



City of Conway Council Agenda

<u>Council Meeting Date:</u>	June 14th, 2016
<u>5:30pm Committee Meeting:</u>	Discussion of Parks & Recreation Capital Projects
<u>6:30pm:</u>	Council Meeting
<u>Call to Order:</u>	Mayor Tab Townsell
<u>Roll Call:</u>	City Clerk/Treasurer Michael O. Garrett
<u>Minutes Approval:</u>	May 24 th , 2016

Mayor Tab Townsell
City Clerk Michael O. Garrett
City Attorney Chuck Clawson

City Council Members

Ward 1 Position 1 – Andy Hawkins
Ward 1 Position 2 – David Grimes
Ward 2 Position 1 – Wesley Pruitt
Ward 2 Position 2 – Shelley Mehl
Ward 3 Position 1 – Mark Ledbetter
Ward 3 Position 2 – Mary Smith
Ward 4 Position 1 – Theodore Jones Jr.
Ward 4 Position 2 – Shelia Isby

1. Report of Standing Committees:

A. Community Development Committee (Planning, Zoning, Permits, Community Development, Historic District, Streets, & Conway Housing Authority)

1. Construction to approve the bid for site grading, drainage, and house demolition (1423 Factory) Street for the Community Development Department.
2. Ordinance approving a substantial amendment to the 2016 Community Development Block Grant Action Plan.
3. Resolution adopting a hazard mitigation plan for the City of Conway.
4. Consideration to approve a change order (#3) for the AIP 2013 grant for paving and lighting 2B project at the Conway Airport – Cantrell Field.
5. Consideration to approve a change order (#3) for the AIP 2014 grant for the access road construction at Conway Airport – Cantrell Field.
6. Consideration to apply for an FAA match grant with the Arkansas Department of Aeronautics for the Conway Airport – Cantrell Field
7. Consideration to enter into a lease agreement for a moto grader for the Street & Engineering Department.
8. Discussion regarding level of compensation for positions within the Street & Engineering Department.
9. Ordinance granting Ritter Communications a franchise to occupy public right of ways and provide telecommunications services within the City of Conway.

B. Public Services Committee (Sanitation, Parks & Recreation & Physical Plant)

1. Consideration to enter into a lease agreement with the Corps of Engineer for Old Ferry Landing Park.

C. Public Safety Committee (Police, Fire, District Court, CEOC, Information Technology, City Attorney, & Animal Welfare)

1. Ordinance appropriating funds and accepting the bid for remodeling of the City Attorney's office.

D. Personnel

1. Ordinance appropriating funds for the City's increase in workers comp premiums for the City of Conway.
2. Discussion of options regarding premium rates for the Arkansas Municipal League Health Benefit Fund for city employees.
3. Ordinance appropriating funds for the City's portion of the AML Municipal Health Benefit premiums.

E. New Business

1. Resolution entering into an agreement for the purchase of a horizontal grinder for the Sanitation Department.

Adjournment

PARKS A&P FUNDING

Annual Revenue

\$3,200,000



Now

2016 - 2021

**2021
BOND
REDEDICATION**

Committee Meeting

An aerial photograph of a park featuring a large blue lake, a green golf course, and several buildings. The lake has a small peninsula with a green field and a sand trap. The golf course is surrounded by trees and a paved path. The buildings are scattered throughout the park area.

CONWAY PARKS AND RECREATION

Needs of A&P Funds

Along with the development of new facilities and the renovation of existing facilities, A&P funding is vital to the parks department.

The department will need to utilize funds for the purchase of equipment each year.

This equipment will be used in the maintenance of the parks system.

Needed additions and renovations to the existing parks system will be required in order to keep the facilities up to date.



Conway Parks and Recreation

A&P Funded Projects

This list of projects was identified for completion by the City Council at a Special Meeting held on May 18, 2015.

Restroom at Conway Station Park

Would be an extension of the existing maintenance building.

Estimated Cost: \$175,000 (Completed)

Tucker Creek Trail – Connecting the trail from College Ave to Adamsbrooke.

Estimated Cost: \$400,000 (Completed)

Completion of Event Center at Expo: Part of the funding for this project will be offset by the A&P Commission. This project will require additional personnel

Estimated Cost: \$1,100,000 (In Progress)

Renovations of infields at Don Owen: This would replace infields and allow for less maintenance and increase usage by both league and tournaments

Estimated Cost: \$656,000 (In Progress)

Conway Station Park - Site Finishes -Trail, Gazebo, Family Area -Playground, Splash Pad, Pavilions

Estimated Cost: 1,000,000 (In Design and Pricing)

Laurel Park - Renovation of Trail - Asphalt surface and additional lighting

Estimated Cost: \$150,000

Pompe Park Natural Area - Playground, Pavilion, Restroom, Bridge and Trail

Estimated Cost: \$325,000



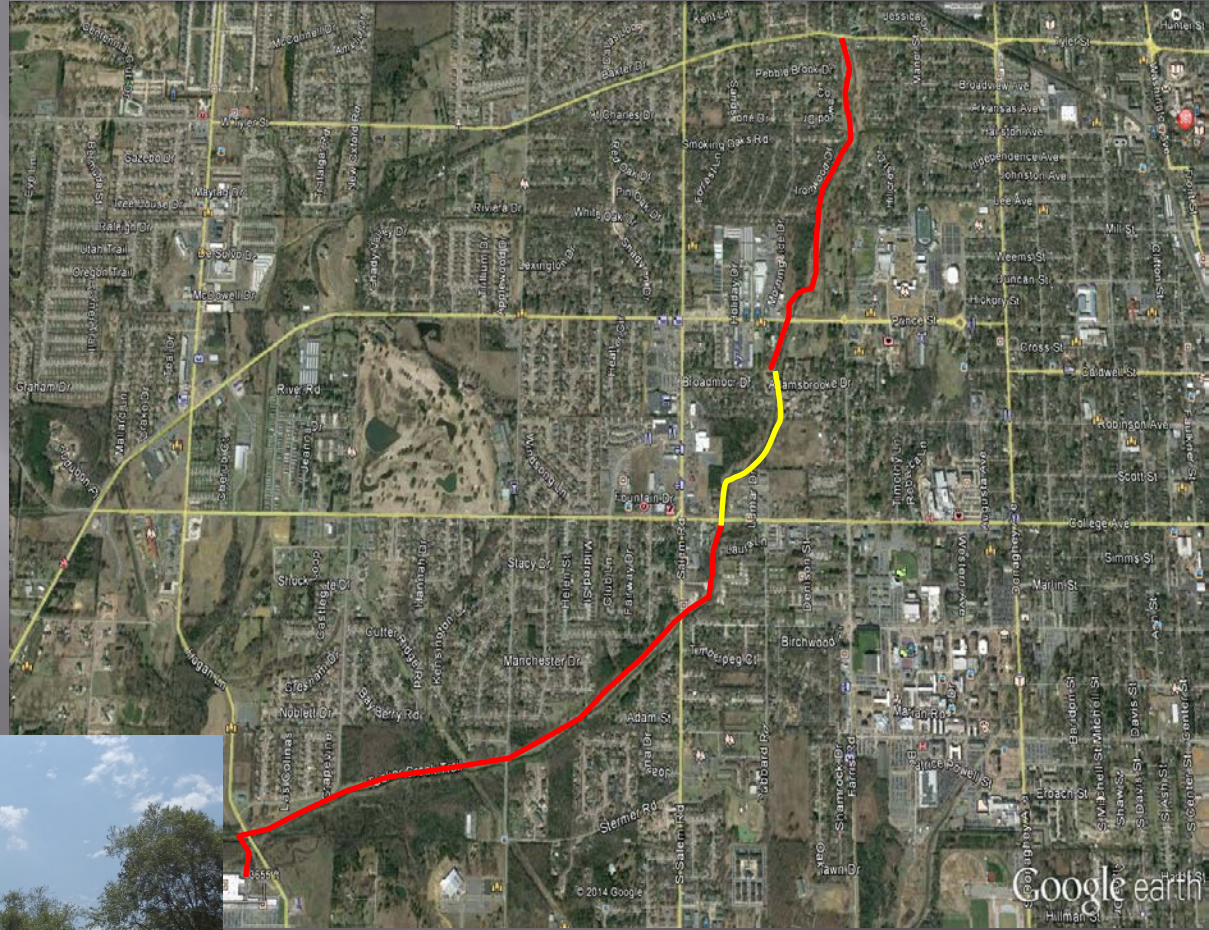
Conway Station Park

Construction of Restroom: \$175,000
Completed



Tucker Creek Trail

Completion of Trail from College to
Adamsbrooke : \$400,000
Completed



Conway Expo

Finish Event Center:

