

City of Fayetteville Staff Review Form

2019-0079

Legistar File ID

2/19/2019

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

Connie Edmonston

1/24/2019

PARKS & RECREATION (520)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approval of a Lease Agreement with NWA OPO, LLC for the patio area adjacent to the Square Gardens and the old Post Office building.

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	\$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF FEBRUARY 19, 2019

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Connie Edmonston, Parks & Recreation Director
Devin Howland, Director of Economic Vitality

DATE: January 24, 2019

SUBJECT: Approval of a Lease Agreement with NWA OPO, LLC for the patio area adjacent to the Square Gardens and the old Post Office building.

RECOMMENDATION:

Approval of a Lease Agreement with NWA OPO, LLC for the patio area adjacent to the Square Gardens and the old Post Office building.

BACKGROUND:

The downtown Square Gardens consist of the entire block except for the footprint of the old Post Office building. The new owner of the old Post Office building, NWA OPO, LLC, is requesting to lease the 1,676 square foot patio area within the fenced area between the south side of their building and the Square Gardens. Previous owners have leased this area which is part of the Square Gardens for the use of their business as an outside patio area.

DISCUSSION:

The term of the lease agreement is 5 years commencing on March 1, 2019 and extending to February 28, 2024. The monthly lease is \$100 with the consideration of the following six items.

1. Provide the space and electricity to operate the wireless internet broadcast antennas that are attached to their building.
2. Allow the A & P Commission to attach and operate their outside speakers for Lights of the Ozarks and provide electricity for the speakers.
3. Allow the City of Fayetteville to hang Christmas lights on the building.
4. Refrain from objecting or legally challenging the closure of City streets and parking spaces around the Square during the Saturday's farmers' market, First Thursday, Lights of the Ozark and occasional special events authorized by the Mayor.
5. Allow city employees access to the storage shed on the southeast side of their building.
6. Enforce the City's no smoking in parks regulation within this leased area.

This lease may be renewed for an additional five years at \$200 per month.

BUDGET/STAFF IMPACT:

The lease agreement would provide revenues of \$1,200 annually. Minimal impact would be on Parks and Recreation Staff for maintenance.

Attachments: Signed Agreement

LEASE

This Agreement, entered into this _____ day of February, 2019, by and between the City of Fayetteville, whose address is 113 West Mountain Street, Fayetteville, AR 72701 and NWA OPO, LLC whose mailing address is Post Office Box 10856 Fayetteville, Arkansas 72703.

WITNESSETH:

1. **LEASED PREMISES.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by NWA OPO, LLC as obligations to the City of Fayetteville, the City of Fayetteville leases to NWA OPO, LLC subject to the terms and conditions contained herein, the improved seating and patio area adjoining the old Post Office Building and within the fence containing approximately 1676 square feet. NWA OPO, LLC agrees to lease this patio area for \$100.00 per month and to abide by and faithfully perform all of the covenants, terms, and conditions stated below.

2. **TERM.** This lease shall commence on March 1, 2019 and shall extend five (5) years until February 28, 2024. If at the end of the first term NWA OPO, LLC shall have fully performed every agreement and covenant pursuant to the terms of this lease, NWA OPO, LLC shall have the right to renew this lease for an additional five (5) year term if so requested in writing provided to the Mayor no later than January 15, 2024. All terms of the original Lease shall remain the same except that the rent shall increase to \$200.00 per month.

3. **RENT.** NWA OPO, LLC agrees to pay the City of Fayetteville the rental rate of **One Hundred Dollars** (\$100.00) per month payable in advance. As further consideration for this Lease and in recognition of the substantial reduction in what would be the normal lease payments, NWA OPO, LLC agrees:

- (A) to continue to provide the space and electricity to operate the wireless internet broadcast antennas attached to its building and any necessary space within its building to enable public WIFI connectivity for persons on the Square as provided by Cox Communications;
- (B) to continue to allow the A & P Commission to attach and operate its outside speakers for Lights of the Ozarks and provide electricity for the speakers;
- (C) to continue to allow the City of Fayetteville to hang Christmas lights on the building;
- (D) to refrain from objecting or legally challenging the closure of City streets and parking spaces around the Square during the Saturday's Farmers' Market, First Thursday, Lights of the Ozarks and occasional special events authorized by the Mayor such as the FHS homecoming parade and celebrations.
- (E) to continue to allow unfettered access by city employees to the storage shed constructed on the former loading area outside the leased premises.
- (F) To enforce the City's no smoking in City parks regulations by prohibiting smoking in the leased area (part of the Square Gardens city park) by its employees, customers and patrons.

4. ALTERATION OF IMPROVEMENTS. Any alteration of the improvements within the City of Fayetteville's leased premises must be approved by the Mayor prior to such alteration.

5. MUSIC. NWA OPO, LLC agrees that only live, non-amplified music will be permitted on the leased premises. This music shall not be loud enough to disturb persons enjoying the Square Gardens, with the exception that on Razorback home football games amplified music shall be allowed from 2:00 P. M. until 10:00 P. M. if also approved by Conditional Use by the Planning Commission and in conformance with the City's Noise Ordinance.

