

City of Fayetteville Staff Review Form

2018-0685

Legistar File ID

12/18/2018

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

Summer Fallen

11/27/2018

AIRPORT SERVICES (760)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval and signature of the Mayor on a lease agreement between the City of Fayetteville and Smokin A's BBQ.

Budget Impact:

Account Number	Fund
Project Number	Project Title
Budgeted Item? <u>NA</u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u>NA</u>	Item Cost
Budget Adjustment Attached? <u>NA</u>	Budget Adjustment
	Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF DECEMBER 18, 2018

TO: Mayor Lioneld Jordan
Fayetteville City Council

THRU: Don Marr, Chief of Staff

FROM: Summer Fallen, Airport Manager

DATE: **November 27, 2018**

SUBJECT: **Smokin A's BBQ Terminal Building Lease Agreement**

RECOMMENDATION:

Staff recommends approval and signature of the Mayor on a lease agreement between the City of Fayetteville and Smokin A's BBQ.

BACKGROUND:

Smokin A's BBQ is owned and operated by Mark Alvarez.

DISCUSSION:

Mark Alvarez requests space in the airport terminal building to operate a Smokin A's BBQ. The space that Mr. Alvarez will be occupying was not previously utilized as leasable space. Smokin A's will provide a much needed food option for incoming traffic and members of the public with an aviation interest.

BUDGET/STAFF IMPACT: N/A.

Attachments:

Staff Review Form
City Council Memo
Lease Agreement
Airport Terminal Building Layout with rented space indicated

LEASE AGREEMENT

This **LEASE AGREEMENT** made this _____ day of _____, 2018, by and between the City of Fayetteville, Arkansas, hereinafter called "City", and **Smokin A's BBQ**, 12145 Flowers Rd, West Fork, AR 72774, hereinafter called "Smokin A's BBQ."

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

WHEREAS, City is the owner of office space at the Airport; and

WHEREAS, **Smokin A's BBQ** desires to lease said office space,

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

1. City leases **Smokin A's BBQ**, and **Smokin A's BBQ** leases from City, approximately 360. sq. ft. of office space in the Terminal Building located at 4500 S. School Ave, Fayetteville, Arkansas.
2. **Smokin A's BBQ** is granted the use, 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. **Smokin A's BBQ** 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 **Smokin A's BBQ**, its employees, customers, passengers, guests, and other invitees. Such rights shall also extend to persons or organizations supplying materials or furnishing services to **Smokin A's BBQ**
4. Term: Subject to earlier termination as hereinafter provided, the initial term of this agreement shall be for TWO (2) year(s) commencing on the 4th day of December, 2018, and ending on the 31st day of December, 2020.

This Lease Agreement may be terminated by either party with a sixty (30) day written notice.

5. Rent: **Smokin A's BBQ** agrees to pay the City for the use of the premises, facilities, rights, and privileges granted hereunder the sum of: ZERO DOLLARS (\$0) per month.

The initial lease payment is due and payable upon execution of this Lease Agreement, and all

subsequent monthly lease payments shall be payable in advance on, or before, the 1st day of each month. In addition to any remedy available to it hereunder, the City may impose as additional rentals a delinquency charge on all overdue payments, at the maximum rate allowed by law.

6. City shall maintain and keep in good repair so much of the Airport premises as are not under the exclusive control of **Smokin A's BBQ**. **Smokin A's BBQ** 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. **Smokin A's BBQ** shall provide for and supply at its expense all janitor service with respect to the demised premises.

8. Improvements: **Smokin A's BBQ** shall bear the cost of all improvements or additions made to the interior or exterior of the building on the leased premises. No improvements or additions to any part of the leased premises shall be made by **Smokin A's BBQ** without the prior written approval of the Airport Manager, 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 Manager and conform to all City Ordinances.

9. Maintenance: 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 facility 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 **Smokin A's BBQ**, or **Smokin A's BBQ** 's agents or invites, upon notice from **Smokin A's BBQ**, 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, City may reconstruct the hangar at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or City may, at its option, cancel this agreement, such cancellation to be effective as of the date the hangar was destroyed, and the rent adjusted as set forth above. Routine maintenance of the hangar doors shall remain the responsibility of the City. **Smokin A's BBQ** shall not make any alterations to the controls of the hangar doors.

10. **Smokin A's BBQ** agrees to observe and obey 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 **Smokin A's**

BBQ's aircraft at the Airport.

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

11. Smokin A's BBQ agrees that it shall use the premises for the implementation and conducting or supporting an aeronautical business activity Smokin A's BBQ further agrees not in any way endanger or violate the provisions of the City's standard commercially available property insurance policy or the requirements of same. Such violations shall constitute a material breach of this Agreement.