Meeting Rooms with Breakouts
Catering Kitchen and Equipment
New Drop Off Drive and Parking
Estimated Cost: \$2,400,000

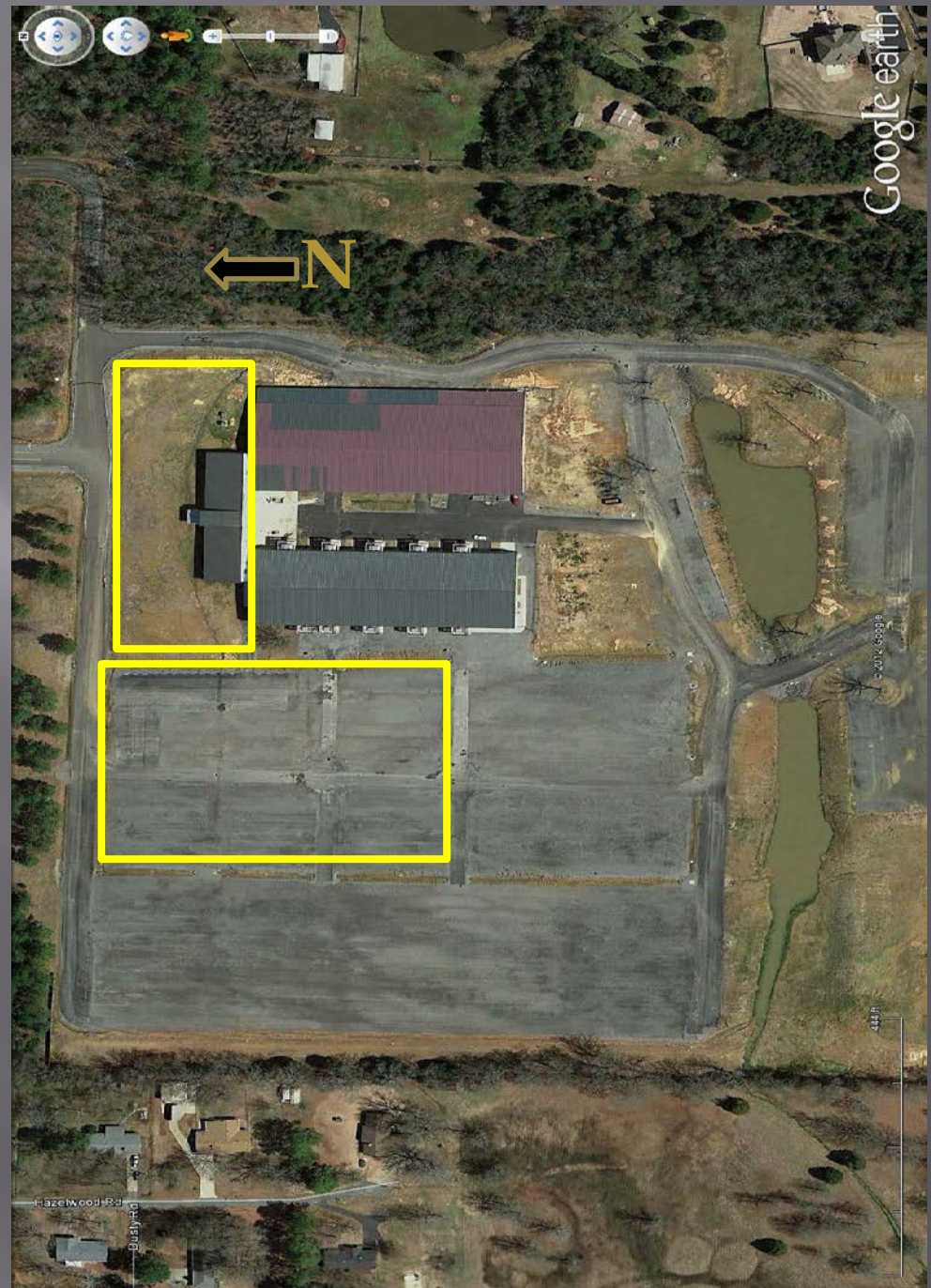
Parking Area:

Asphalt East Half of Parking
Estimated Cost: \$350,000

Future Considerations:

Providing Drive to the South
connecting to Middle Road.

