

City of Fayetteville Staff Review Form

2019-0248

Legistar File ID

5/7/2019

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

Justin Clay

4/15/2019

PARKING MANAGEMENT (430)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Approving a sublease agreement with Tower Square Fayetteville, LLC, to reserve four (4) parking spaces for the Federal Public Defender's Office

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>No</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 MAY 7, 2019

TO: Mayor and City Council
THRU: Don Marr, Chief of Staff
FROM: Justin Clay, Parking Manager
DATE: April 15, 2019
SUBJECT: **Approving a sublease agreement with Tower Square Fayetteville, LLC, to reserve four (4) parking spaces for the Federal Public Defender's Office**

RECOMMENDATION:

Staff recommends approving a sublease agreement with Tower Square Fayetteville, LLC, as authorized by the Off-Street Parking Development District (OSP) to reserve four (4) parking spaces in one of their parking lots for the exclusive use of the Federal Public Defender's Office.

BACKGROUND:

Since 2009, OSP has leased to the City its three surface parking lots in the Downtown Business District. Pursuant to the terms of the lease, the City manages the lots in the same manner as the other City-owned parking lots in the area and remits net revenues from meter payments to OSP on a quarterly basis. The largest lot (a.k.a. D Lot or Lot 7) is a 165-space lot behind the 112 W. Center Building (formerly known as the EJ Ball Building).

A sublease agreement was executed once before in 2015, to convert 10 metered spaces to "free public parking" spaces at the request of Ball Plaza Holdings, LLC (previous building owners). The ensuing agreement expired in 2017, and the current owners of the 112 W. Center Building chose not to renew the agreement.

DISCUSSION:

Tower Square Fayetteville, LLC, now owns the 112 W. Center Building and the property is managed by Newmark Moses Tucker Partners. The property manager has facilitated the purchasing of parking permits from the City for most tenants of the building. One new tenant, the Federal Public Defender's Office, has requested four (4) reserved parking spaces in the lot, citing the sensitive nature of the files and clientele that frequently enter and exit their office.

At their March 28th meeting, the OSP Commission heard and granted the request from the Federal Public Defender's Office to reserve four (4) parking spaces at a rate of no less than \$50 per space per month. The OSP commission then took affirmative action authorizing the City to execute a two-year sublease agreement to convert these spaces to "reserved" spaces.

BUDGET/STAFF IMPACT:

No Budget/Staff Impact. Revenues from the reserved spaces will be remitted to OSP.

Attachments:

Sublease Agreement with Tower Square Fayetteville, LLC
Exhibit A

SUBLEASE AGREEMENT

This Agreement, made and entered into this ____ day of _____ 2019, by and between the City of Fayetteville, Arkansas, as Sublessor, and Tower Square Fayetteville, LLC, as Sublessee, and **Witnesseth:**

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered and agreed upon by Tower Square Fayetteville, LLC, as obligations to the City of Fayetteville, the City of Fayetteville lets, leases and demises unto Tower Square Fayetteville, LLC, subject to the terms and conditions contained herein, the following described property situated in Washington, County, Arkansas:

Four (4) parking spaces, as set forth on Exhibit "A" attached hereto, located in the Off-Street Parking District's Lot 7, west of the 112 W. Center Building between Meadow, Church, and Center Streets, a/k/a/ 185 West Meadow Street, Fayetteville, Arkansas.

The same being a portion of the lands leased to the City of Fayetteville by the Off-Street Parking Development District No. 1, to have and to hold said premises unto Tower Square Fayetteville, LLC, for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. **Term.** This term shall commence on June 1, 2019 and shall extend for a term of two (2) years, ending at midnight on May 31, 2021. The term of this lease may be terminated early or extended only upon the mutual agreement of Tower Square Fayetteville, LLC, and the City of Fayetteville.