12. Hazardous Substance: Smokin A's BBQ shall not cause or permit any Hazardous Substance to be used or stored on or in the Leased Premises without first obtaining the City's written consent. If hazardous Substances are used, stored, generated, or disposed of on or in the Leased Premises or if the Leased Premises or any other Airport property becomes contaminated in any manner for which Smokin A's BBQ is responsible or legally liable, Smokin A's BBQ shall indemnify and hold harmless the City, its officers, directors, agents, servants, and employees from any and all claims, damages, fines, judgments, penalties, costs, liabilities, or losses including all reasonable costs for investigation and defense thereof, (including but not limited to attorney's fees, court costs, and expert fees, and without limitation, decrease in value of the Lease Premises, damages caused by loss or restriction of rentable or usable space as a part of the Leased Premises arising during or after the term hereof and arising as a result of that contamination by Smokin A's BBQ, Smokin A's BBQ agents, employees, and invitees. This indemnification includes, without limitation, all cost incurred because of any investigation of the Airport or any cleanup, removal, or restoration mandated by a federal, state, local agency or political subdivision.

13. If the demised premises are partially damaged by fire or other casualty which is not due to the negligence or fault of Smokin A's BBQ, said premises shall be repaired with due diligence by City at 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, City may reconstruct the hangar at the City's own cost and the rent payable hereunder shall be adjusted as set forth above, or City may, at its option, cancel this agreement, such cancellation to be effective as of the date the hangar was destroyed, and the rent adjusted as set forth above.

14. Smokin A's BBQ shall maintain in force during the Term and any extended term public liability and property damage insurance in comprehensive form as reasonably may be required by the City and specified in the Airport Minimum Standards. The insurance shall be issued by an insurer licensed to do business in the State of Arkansas.

Concurrent with the execution of this Agreement, Smokin A's BBQ shall provide proof of insurance coverage by providing a Certificate of Lessee's Insurance coverage, a copy of the declarations page on the insurance policy, and a copy of all endorsements. The Certificates of Insurance, or endorsements attached thereto, shall provide that; (a) insurance coverage shall not

be canceled, changed in coverage, or reduced in limits without at least thirty (30) days prior written notice to the City: (b) the City and the Airport and their trustees, agents, officers, servants, and employees are named as additional insured: (c) the policy shall be considered primary as regards to any other insurance coverage the City may possess, including any self-insured retention or deductible the City may have, and any other insurance coverage the City may possess shall be considered excess insurance only; (d) the limits of liability required therein are on an occurrence basis.

15. **Smokin A's BBQ** agrees to indemnify City against any and all liabilities, losses, suits, claims, judgments, fines, penalties, demands or expenses, including all reasonable costs for investigation and defense thereof, (including but not limited to attorney's fees, court costs, and expert fees, for injuries to persons or damage to property caused by **Smokin A's BBQ** use or occupancy of the lease premises; provided, however, that **Smokin A's BBQ** shall not be liable for any injury, damage or loss arising from the negligence of City or its agents or employees; and provided further, that each party shall give prompt and timely notice of any claim made or suit instituted which in any way directly or indirectly affects or might affect either party, and each party 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. **Smokin A's BBQ** agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color, religion, national origin, sex, marital status, or handicap in the furnishing, or by refusing to furnish, to such persons the use of any facility, including any and all services, privileges, accommodations, and activities provided thereby. Nothing herein shall require the furnishing to the general public of the use of any facility customarily furnished by the City solely to tenants, their employees, customers, patients, client, guests, and invites.

17. Assigning, Subletting and Encumbering. **Smokin A's BBQ** 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 Airport Manager, which consent shall not be unreasonably withheld. Any consent by the Airport 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 **Smokin A's BBQ**'s creditors or otherwise by operation of law shall not be effective to transfer or assign **Smokin A's BBQ**'s interest under this Agreement unless the Airport shall have first consented thereto in writing. Neither **Smokin A's BBQ**'s interest in this Agreement, not any estate created hereby in **Smokin A's BBQ** 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 **Smokin A's BBQ** are transferred, or if any partnership interests of **Smokin A's BBQ** 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 **Smokin A's BBQ**, same shall be deemed an assignment for the purposes of this Section 17 and shall require the Airport's prior consent, and **Smokin A's BBQ** shall notify the Airport of any such change or proposed change.

18. On the expiration or other termination of this lease Smokin A's BBQ's right to use the demised premises shall cease, and Smokin A's BBQ shall vacate the premises without unreasonable delay. All property installed, erected, or placed by Smokin A's BBQ in, on, or about the premises leased Smokin A's BBQ 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 Smokin A's BBQ's obligation to repair all damage, if any, resulting from such removal. Any and all property not removed by Smokin A's BBQ 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.