Construction Management in place
Facility is being priced



Event Center Floor Plan

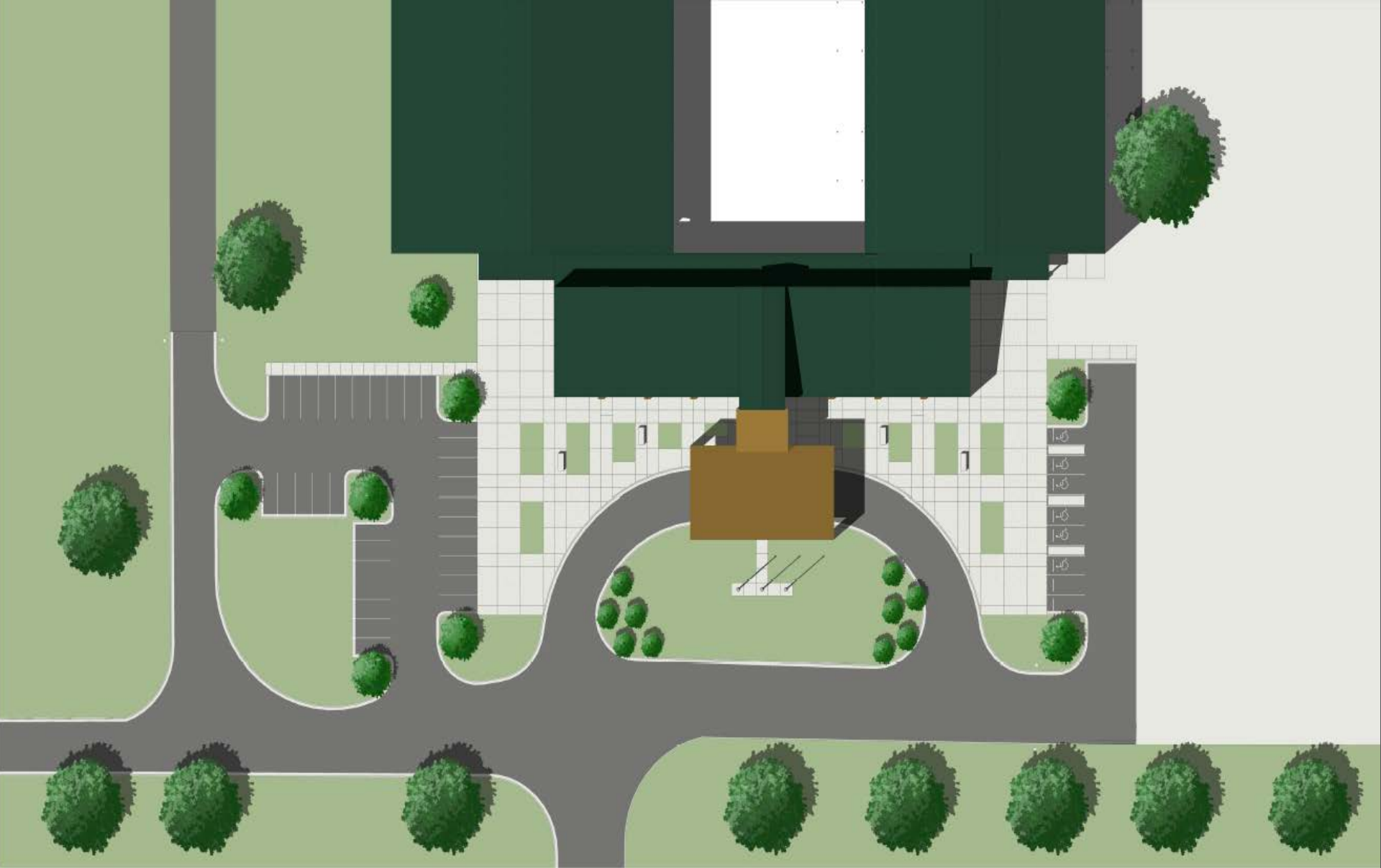


CONWAY EXPO CENTER FLOOR PLAN

Event and Expo Renderings



CONWAY EXPO CENTER



CONWAY EXPO CENTER SITE PLAN



Don Owen Field Renovations

Conway Station Park

Turf All Fields: \$4,040,000

Turf All Infields: \$1,232,000

Site Finishes -Trail, Gazebo,
Signage: \$500,000

Family Area -Playground, Splash Pad,
Pavilions: \$500,000



Conway Station Site Finishes

JACOBS

0076 Executive Center Dr., Suite 303
 Little Rock, Arkansas 72201
 (501) 222-8200

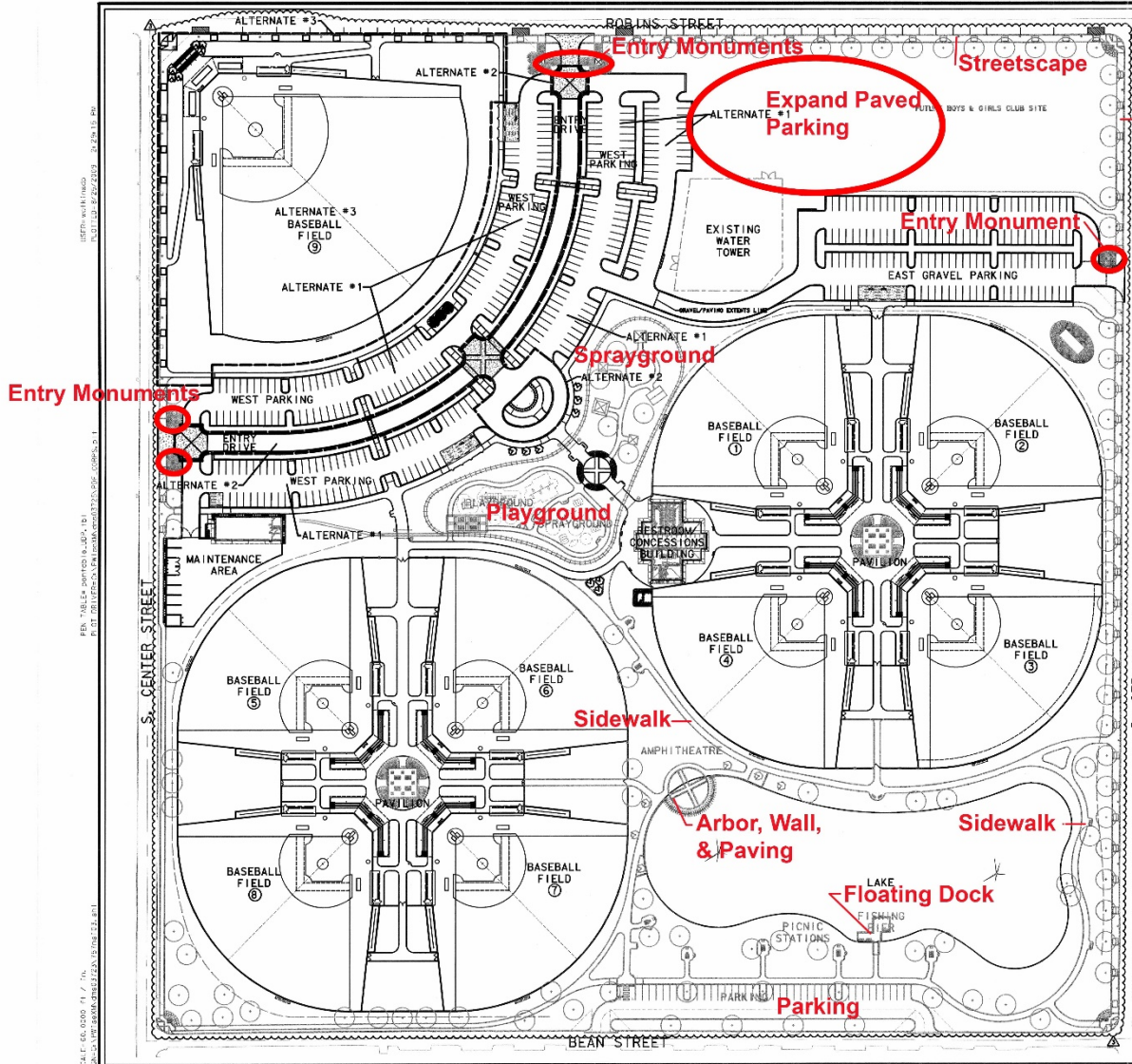
CONWAY STATION PARK - PHASE I

CITY OF CONWAY
 PARKS & RECREATION DEPARTMENT
 CONWAY, ARKANSAS 72032

JACOBS JOB #:
 024757.00
 DATE ISSUED:
 JULY 30, 2009
 REVISIONS:
 August 19, 2009

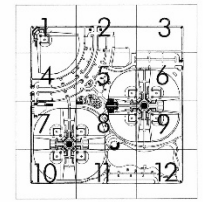


SHEET NUMBER:
 LO-1B

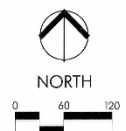


- DEDUCT ALTERNATES*
1. WEST PARKING AREAS AND DRIVES (HEAVY DUTY / REGULAR DUTY ASPHALT PAVING) TO FULL DEPTH SUB BASE (W/ CURB AND GUTTER).
 2. ENTRY DRIVE ASPHALT AND DROP OFF ASPHALT (FROM ROBINS ST. TO S. CENTER ST. (HEAVY DUTY ASPHALT PAVING, SPECIALTY PAVING AT INTERSECTIONS AND CROSSWALKS, PARKING AND FIRE LANE STRIPING) TO FULL DEPTH SUB BASE (W/ CURB AND GUTTER).
 3. FIELD #9 AS FULLY DEVELOPED (INCLUDES STAIRS, SIDEWALKS, PAVING, SHADE CANOPY, SCORER'S TABLE, BLEACHERS, DRINKING FOUNTAIN, ALL FIELD COMPONENTS, LANDSCAPING, AND IRRIGATION).

Phase II
 Items as listed on plan



KEY
 N.T.S.