3. **Rent.** Tower Square Fayetteville, LLC, agrees to pay to City of Fayetteville as rental for the term of this lease the sum of \$50.00 per space per month. Each monthly payment is due in advance and payable on or before the first 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.** Tower Square Fayetteville, LLC agrees to use the lease premises only for vehicle parking for use by the Federal Public Defenders Office, tenants of the 112 W. Center Building, with the understanding that, upon execution of this agreement, the parking spaces will be converted from metered parking to reserved parking for the exclusive use of the Federal Public Defenders Office. The City of Fayetteville will provide parking enforcement for this parking area.

5. **Improvements.** Improvements to this parking area may only be made by, or with the approval of, the Off-Street Parking Development Distract No. 1, which is the owner of this lot, or by its successors or assigns.

6. **Assignment.** Tower Square Fayetteville, LLC, shall not assign this sublease 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 Tower Square Fayetteville, LLC, from liability for the obligation imposed by this lease. Tower Square Fayetteville, LLC, may only be released from liability by a specific written release executed by City of Fayetteville.

7. **Holdover.** Tower Square Fayetteville, LLC, hereby agrees that upon termination of this lease by expiration or by earlier termination for any reason whatsoever, the parking spaces will be converted back to metered parking. In the event Tower Square Fayetteville, LLC, 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 Tower Square Fayetteville, LLC'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.

8. **Termination.** The City of Fayetteville hereby reserves the right to terminate this sublease at any time during the term of this sublease if payment of rent in accordance with Paragraph 3 above is not received within five (5) business days from the due date. If the sublease is terminated, the parking spaces will be immediately re-converted to metered parking.

9. **Non-Waiver.** It is agreed that the failure of City of Fayetteville to invoke any of the available remedies under this sublease or under law in the event of one or more breaches or defaults by Tower Square Fayetteville, LLC, 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.

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

11. **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.

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

13. **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

TOWER SQUARE FAYETTEVILLE, LLC

By: Chris M

Printed Name: Chris Moses

Title: Managing Member

185 W Meadow St / D-Lot & Lot 7

165 Parking Stalls

Center St

Sidewalk

	//////	31	66	////////	Lot 7-33
	1	32	67	Lot 7-1	Lot 7-34
	2	33	68	Lot 7-2	Lot 7-35
A	3	34	69	Lot 7-3	Lot 7-36
L	4	35	70	Lot 7-4	Lot 7-37
L	5	36	71	Lot 7-5	Lot 7-38
E	6	37	72	Lot 7-6	Lot 7-39
Y	7 - Reserved	38	73	Lot 7-7	Lot 7-40
	8 - Reserved	39	74	Lot 7-8	Lot 7-41
	9 - Reserved	40	75	Lot 7-9	Lot 7-42
	10 - Reserved	41	76	Lot 7-10	Lot 7-43
	Utilities	42	77	Lot 7-11	Lot 7-44
		43	78	Lot 7-12	Lot 7-45
		44	79	Lot 7-13	Lot 7-46
	Dumpsters	45	80	Lot 7-14	Lot 7-47
	11	46	81	Lot 7-15	Lot 7-48
	12	47	82	Lot 7-16	Lot 7-49
	13	48	83	Lot 7-17	Lot 7-50
	14	49	84	Lot 7-18	Lot 7-51
	15	50	85	Lot 7-19	Lot 7-52
	16	51	86	Lot 7-20	Lot 7-53
	17	52	87	Lot 7-21	Lot 7-54
	18	53	88	Lot 7-22	Lot 7-55
	19	54	89	Lot 7-23	Lot 7-56
	20	55	90	Lot 7-24	Lot 7-57
A	21	56	91	Lot 7-25	Lot 7-58
L	22	57	92	Lot 7-26	Lot 7-59
L	23	58	93	Lot 7-27	Lot 7-60
E	24	59	94	Lot 7-28	Lot 7-61
Y	25	60	95	Lot 7-29	Lot 7-62
	26	61	96	Lot 7-30	Lot 7-63
	27	62	97	Lot 7-31	Lot 7-64
	28	63	98	Lot 7-32	Lot 7-65
	29	64	99	////////	////////
	30	65	100	////////	////////

Sidewalk

Meadow St