19. City may enter the premises leased to Smokin A's BBQ at any reasonable time for any purpose necessary or incidental to the performance of its obligations or Smokin A's BBQ's obligations hereunder.

20. Smokin A's BBQ shall maintain the demised premises in a clean and orderly fashion at all times.

21. Smokin A's BBQ, agrees that habitation of the hangar building or offices as a residence is prohibited.

22. 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
AVIATION**

Airport Administration Office
4500 S. School Avenue, Suite F
Fayetteville, Arkansas 72701

Phone: (479) 718 -7642

Smokin A's BBQ

Smokin A's BBQ
12145 Flowers Rd
West Fork, Arkansas 72774

Phone: (903) 461-8132

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

25. 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.

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

ATTEST

By: _____
Sondra Smith, City Clerk and Treasurer

Smokin A's BBQ

By: Mark Alway
Business owner
Title

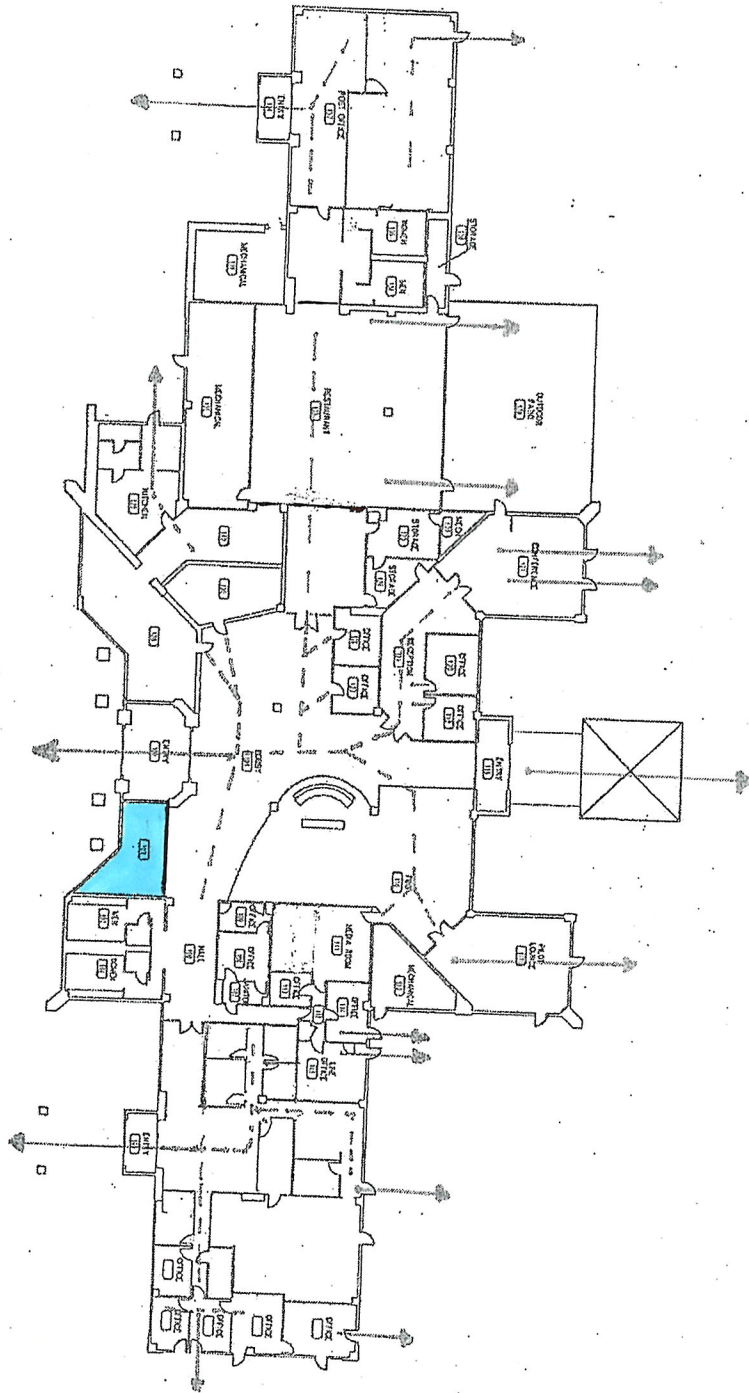
ATTEST:

Title

Fayetteville Executive Airport

Terminal Building

Escape Routes



Primary escape route follow Blue line
Alternate escape route follow Red line

Evacuation Plan diagram for Terminal Building

FAA APPROVED

JUN 16 2015

WM