6. SIGNS AND ADVERTISING. No sign, picture, advertisement, or notice shall be displayed on any part of the leased premises visible to the public outside the patio area without the previous written consent of the City of Fayetteville.

7. LIMITED RIGHT OF ASSIGNMENT AND SUCCESSION. This Lease agreement shall inure to the benefit of and be binding upon NWA OPO, LLC and the City of Fayetteville. If NWA OPO, LLC wishes to assign this Lease, it must notify the Mayor's Office in writing at least 30 days before such assignment is anticipated with the name of the proposed assignee. Unless the City Council objects by passing a Resolution forbidding such assignment within 30 days after proper notice, NWA OPO, LLC may assign this lease if the assignee has agreed in writing to honor all the terms of this Lease.

8. TAXES. NWA OPO, LLC shall pay any and all ad valorem taxes or special improvement district taxes levied and assessed against the leased premises and the improvements located thereon during the term of this lease. NWA OPO, LLC also agrees to promptly and properly pay all Fayetteville Hotel Motel and Restaurant taxes and all Alcoholic Beverage taxes during this Lease. Failure to properly and timely pay all HMR, Alcoholic Beverage or other State or City tax would constitute a material breach of this Lease and justify the City of Fayetteville to terminate this Lease for cause.

9. COMPLIANCE WITH LAWS. NWA OPO, LLC agrees not to violate any law, ordinance, rule or regulation of any government authority having jurisdiction of the leased premises.

10. INSURANCE ON LEASED PROPERTY. NWA OPO, LLC shall be solely responsible for maintaining whatever insurance it deems necessary on the leased property. The City of Fayetteville makes no warranty that this area is fit for any purposes to which NWA OPO, LLC may use it and shall not be liable for any injuries or damage which might occur upon the Leased premises.

11. RIGHT OF INSPECTION. The City of Fayetteville shall have the right, in person or through the City of Fayetteville's duly authorized representative, at all reasonable times to inspect the leased premises.

12. ACCEPTANCE OF PREMISES. The NWA OPO, LLC acknowledges that it has inspected the premises and determined them adequate for its intended uses. NWA OPO, LLC accepts the premises in their current condition.

13. MAINTENANCE OF LEASED PREMISES. NWA OPO, LLC shall be responsible for maintaining the improvements upon the leased premises in a satisfactory condition and the premises shall, at all times, be maintained in a neat and orderly condition. NWA OPO, LLC's business operations will be carried on in accordance with the highest standards for such businesses, particularly in the areas of cleanliness, service and noise.

14. RETURN OF LEASED PROPERTY. At the end of the term of this lease, or upon any other earlier termination, NWA OPO, LLC agrees promptly and peaceably to restore possession of the leased premises to the City of Fayetteville in as good condition as they were when delivered to NWA OPO, LLC, ordinary wear and tear excepted.

15. NOTICES. Any notice called for or permitted under the terms hereof shall be given in writing and sent by certified mail to NWA OPO, LLC, at 3862 East Chadwick Drive, Fayetteville, AR 72702 and to the Mayor's Office, City of Fayetteville, 113 W. Mountain St., Fayetteville, AR 72701. If such certified mail is returned to sender, the City of Fayetteville may provide adequate notice by posting said Notice on the premises.

16. WASTE. NWA OPO, LLC agrees not to commit waste, nor permit waste to result or to be done to or upon the leased premises, nor to store or permit to be stored thereon any explosives, combustible substances or dangerous materials; nor to operate or permit to exist thereon any public or private nuisance.

17. RIGHT TO CURE. If NWA OPO, LLC shall default in any of the covenants, agreements, conditions, or undertakings herein contained to be kept, observed and performed by NWA OPO, LLC, the City of Fayetteville shall give notice of such default in writing to NWA OPO, LLC and NWA OPO, LLC shall have thirty (30) days from and after the giving of such notice to eliminate and/or cure the cause of such default. If said default is eliminated or cured with the aforementioned thirty (30) days, NWA OPO, LLC shall not be considered in default or in breach of this lease.

18. 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.

19. INTERPRETATION AND VENUE. This lease agreement shall be interpreted according to and enforced under the laws of the State of Arkansas with proper jurisdiction and venue in Washington County, Arkansas.

20. 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.

21. NON-WAIVER PROVISION. The failure of the City of Fayetteville or NWA OPO, LLC to insist upon the strict and literal performance of any agreement, term or condition herein or to exercise any option retained or granted by reason of a default by

NWA OPO, LLC shall not constitute a waiver of the City of Fayetteville's right thereafter to insist upon and enforce full performance of such conditions and agreements.

IN WITNESS WHEREOF, the City of Fayetteville by Mayor Lioneld Jordan and NWA OPO, LLC by and through its Owner and Managing Partner Mike Arnold have hereunto set their hands and seals and have caused their names to be hereunto affixed by the undersigned officers who are duly authorized to act.

NWA OPO, LLC

CITY OF FAYETTEVILLE, ARKANSAS

By: *Mike Arnold*
MIKE ARNOLD
OWNER OF NWA OPO, LLC

By: _____
LIONELD JORDAN
Mayor

Witness: *Mike Arnold member*
Name & Title NWA OPO, LLC

Attest: _____
Sondra Smith, City Clerk

Date signed: 22 Apr 2019

Date signed: _____