

RESOLUTION NO. _____

A RESOLUTION APPROVING A LEASE AGREEMENT BETWEEN THE NORTH LITTLE ROCK PARKS AND RECREATION DEPARTMENT AND TERRAFORMA, LLC FOR A PORTION OF THE FORMER ROSE CITY ELEMENTARY SCHOOL GROUNDS IN THE CITY OF NORTH LITTLE ROCK; AND FOR OTHER PURPOSES.

WHEREAS, the North Little Rock Parks and Recreation Department wishes to enter into a Lease Agreement with Terraforma, LLC for a portion of the old Rose City Elementary School grounds (located on School and Middle Streets), which lease was approved by the Parks and Recreation Commission at its regularly scheduled meeting held on September 21, 2015 (see letter and Agenda Summary attached hereto, collectively, as Exhibit "A"); and

WHEREAS, this property has traditionally been used as a park, there is a need for additional park and recreational space in the Rose City area, and annual costs for the lease and maintenance of grounds and equipment are reasonable; and

WHEREAS, it is in the best interests of the City and its residents that the Lease Agreement be approved.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTH LITTLE ROCK, ARKANSAS:

SECTION 1: That the Lease Agreement between the North Little Rock Parks and Recreation Department and Terraforma, LLC (substantially similar to Exhibit "B" attached hereto and incorporated by reference) for certain property located on School and Middle Streets, to be utilized as public park and recreational space in the Rose City area, is hereby approved.

SECTION 2: That this Resolution shall be in full force and effect from and after its passage and approval.

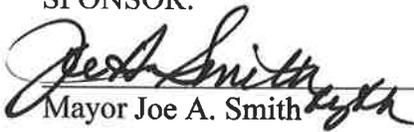
PASSED:

APPROVED:

Mayor Joe A. Smith

SPONSOR:

ATTEST:



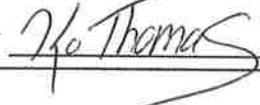
Mayor Joe A. Smith

Diane Whitbey, City Clerk

APPROVED AS TO FORM:


C. Jason Carter, City Attorney

PREPARED BY THE OFFICE OF THE CITY ATTORNEY/b

FILED	10:15	A.M.		P.M.
By	Becky-city Atty office			
DATE	10-6-15			
Diane Whitbey, City Clerk and Collector North Little Rock, Arkansas				
RECEIVED BY				



Parks and Recreation Department

2700 Willow Street
Voice (501) 791-8538

North Little Rock, Arkansas 72114
parksandrec@northlittlerock.ar.gov Fax (501) 791-8528

October 5, 2015

Mayor Joe A. Smith
City of North Little Rock
300 Main Street
North Little Rock AR 72114

Dear Mayor Smith,

Attached is a lease with Terraforma LLC for utilization of part of the old Rose City Elementary School grounds property for use as a park. The Parks and Recreation Commission approved the lease as it has the authority to do so with contracts. The state often treats real property interest differently so Mr. Jason Carter encourages City Council approval also.

Attached is pertinent information related to the lease with Terracotta. LLC for use of the property known as School Street Park.

Your support and City Council approval is recommended. Thank you.

Sincerely,

Bob W. Rhoads, CPRP
Director of Parks and Recreation

Attachments



V. Action Items – New Business and Unfinished

Agenda Summary

3. Lease for School Street Park

At the former Rose City Elementary School site, a joint use Letter of Agreement was set up with the North Little Rock School District for the city to utilize part of the area as a park. In 2009, city sales tax money was allocated and a playground was installed at that location.

Park Maintenance removed some of the old asphalt tennis courts and added basketball goals to another asphalt area. Up until recently and per the Letter of Agreement, the school staff mowed the parks and school area, and the parks division maintained the recreational amenities.

This year, the school district sold the property to Mr. Doug Meyer, Terraforma, LLC. Mr. Meyer was willing to do a yearly lease for \$1 if Parks and Recreation mowed all of the area including the area in front of and around the school building. Legal staff had concerns about Parks mowing private property and recommended Parks and recreation pay a monthly lease price to Mr. Meyer for the price of a contractor to mow the area.

Quotes for mowing were obtained from mowing contractors. Based on the quotes received, staff recommends paying Mr. Meyer a lease amount of \$187.50 per month. This is the monthly cost based on \$150 per mowing for 15 mowings during a calendar year.

The lease cost of \$2,250 per year, and parks staff and equipment cost to mow the park area of \$1,911, makes a total cost of \$4,161 annually to keep the area a park. Staff feels this is a bargain and reasonable cost to keep this area as a park for the Rose City community.

Staff is seeking commission approval to allow the Director of Parks and Recreation to negotiate and execute a contract/lease with Mr. Meyer that is approved by the legal department staff.