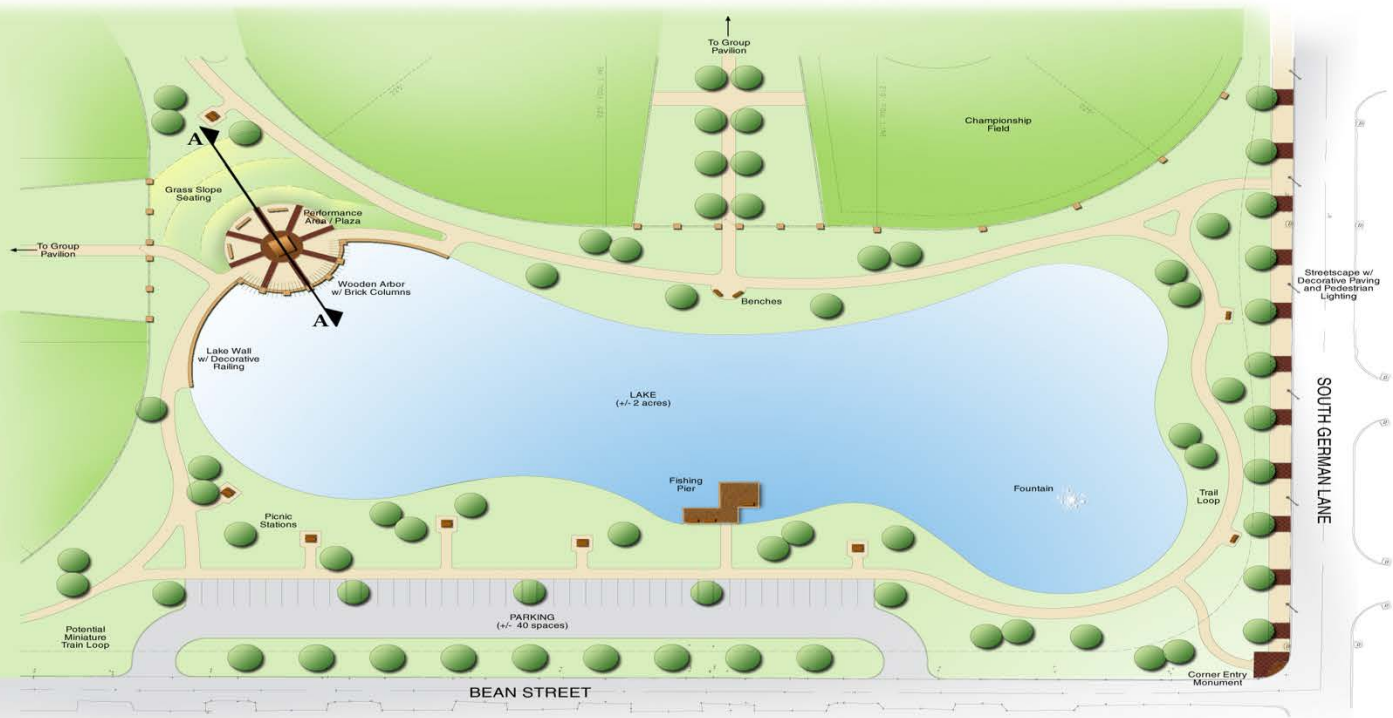
SITE ALTERNATES PLAN

SCALE: AS SHOWN ON PLANS
 DATE: 08/19/09
 DRAWN BY: JACOBSON
 CHECKED BY: JACOBSON
 APPROVED BY: JACOBSON

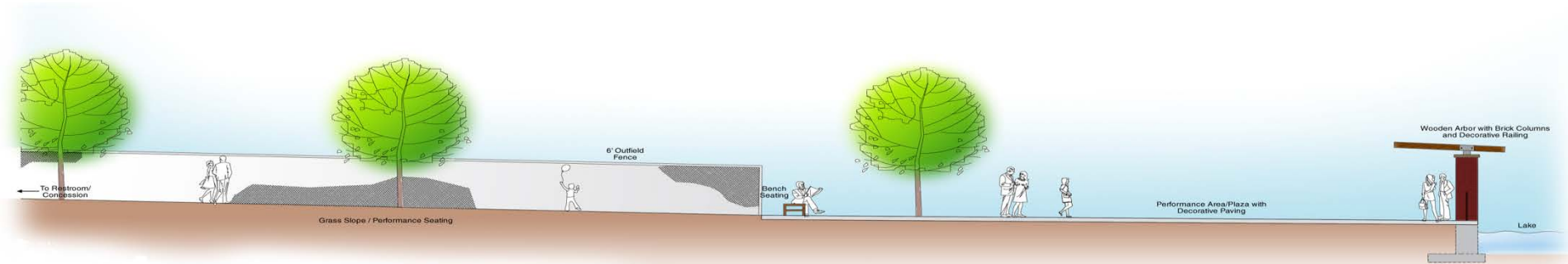
Conway Station Splash Pad



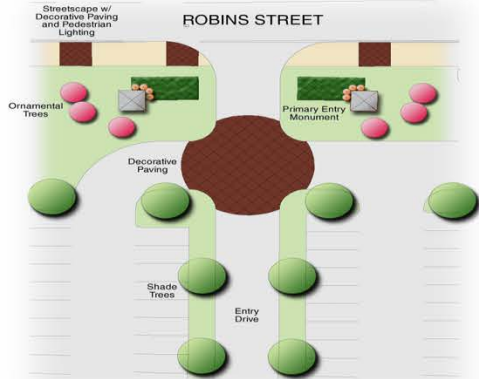
File: P-3-200-01-15



PLAN - Amphitheater / Lake Area
Scale: 1" = 30'-0"

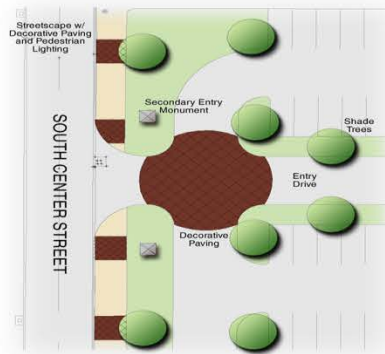


SECTION A - Amphitheater @ Lake Edge
Scale: 1/4" = 1'-0"



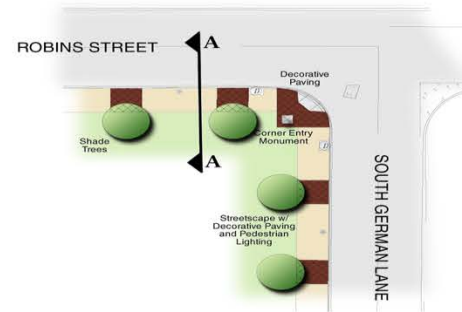
PLAN - Primary Entry Monument

Scale: 1" = 20'-0"



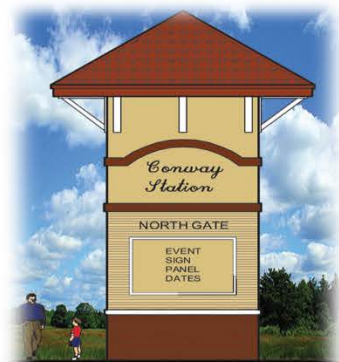
PLAN - Secondary Entry Monument

Scale: 1" = 20'-0"



PLAN - Corner Entry Monument

Scale: 1" = 20'-0"



ELEVATION - Primary Entry Monument

Scale: 1/4" = 1'-0"



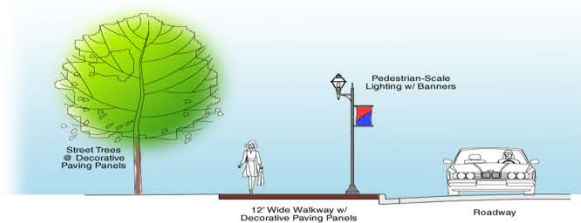
ELEVATION - Secondary Entry Monument

Scale: 1/4" = 1'-0"



ELEVATION - Corner Entry Monument

Scale: 1/4" = 1'-0"



SECTION A - Streetscape

Scale: 1/4" = 1'-0"



Laurel Park

Tennis Complex - 8 -Courts
Lighting, Restroom, and Parking
Estimated Cost: \$2,000,000

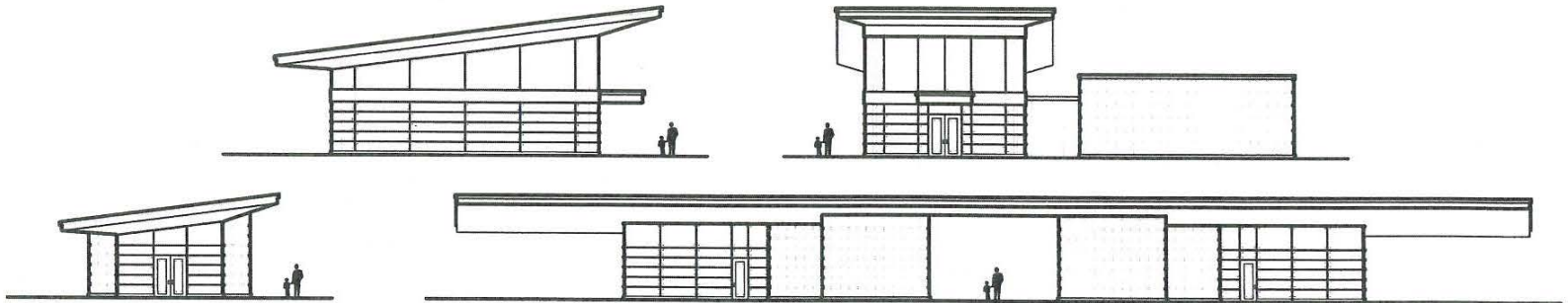
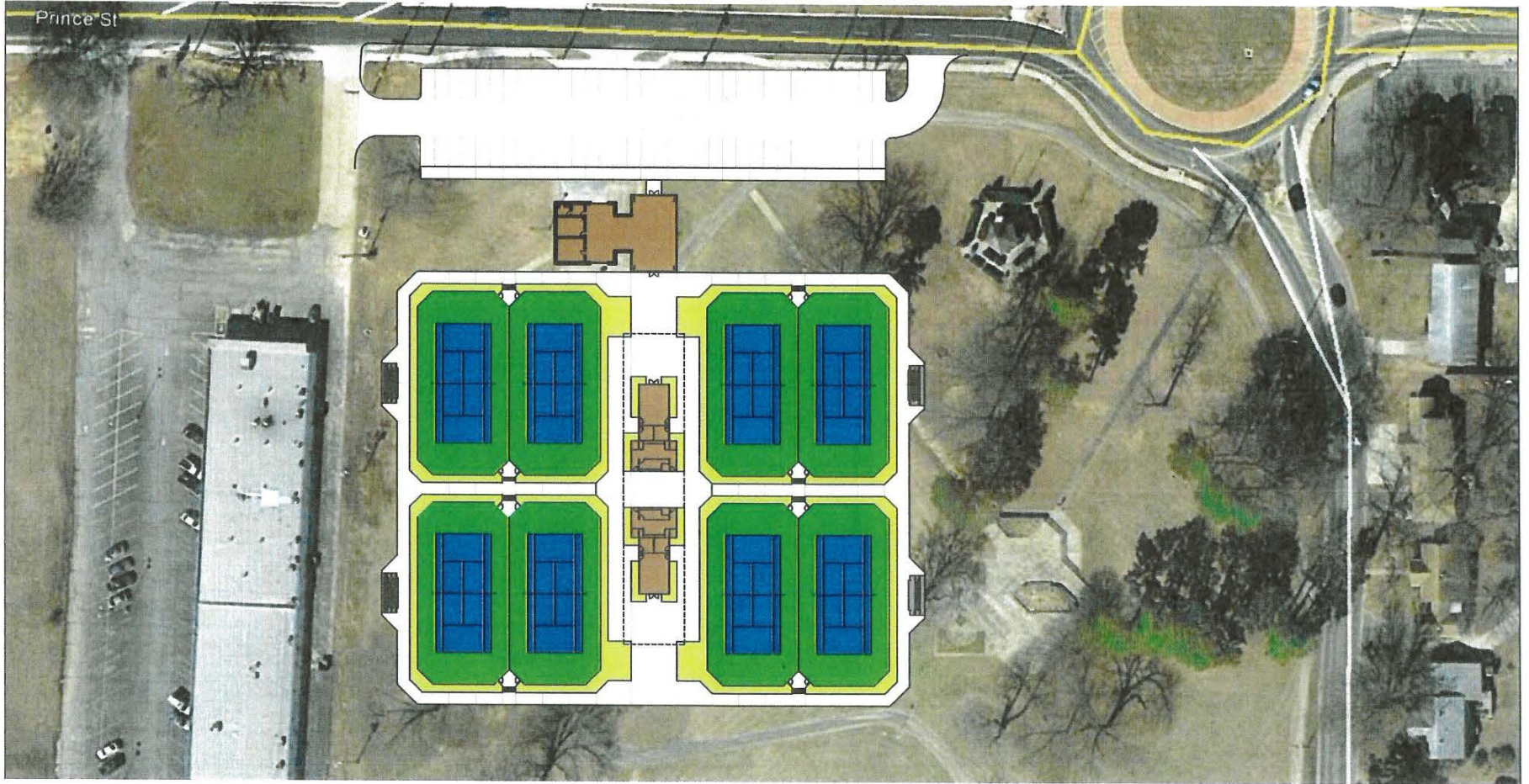
Renovation of Trail - Asphalt Surface and
additional lighting
Estimated Cost: \$250,000

