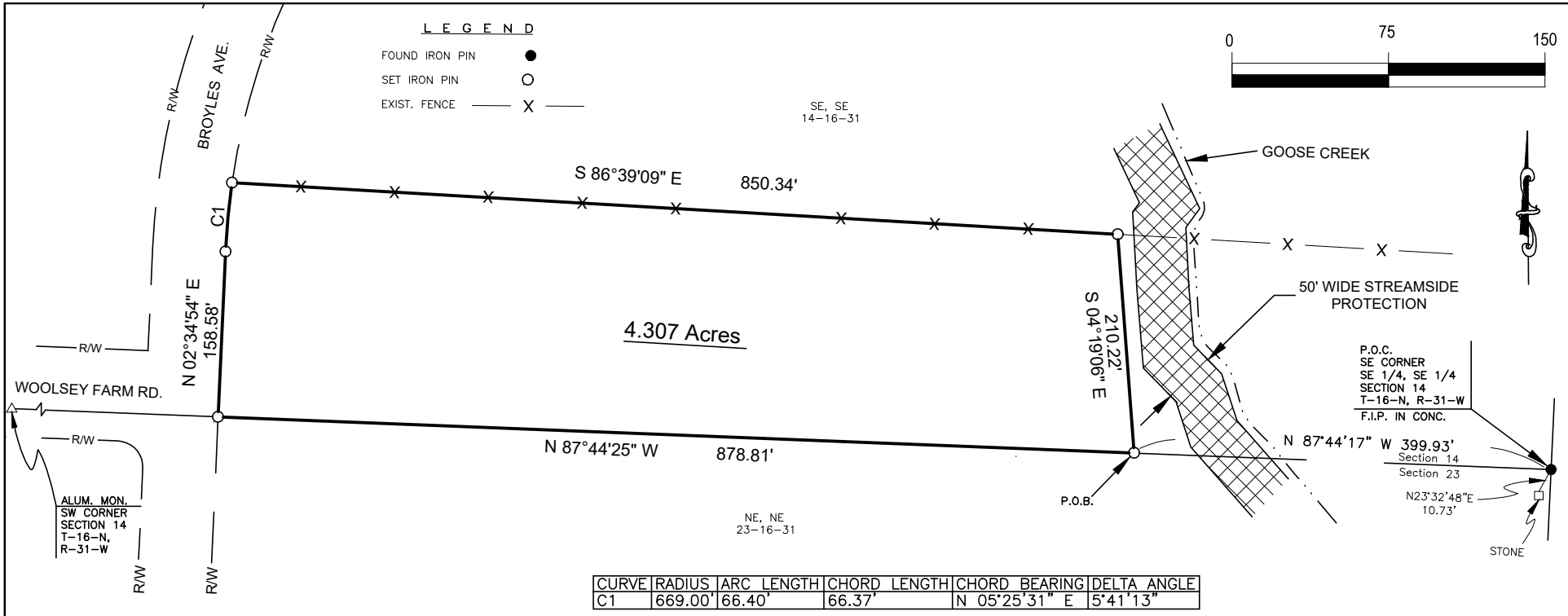
Subscribed and sworn to before me on this 23 day of July, 2020.

Signature of Notary Public

(Seal)

My Commission Expires: 7/11/29

LEAH SAFFIAN
NOTARY PUBLIC
WASHINGTON COUNTY, ARKANSAS
COMM. EXP. JULY 11, 2029
COMMISSION NO. 12708587



CURVE	RADIUS	ARC LENGTH	CHORD LENGTH	CHORD BEARING	DELTA ANGLE
C1	669.00'	66.40'	66.37'	N 05°25'31" E	5°41'13"

LEASE

A part of the Southeast Quarter (SE ¼) of the Southeast Quarter (SE ¼) in Section Fourteen (14), Township Sixteen North (16N), Range Thirty-one West (31W) of the Fifth Principle Meridian being more particularly described as follows:

Commencing at a found iron pin in concrete and accepted as the Southeast corner of said Section; thence North 87°44'17" West 399.93 feet to a set iron pin with cap #1514 and the **Point of Beginning**;

Thence North 87°44'25" West 878.81 feet to a set iron pin with cap #1514 and the easterly right-of-way Broyles Avenue;

Thence along said right-of-way to a set iron pin with cap #1514, North 02°34'54" East 158.58 feet to a set iron pin with cap #1514 and the beginning of a curve to the right having a radius of 669 feet and a central angle of 5°41'13";

Thence along said curve and said right-of-way an arc length of 66.40 feet to a set iron pin with a cap #1514, having a chord bearing and distance of North 5°25'31" East 66.37 feet;

Thence leaving said right-of-way South 86°39'09" East 850.34 feet to a set iron pin with cap #1514;

Thence South 04°19'06" East 210.22 feet to the Point of Beginning. This description contains an area of 4.307 acres more or less.

STATE OF ARKANSAS
REGISTERED PROFESSIONAL LAND SURVEYOR
No. 1514
DARYL V. DOYAL

CERTIFICATION:
THIS IS TO CERTIFY that the plat hereon is a true representation of the above described property as determined by survey and that I, Daryl V. Doyal, P.L.S. #1514, have surveyed and marked on the ground the boundaries and corners as shown and that there are no encroachments or protrusions except as shown herein.

CITY OF FAYETTEVILLE ARKANSAS
ENGINEERING DIVISION
113 W. MOUNTAIN STREET
PHONE NO: (479) 575-8206 FAX NO: (479) 575-8202

EXHIBIT FOR NWA LAND TRUST LEASE

PROJECT: May 5, 2021
REVISED: REV 1

1

Westside Wastewater Treatment Plant
BROYLES AVE
Historic Woolsey Homestead
Woolsey Working Farm Site
WOOLSEY FARM RD
ATLANTIC AVE
LOVELAND LOOP
JOLIET ST
BROYLES ST
N
Legend
County Parcels
Street
Streams
1 inch = 300 feet