Bob Rhoads
September 21, 2015

School Street Mowing Cost Breakdown

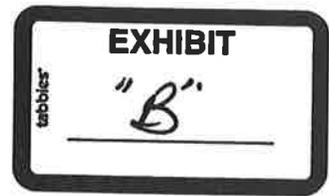
Man Hour Breakdown

1 hour batwing mower	\$ 22.00	
3 employees for 30 minutes each on riding mowers and weed eaters	\$ 32.00	
Total man hours	<u>2.50</u>	
 Total cost		 \$54.00

Equipment Breakdown

Tractor (FEMA SCHEDULE) and batwing \$25.00 per hour	\$ 25.00	
Truck (FEMA SCHEDULE) \$14.00 per hour	\$ 7.00	
Equipment trailer (FEMA SCHEDULE) \$10.25 per hour	\$ 5.12	
Riding mowers \$12.18 per hour	\$ 18.26	
Diesel Fuel - 4 gallons at \$2.00 per gallon average	\$ 8.00	
Miscellaneous supplies (oil, grease, weed eater string, round-up)	<u>\$ 10.00</u>	
 Total Cost		 \$ 73.38

Total cost of labor and equipment per mowing	\$ 127.38
Total cost of labor and equipment for estimated 15 mowings per year	\$1,910.70



LEASE AGREEMENT

THIS AGREEMENT made and entered into this 2nd day of October 2015, by and between Terraforma, LLC ("Lessor"), whose address is P.O. Box 13437, Maumelle, AR 72022, and the City of North Little Rock Parks and Recreation Department ("City" or "Lessee"), whose address is 2700 Willow Street Street, North Little Rock, AR 72114.

W-I-T-N-E-S-S-E-T-H:

1. **Leased Premises.** For and in consideration of the rents, covenants and agreements herein entered into and agreed upon by the Lessee, the Lessor hereby lets, leases and demises unto Lessee, subject to the terms and conditions contained herein, the following described property ("Leased Premises" and outlined in Exhibit "A") situated in Pulaski County, Arkansas:

In Block 21 of the John L Atkins School Subdivision in North Little Rock, Arkansas: Beginning at the intersection of the western edge of the paved drive off of School street and the northern edge of the sidewalk parallel to school street following the western edge of the paved drive northeast for 305 feet where it ends. Then follow the centerline of the extending asphalt sidewalk for 63 feet where it connects to the east/west sidewalk and follow its centerline going east for 6 feet where it crosses a ditch. Follow the centerline of the ditch going northeast for 265 feet where it connects with a sidewalk that parallels Haywood Street. Follow the southern edges of the sidewalk east for 164 feet then follow the western edge of the sidewalk which parallels Middle Street going south for 454 feet then follow the western edge of the sidewalk which parallels School Street going northwest for 540 feet to the beginning.

To have and to hold said premises unto the said Lessee for and during the term herein stated, subject to the covenants, terms, conditions and liens herein contained.

2. **Use of Leased Premises.** The City shall only use the property for public recreational purposes, and such other purposes as are reasonably associated with recreation. If, at any time, the Leased Premises should cease to be used for the purposes described herein without express approval of Lessor, this Lease shall terminate.

3. **Term.** This lease shall commence on the first day of October 2015, and shall extend for a period of one (1) year ending at midnight on the 31st day of October 2016. At the end of this period, the lease may be renewed for one (1) year periods each year. At the end of any lease period, either party may end lease with notice within 60 days of the expiration of lease.

4. **Rent.** The City agrees to pay to Lessor as rental for the full term of this lease the sum of one hundred and eighty-seven dollars and 50/100 (\$187.50) per month paid by the 5th of each month.

5. **Repairs and Improvements.** All repairs to any improvements on the premises, including but not limited to playground equipment, backstops, benches, paths, roads or the like, which may be required during the term of this lease shall be made at the expense of the City. The City shall also maintain the premises at least in the same condition as exists as of the making of this lease, normal wear and tear excluded. Any structures erected on said premises by the City shall be and become a part of the realty and pass to Lessor at the termination of this lease unless the parties agree in writing to the contrary. The City shall, at the termination or surrender or forfeiture of this lease, return said premises to Lessor in as soon and satisfactory condition as existed at the inception of the lease.

6. **Taxes.** It is the contemplation of the parties that the leased premises shall not be subject to ad valorem taxation. If any improvement or activity by the City should cause the property to become subject to ad valorem taxes, or any other taxes, the City shall pay the same during the term of this lease. For any fractional calendar year, such payments and assessments shall be pro-rated between the parties.

7. **Covenant Not To Commit Waste.** The City covenants that it shall keep the premises in good order, that it will not commit waste nor permit waste to occur to the demised premises that it will not permit or cause any nuisance to exist on said premises, and that the premises shall be used solely for public recreational purposes.

8. **Assignment.** The City shall not assign this lease or sublet the leased premises without prior written consent of Lessor. Any such assignment or subletting shall in no way relieve the City from liability for the obligation imposed by this lease, unless and until a written release is executed by Lessor.

9. **Non-Waiver.** It is agreed that the failure of the Lessor to invoke any of the available remedies under this lease or under law in the event of one or more breaches or defaults by the City under the lease shall not be construed as a waiver of such provisions and conditions and shall not prevent Lessor from invoking such remedies in the event of any future breach or default.