Playground :
New Fall Surface
Estimated Cost:\$ 58,000

Treehouse: \$200,000



Laurel Park Tennis



Gatlin Park

Playground
Renovation: \$60,000

Tennis Court
Renovation: \$200,000

Replace two pedestrian
Bridges: \$160,000



Don Owen Complex

Turf All Fields: \$1,970,000

Turf All Infields: \$656,000

Complete Renovation of Park: \$3,100,000

Renovation of Concession/Restroom: \$300,000



Lake Beaverfork

Restrooms: \$400,000

Maintenance Building: \$60,000

Playground: \$100,000

Perimeter Fence: \$65,000



Salem Park

Restroom: \$200,000



Bainbridge Park

Restroom: \$200,000

Playground: \$100,000



City of Colleges

Turf All Fields: \$1,550,000

Turf All Infields: \$304,000

Perimeter fence: \$65,000

Perimeter Trails and Pavilion: \$300,000

Playground Renovation: \$25,000



Pompe Park

Natural Area:

Playground, Pavilion, Restroom, Bridge and Trail

Estimated Cost: \$325,000

Promenade Area:

Covered Plaza, Restrooms, Bridges, Landscaping and Parking

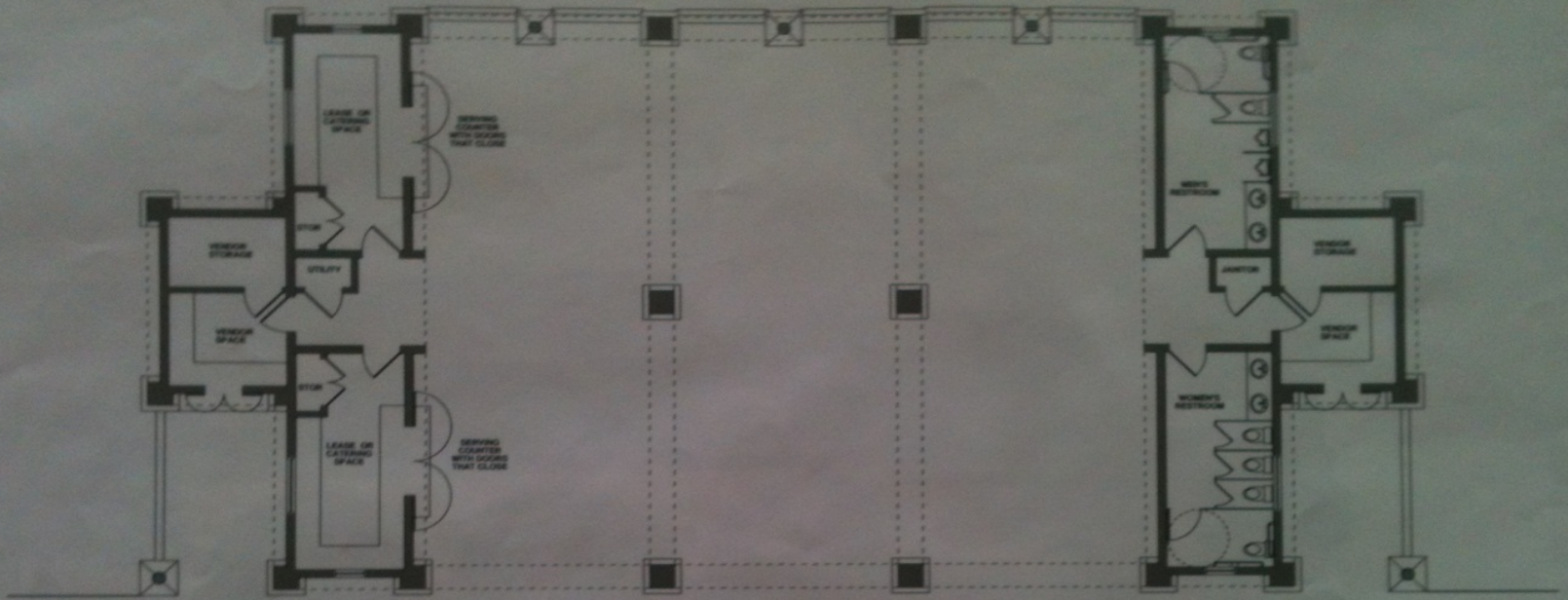
Estimated Cost: \$6,300,000





POMPE PARK PAVILION





1 PAVILION FLOOR PLAN

POMPE PARK PAVILION

Blaney Hill Park

Mountain Bike Trails

Disc Golf Course

Parking

Pre Fab Waterless Restroom

Estimated Cost: \$300,000

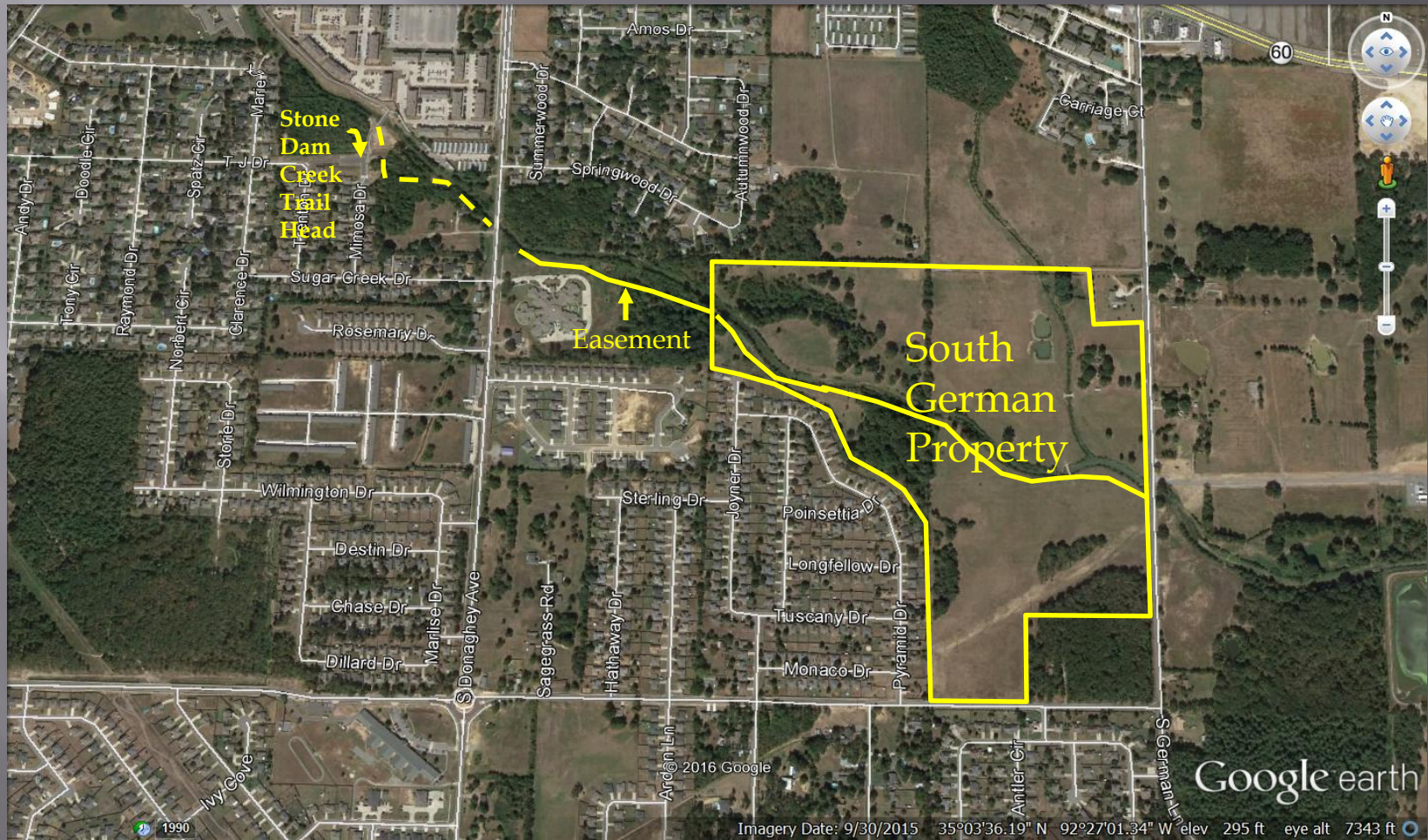


Stone Dam Creek

Pedestrian Overpass

Estimated Cost: \$1,700,000

Stone Dam Creek Trail Extension to South German Estimated at \$80,000 for gravel trail. Does not include any land acquisition.



Springfield/Des Arc Bridge

If not the oldest Bow String Bridge in the nation, it is one of the oldest. The bridge is on the National Historic Register and will be relocated to Lake Beaverfork and used as a pedestrian and bicycle crossing over a cove at the western end of the lake adjacent to Hwy. 25



Moving and restoring bridge with Metro Plan Grant would have an estimated cost: \$150,000

Projected cost if grant was not used: \$450,000

Fifth Avenue Park and Airport Park

Consideration should be given to the best use for these two pieces of property.

Fifth Avenue Park has a softball field, two tennis courts, two pavilions, playground, and restroom.

Airport Park has softball field and parking.



Community/Aquatic Center





Bike Share



Recommended Projects and Totals

Conway Event Center	\$2,400,000
Conway Station Site Finishes	\$1,000,000
Laurel Park Trail Renovation	\$ 250,000
Pompe Natural Area	\$ 325,000
Laurel Park Tennis	\$2,000,000
Stone Dam Creek Trail	\$ 80,000
Springfield Bridge	\$ 150,000
Dave Ward Pedestrian Bridge	\$1,700,000
Gatlin Park Pedestrian Bridges	\$ 160,000
5 th Avenue Park Restroom	\$ 200,000
Don Owen Restroom/Concession Renovation	\$ 300,000
Beaverfork Restrooms and Maintenance Building	\$ 460,000
City of Colleges Perimeter Fence	\$ 65,000
Total Amount of Projects Listed	\$9,090,000

Memo

To: Mayor Tab Townsell
From: Scott Grummer, Planning & Development
Date: 6/10/2016
Re: Grading, Drainage and Demolition Bid Approval

A request for bid was advertised on 05/10/2016 for Grading, Drainage and House demolition on Block 7, Burns Addition to the City of Conway, in the Pine Street Neighborhood. This work is pre-development preparation for the Cottage Housing Pocket Neighborhood project which is a public/private partnership with the City of Conway.

On May 24th, 2016 at 10:00am, three bids were received and opened by Felicia Rogers at City Hall in the presence of the bidding contractors, which bid tabulation is attached. The following bids were received:

- Craig Custom Construction, LLC \$58,450.00
- Paladino Nash Inc. \$75,500.00
- J's Construction Company Inc. \$95,016.00

Craig Custom Construction, LLC was the low bidder in the amount of \$58,450. This project is being paid for with Community Development Block Grant (CDBG) funding, so we are requesting approval of these bid results, and authorization to award Craig Custom Construction, LLC with the project.



City of Conway, Arkansas
Ordinance No. O-16-_____

AN ORDINANCE APPROVING A SUBSTANTIAL AMENDMENT TO THE 2016 COMMUNITY DEVELOPMENT BLOCK GRANT ACTION PLAN; AND FOR OTHER PURPOSES

Whereas, it is the intention of the City Council of the City of Conway to allocate Community Development Block Grant (CDBG) funds in such a manner that the maximum feasible priority is given to activities which will benefit low to moderate income families and eliminate slum and blight; and

Whereas, there is an approximate total of \$280,000 in accumulated unspent funds from past CDBG activities; and

Whereas, these activities fell under budget, could not be completed in a timely fashion with the funds available or were funded from another revenue; and

Whereas, the Pine Street Neighborhood Revitalization project is ready for sidewalk and street improvements along Siebenmorgan Road and alleyway construction for the Spruce Street pocket neighborhood but lacks complete funding.

NOW THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

Section 1: The Annual Action Plan for 2016 is hereby amended to fund the Pine Street Neighborhood Revitalization Project from funds previously allocated to other activities. The Director of Community Development is authorized to submit the amendments to the 2010 Action Plan to the Department of Housing and Urban Development.

Section 2: After a 30 day comment period and approval by HUD, the Finance Office will add \$280,000 to line item 350-000-5799, project 305001 (Pine Street).

Section 3: This change shall not affect the 2016 CDBG budget as passed by City Council.

Section 4: Policies regarding Affirmative Action, Fair Housing, Davis-Bacon, Section 3 Employment, Environmental Concerns and all other federal, state and local laws shall be enforced on this project.

PASSED this 14th day of June, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer



CITY OF CONWAY

Community Development

Memo

To: Mayor and City Council Members
From: Lauralee Wilcox McCool, CDBG Director
Date: 6/10/2016
Re: 2016 Substantial Amendment

The attached ordinance reallocates approximately \$280,000 from unspent funds to the Pine Street Revitalization Project in anticipation of finishing sidewalk and street improvements along Siebenmorgan and alley construction midblock on the initial block of Siebenmorgan, Factory, Spruce and Hamilton.

The CDBG grant portal shows \$282,280.65 in unallocated funds.

Below is an accounting of activities with unspent funds. Administration and Public Service funds may only be rolled over if doing so does not exceed the spending cap on those two areas.

2014	ILS Drainage	\$1,075.00
2014	Faulkner County Day School Parking Lot	\$13,907.00
2014	Faulkner County Day School Bus Match	\$902.00
2014	FCCDD Transportation (agency closed)	\$20,000.00
2014	Administration	\$477.15
2013	Children's Advocacy Alliance Rehab	\$2,517.15
2013	Administration	\$83,502.00
2012	FCCA (Senior Citizens) Parking Lot	\$4,152.15
2012	Administration	\$7,259.92
2011	Administration	\$32,123.38
2011	Not appropriated	\$54.00
2010	Housing Rehab (project canceled)	\$70,000.00
2007	Boys and Girls Club Transportation	\$4,000.00
2007	Not appropriated	\$2,522.40
2006	Not appropriated	\$39,788.50

If you have any questions or concerns, please feel free to contact me. My email is lauralee.mccool@cityofconway.org and my cell phone number is 501.733.1782.

City Hall • 1201 Oak • Conway, AR 72032 • 501.513.3570
lauralee.mccool@cityofconway.org



City of Conway, Arkansas
Resolution No. O-16-_____

A RESOLUTION ADOPTING THE HAZARD MITIGATION PLAN FOR THE CITY OF CONWAY; AND FOR OTHER PURPOSES

Whereas, certain areas of Conway, Arkansas located in Faulkner County are subject to periodic flooding and other natural and man-caused hazards with the potential to cause damages to people's properties within the area; and

Whereas, City of Conway in Faulkner County desires to prepare and mitigate for such circumstances; and

Whereas, under the Disaster Mitigation Act of 2000, the United States Federal Emergency Management Agency (FEMA) required that local jurisdictions have in place a FEMA- approved Hazard Mitigation Action Plan as a condition of receipt of certain future Federal mitigation funding after November 1, 2004; and

Whereas, to assist cities and counties in meeting this requirement, Faulkner County, with the assistance of Central Arkansas Planning and Development District has initiated development of a county wide, multi-jurisdiction Hazard Mitigation Plan the county and all jurisdictions in the county, specifically the cities and school districts;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF CONWAY, ARKANSAS THAT:

Section 1. That the City of Conway, Arkansas located in Faulkner County, hereby adopts those portions of the Plan relating to and protecting its jurisdictional area against all hazards, (2008-2013=Time span of Plan); and

Section 2. Appoints the Emergency Management Director to assure that the Hazard Mitigation Plan be reviewed at least annually and that any needed adjustment to the Hazard Mitigation Plan be developed and presented to the governing board for consideration; and agrees to take such other official action as may be reasonably necessary to carry out the objectives of the Hazard Mitigation Plan.