10. **Liability.** Lessee shall be solely responsible for maintenance of the leased premises. Any and all claims made by third parties based upon the condition of the property shall be received and resolved by the Lessee. Lessor and Lessee expressly preserve the immunities afforded by state law to entities granting recreational access to property, to local government, and to officers, employees, and agents of local government.

11. **Holdover.** The City hereby agrees that upon the termination of this lease for whatever reason, the City will peaceably deliver possession of the leased premises to Lessor. The Lessor agrees to let the City remove any playground equipment, backstops, or other equipment erected for the purpose of public recreation. In the event the City shall be permitted by Lessor to hold over after the expiration of termination of this lease, or any extension thereof, said holding over in the absence of a written agreement otherwise shall be construed as a tenancy from year to year at a rental equal to that due for the last year paid under this lease. Such tenancy may be terminated by a sixty (60) day written notice from either party to the other party on or before the date on which

the last payment of rental is due for that year. In the event it becomes necessary for Lessor to take legal action to recover possession at the time of termination, the City agrees to pay all costs and expenses of such action, including reasonable attorney's fees, incurred by Lessor.

12. Title and Quiet Enjoyment. Lessor covenants and warrants that it is the owner in fee simple absolute of the leased premises and may lease said premises as herein provided. Upon payment by the City of the rents herein provided and upon the observance and performance of all the covenants, terms and conditions upon the City's part to be observed and performed, the City shall peaceably and quietly hold and enjoy the demised premises for the term hereby demised without hindrance or interruption by Lessor or any other person or persons lawfully or equitably claiming by, through or under Lessor, subject to the terms and conditions of this lease.

13. Succession. This Lease Agreement shall inure to the benefit of and be binding upon the parties hereto and its respective heirs, successors and assigns.

14. 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.

15. Interpretation. The parties hereto agree that this Agreement shall be construed under Arkansas law. The parties further agree that proper jurisdiction and venue for any cause of action arising from this Agreement shall be vested in the Circuit Court of Pulaski County, Arkansas.

16. 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 one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

17. Notice. All notices, requests, demands and other communications required by or permitted hereunder shall be in writing and shall be deemed to have been duly given when received by the party to whom directed; provided, however, that notice shall be conclusively deemed given at the time of its deposit in the United States Mail when sent by certified mail, postage prepaid, to the other party at the following addresses or at such other addresses as shall be given in writing by either party to the other:

TERRAFORMA, LLC
P.O. Box 13437
Maumelle, AR 72022

NORTH LITTLE ROCK PARKS and RECREATION
2700 Willow Street
North Little Rock, AR 72114

18. Failure to Pay Rentals or Keep Covenants. The failure or refusal by the City to pay the rentals at the times and in the manner provided by this lease, and the failure of the City to keep and perform its covenants hereunder, shall in either of these events, permit Lessor at its option and without any liability on its part to terminate this lease, re-enter and repossess said property.

19. Modification. No conditions, usage of trade, course of dealing or performance, understanding or agreement purporting to modify, vary the terms or conditions of the Agreement shall be binding unless hereafter made in writing and signed by the party to be bound, and no modification shall be effected by the acknowledgment or acceptance of any forms containing terms or conditions or variance with or in addition to those set forth in this Agreement.

20. Termination. Either party may terminate this lease with a sixty (60) written notice. Upon termination of this lease, the City may remove any playground equipment, backstops, or other recreational equipment for continued use elsewhere by the City.

21. Authority. The parties executing this lease represent that they have been duly authorized to bind their respective entities for the purposes stated herein.

IN WITNESS WHEREOF, the Lessor and Lessee have hereunto set their hands and seals on the day first above written.

NORTH LITTLE ROCK PARKS AND RECREATION DEPARTMENT

By: _____
Director (Printed Name) Director (Signature)

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF PULASKI)

On this day before the undersigned, a Notary Public within and for the State and County aforesaid, personally appeared Bob Rhoads for the City of North Little Rock, Arkansas, known to me or satisfactorily proven to be the persons described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained, and that they had such authority to execute the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal on this ____ day of _____, 2015.

Notary Public My Commission Expires: _____

TERRAFORMA, LLC

By: _____
(Printed Name) (Signature)

Title: _____

ACKNOWLEDGMENT

STATE OF ARKANSAS)
) SS.
COUNTY OF PULASKI)

On this day before the undersigned, a Notary Public within and for the State and County aforesaid, personally appeared _____ for Terraforma, LLC, known to me or satisfactorily proven to be the person described in the foregoing instrument, and acknowledged that they executed the same in the capacity therein stated and for the purposes therein contained, and that they had such authority to execute the same.

IN WITNESS WHEREOF, I hereunto set my hand and seal on this ____ day of _____, 2015.

Notary Public My Commission Expires: _____

NORTH LITTLE ROCK CITY ATTORNEY Approved as to form and content.

By: _____
City Attorney or Designee (Printed Name) City Attorney or Designee (Signature)