APPROVED and ADOPTED on this 14th day of June, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer

MEMO

To: Mayor Tab Townsell
CC: Conway City Council
From: Josh Zylks, Airport Manager
Date: 07 June 2016
Subject: Approval of change order #3 for Airport Paving AIP 2013

I have attached Change Order No. 3 for the Airport Paving FAA AIP 2013 Grant in the amount of -\$11,881.57. This change order involves reconciliation of final quantities of paving and lighting infrastructure so that the grant can be closed out.

This change order will be refunded at 90% to the FAA AIP 2012 grant (\$10,693.41), with the remaining 10% (\$1,188.16) refunded to local Cantrell Field Sale funds.

I ask for your approval of this change order as submitted.

If you have any questions please advise.



Construction Contract Change Order

Project: Stage 2B - Paving and Lighting Garver Job No. 1201-1500	Change Order No. 3 Date Prepared: 4/22/2016 Prepared by: BSM
Owner: City of Conway 100 East Robins Conway, AR 72032	Contractor: Weaver-Bailey Contractors, Inc. P.O. Box 60 El Paso, AR 72045

Description of Work Included in Contract
 Stage 2B - Paving and Lighting

Changes and Reasons Ordered (List Individual Changes as: A, B, C, D, etc.)
 A. Reconciliation of over and underuns.

Attachments:

Contract Changes	Bid Item No.	Bid Item Description	Previous Estimated Quantity	Unit of Measure	Contract Unit Price	Revised Estimated Quantity	Revised Unit Price	Original Estimated Cost	Revised Estimated Cost
A.	SS-272-5.1	Erosion Control Matting	8,100	S.Y.	\$2.48	0	\$2.48	\$20,088.00	\$0.00
A.	SS-310-5.8 C0.1	L-861T(L) Base Mounted Taxiway Edge Light, Installed	286	Each	\$935.00	291	\$935.00	\$267,410.00	\$272,085.00
A.	SS-310-5.10	L-881 Precision Approach Path Indicator Aiming Bar	1	Each	\$1,320.00	0	\$1,320.00	\$1,320.00	\$0.00
A.	L-108-5.1 C0.1	No. 8 AWG 5kV, L-824C Cable, Installed in Trench, Duct Bank or Conduit	59,440	L.F.	\$1.54	55,513	\$1.54	\$91,537.60	\$85,490.02
A.	L-108-5.2 C0.1	No. 6 AWG Solid, Bare Counterpoise Wire, Installed in Trench, Above the Duct Bank or Conduit, Including Ground Rods and Ground Connectors	38,630	L.F.	\$1.54	37,949	\$1.54	\$59,490.20	\$58,441.46
A.	L-108-5.3	No. 6 AWG Stranded, 600V Rated, Type XHHW, Green Insulated Equipment Ground, Installed in Duct Bank or Conduit, Including Ground Rods and Ground Connectors	900	L.F.	\$1.76	698	\$1.76	\$1,584.00	\$1,228.48
A.	L-108-5.4 C0.1	Trenching for Direct-Buried Bare Counterpoise Wire, 8" Minimum Depth	27,540	L.F.	\$1.10	25,578	\$1.10	\$30,294.00	\$28,135.80
A.	L-108-5.5	12-Strand ALCMS Fiber Optic Cable, Installed	360	L.F.	\$9.19	555	\$9.19	\$3,308.40	\$5,100.45
A.	L-108-5.6	6-Pair, PE-89 Telephone Cable, Installed	360	L.F.	\$2.31	0	\$2.31	\$831.60	\$0.00
A.	L-108-5.7	500 kcmil Stranded, 600V Rated, Type THHN/THWN-2 Cable, Installed in Duct Bank or Conduit	2,900	L.F.	\$13.20	4,584	\$13.20	\$38,280.00	\$60,508.80
A.	L-108-5.8	No. 1 AWG Stranded, 600V Rated, Type THHN/THWN-2, Green Insulated Equipment Ground, Installed in Duct Bank or Conduit	720	L.F.	\$4.40	1,110	\$4.40	\$3,168.00	\$4,884.00
A.	L-108-5.9	Generator Remote Annunciator Panel Cable, Installed	720	L.F.	\$3.30	0	\$3.30	\$2,376.00	\$0.00
A.	L-110-5.1	Concrete Encased, Electrical Duct Bank, 2-Way 2"C	90	L.F.	\$22.00	73	\$22.00	\$1,980.00	\$1,606.00
A.	L-110-5.2 C0.1	Non-Encased, Electrical Conduit 1-Way 2"C	37,855	L.F.	\$3.30	37,513	\$3.30	\$124,921.50	\$123,792.90
A.	L-110-5.3	Non-Encased, Electrical Duct Bank 4-Way 4"C	85	L.F.	\$55.00	140	\$55.00	\$4,675.00	\$7,700.00
A.	L-110-5.4	Non-Encased, Electrical Duct Bank 2-Way 2"C	360	L.F.	\$27.50	497	\$27.50	\$9,900.00	\$13,667.50
A.	L-110-5.5	Non-Encased, Electrical Duct Bank 2-Way 4"C	360	L.F.	\$16.50	375	\$16.50	\$5,940.00	\$6,187.50
A.	L-115-5.1	Concrete Encased, Electrical Junction Structure, L-867 Class 1, Size 16" Diameter by 24" Depth, Installed	38	Each	\$1,045.00	47	\$1,045.00	\$39,710.00	\$49,115.00
A.	L-115-5.3	Concrete Encased, Prefabricated Electrical Handhole, Size 13"L x 24"W x 24"D, Installed	3	Each	\$1,072.50	2	\$1,072.50	\$3,217.50	\$2,145.00
A.	L-115-5.4	Concrete Encased, Prefabricated Electrical Handhole, Size 30"L x 48"W x 24"W, Installed	2	Each	\$3,025.00	3	\$3,025.00	\$6,050.00	\$9,075.00
A.	P-152-4.3 C0.1	Unsuitable Excavation	2,000	C.Y.	\$13.15	0	\$13.15	\$26,300.00	\$0.00
A.	P-301-6.1	Soil-Cement Base Course (8" thickness)	56,850	S.Y.	\$5.11	55,250	\$5.11	\$290,503.50	\$282,326.22
A.	P-501-8.1a C0.1	Portland Cement Concrete Pavement (11" Thickness)	29,622	S.Y.	\$40.19	30,533	\$40.19	\$1,190,508.18	\$1,227,121.27
A.	T-901-5.1	Seeding	35	Acre	\$1,595.00	18	\$1,595.00	\$55,825.00	\$28,933.30

A.	T-904-5.1	Sodding	5,874	S.Y.	\$2.48	5,765	\$2.48	\$14,567.52	\$14,296.33		
A.	C02.1	Concrete Encased Electrical Conduit (1 Way, 2 inch C)	700	L.F.	\$19.80	678	\$19.80	\$13,860.00	\$13,424.40		
A.	C02.3	Single 4" Schedule 40 Pipe	620	L.F.	\$10.00	670	\$10.00	\$6,200.00	\$6,700.00		
								\$2,313,846.00	\$2,301,964.43		
								Net Cost for this Change Order (\$11,881.57)			
Estimated Project Cost					Time Change						
Estimated Project Cost					Contract Start Date						
Original Contract Amount \$6,462,856.01					October 7, 2013						
Previously Approved Changes (\$1,383,344.83)					Original Contract Time (calendar days) 328						
This Change Order (\$11,881.57)					Previously Approved Changes (calendar days) 0						
New Contract Amount \$5,067,629.61					This Change Order (calendar days) 0						
					New Construction Completion Date June 1, 2014						
THIS AGREEMENT IS SUBJECT TO ALL ORIGINAL CONTRACT PROVISIONS AND PREVIOUS CHANGE ORDERS											
ISSUED FOR REASONS INDICATED ABOVE											
Engineer: Garver											
			_____ Engineer's Signature			_____ Title			_____ Date		
ACCEPTED BY CONTRACTOR											
			_____ Contractor's Signature			_____ Title			_____ Date		
APPROVED BY OWNER											
			_____ Owner's Signature			_____ Title			_____ Date		

MEMO

To: Mayor Tab Townsell
CC: Conway City Council
From: Josh Zylks, Airport Manager
Date: 07 June 2016
Subject: Approval of change order #3 for Airport Access Road Construction

I have attached Change Order No. 3 for the Airport Access Road Job included in the FAA AIP 2014 Grant in the amount of \$254,976.59. This change order involves reconciliation of final quantities of paving, earth, stone, and sod so that the grant can be closed out.

This change order will be funded by the FAA AIP 2013 grant and Arkansas Department of Aeronautics Grant funds.

I ask for your approval of this change order as submitted.

If you have any questions please advise.



Construction Contract Change Order

Project: Access Road Construction Garver Job No. 1201-1501	Change Order No. 3 Date Prepared: 05/19/16 BSM
Owner: City of Conway 100 East Robins Conway, AR 72032	Contractor: Weaver-Bailey Contractors, Inc. P.O. Box 60 El Paso, AR 72045

Description of Work Included in Contract
 Access Road Construction

Changes and Reasons Ordered (List Individual Changes as: A, B, C, D, etc.)

A. Reconciliation of over and underruns.

Attachments:

Contract Changes	Bid Item No.	Bid Item Description	Previous Estimated Quantity	Unit of Measure	Contract Unit Price	Revised Estimated Quantity	Revised Unit Price	Original Estimated Cost	Revised Estimated Cost
A.	SS-140-6.1 CO2.1	4" Concrete Sidewalk	126	S.Y.	\$49.50	50	\$49.50	\$6,237.00	\$2,475.00
A.	D-701-5.1a CO2.10	18" Reinforced Concrete Pipe (Class IV)	481	L.F.	\$41.56	466	\$41.56	\$19,990.36	\$19,366.96
A.	D-701-5.1b CO2.11	24" Reinforced Concrete Pipe (Class IV)	150	L.F.	\$54.86	224	\$54.86	\$8,229.00	\$12,288.64
A.	D-701-5.1c CO2.12	30" Reinforced Concrete Pipe (Class IV)	208	L.F.	\$77.39	240	\$77.39	\$16,097.12	\$18,573.60
A.	D-701-5.1d CO2.13	22" x 13" Reinforced Concrete Arch Pipe (Class IV)	231	L.F.	\$56.67	271	\$56.67	\$13,090.77	\$15,357.57
A.	D-701-5.2a CO2.14	18" Reinforced Concrete Flared End Section	6	Each	\$1,090.72	5	\$1,090.72	\$6,544.32	\$5,453.60
A.	D-701-5.2b CO2.15	24" Reinforced Concrete Flared End Section	2	Each	\$1,215.75	6	\$1,215.75	\$2,431.50	\$7,294.50
A.	D-701-5.2c	30" Reinforced Concrete Flared End Section	4	Each	\$2,212.31	12	\$2,212.31	\$8,849.24	\$26,547.72
A.	D-752-5.1 CO1.1	Reinforced Concrete Drainage Flume	0	S.Y.	\$82.50	22.3	\$82.50	\$0.00	\$1,839.75
A.	D-752-5.2 CO2.16	Concrete Ditch Paving	1909	L.F.	\$58.35	3917.4	\$58.35	\$111,390.15	\$228,580.29
A.	P-152-4.1 CO2.17	Unclassified Excavation	10312	C.Y.	\$4.95	11408.55	\$4.95	\$51,044.40	\$56,472.32
A.	P-152-4.2 CO1.2 & CO2.18	Embankment in Place	71238	C.Y.	\$7.37	73906	\$7.37	\$525,024.06	\$544,687.22
A.	P-152-4.3 CO1.3	Unsuitable Excavation	1000	C.Y.	\$15.40	488.9	\$15.40	\$15,400.00	\$7,529.06
A.	P-301-6.1 CO2.19	Soil-Cement Base Course (8" thickness)	15869	S.Y.	\$5.08	15594.72	\$5.08	\$80,614.52	\$79,221.18
A.	P-501-8.1a CO1.4 & CO2.20	Portland Cement Concrete Pavement (8" Thickness)	11230	S.Y.	\$36.56	11611.42	\$36.56	\$410,568.80	\$424,513.52
A.	T-901-5.1	Seeding	8	Acre	\$1,595.00	13.47	\$1,595.00	\$12,760.00	\$21,484.65
A.	T-904-5.1	Sodding	1425	S.Y.	\$2.75	11195.24	\$2.75	\$3,918.75	\$30,786.91
A.	CO2-21	Shale Embankment	6500	CY	\$10.14	6366	\$10.14	\$65,910.00	\$64,551.24
A.	CO2-22	Class 7 Aggregate Base	2393	SY	\$9.14	4363.27	\$9.14	\$21,872.02	\$39,880.29
A.	CO2-23	18" Dumped Riprap	200	TON	\$58.15	682.28	\$58.15	\$11,630.00	\$39,674.58

Summation of Cost	\$1,391,602.01	\$1,646,578.60
Net Cost for this Change Order		\$254,976.59

Estimated Project Cost	Estimated Project Cost	Time Change	
Original Contract Amount	\$1,798,557.24	Contract Start Date	TBD
Previously Approved Changes	(\$200,743.25)	Original Contract Time (calendar days)	N/A
This Change Order	\$254,976.59	Previously Approved Changes (calendar days)	0
New Contract Amount	\$1,852,790.58	This Change Order (calendar days)	0
		New Construction Completion Date	April 22, 2016

THIS AGREEMENT IS SUBJECT TO ALL ORIGINAL CONTRACT PROVISIONS AND PREVIOUS CHANGE ORDERS

ISSUED FOR REASONS INDICATED ABOVE		
Engineer: Garver		
_____ Engineer's Signature	_____ Title	_____ Date
ACCEPTED BY CONTRACTOR		
_____ Contractor's Signature	_____ Title	_____ Date
APPROVED BY OWNER		
_____ Owner's Signature	_____ Title	_____ Date

MEMO

To: Mayor Tab Townsell
Conway City Council

From: Josh Zylks, Airport Manager

Date: 07 June 2016

Subject: Approval to Apply for ADA FAA AIP Match Grant

I am requesting permission to apply for an FAA Match Grant with the Arkansas Department of Aeronautics. This grant is for a portion of the local 10% match of the FAA 2013 AIP project in the amount of \$400,000.00. The local 10% share of the FAA AIP grant is \$656,800 to date, therefore we can go ahead and apply for the state ADA grant since their cap on this type of grant is \$400,000.00. This AIP grant paid for paving of the taxiways, aprons, lighting systems, sewer system, and access roads.

If you have any questions please advise.

Thank you,

State Airport Aid Application – Page 1

The City/County of Conway, herein called “Sponsor”, hereby makes application to the Arkansas Department of Aeronautics for State funds pursuant to Act 733 of 1977, for the purpose of aiding in financing a project for the development of a municipal airport located in the city of Conway Arkansas, Faulkner county.

Date of Request: June 13, 2016

Name of Airport: Conway Municipal Airport

Name and address of City/County Commission sponsoring request:

City of Conway
1201 Oak Street
Conway, AR 72032

Phone Number: _____

Fax Number: _____

Person to Contact about project:

Josh Zylks

Phone Number: 501-358-6204

Cell Number: 501-428-1832

Fax Number: 501-358-6205

Name and address of Engineering Firm (if applicable):

Garver, LLC
4701 Northshore Drive
North Little Rock, AR
72118

Contact Person: Blake Roberson

Phone/Fax Number: 501-376-3633

Describe the work to be accomplished: Stage 2B Paving and Lighting, Access Road Construction and Utility Construction

State and Local Project Costs:
 Please indicate:

- 50-50% Match
- 80-20% Match
- 90-10% Match
- 100%

Federal AIP Projects:

AIP Number: 3-05-0089-006-2013

- 95-5% Match
- 90-10% Match

Total Cost of Project _____
 Local Share/Funds _____
 Local Share/In-Kind _____
 State Share _____

Total Cost of Project: \$7,668,804.94
 Federal Share: \$6,846,139.00
 State Share: \$400,000.00
 Local Share: \$422,665.94

State Airport Aid Application – Page 2

Provide the information listed below as it applies to your project:

Funding:

Source of Funds: Federal Aviation Administration, Arkansas Department of Aeronautics, City of Conway

Source of In-Kind Services: N/A

Estimated starting date of project: September, 2013

Estimated completion date of project: May, 2016

Project will be for: **New Airport** Existing Airport

Is land to be leased or purchased? No

Description of land and cost per acre: N/A

Provide the Federal AIP Grant Number (if applicable): 3-05-0089-006-2013

State Legislators for your area:

State Senator: Jason Rapert

State Representative: David Meeks

State Airport Aid Application – Page 3

The sponsor agrees to furnish the Arkansas Department of Aeronautics a copy of the legal instrument affecting use of the property for an airport. In application for a new landing site or expansion of existing facility, the FAA Form 7480-1, *Notice of Landing Area Proposal*, must be approved by the FAA before review for grant can be made by the State. Applications for hangar construction or renovation funds must include a signed lease agreement. This agreement must be in compliance with all FAA grant assurances. The application must be based on bids and include a calculated return on investment.

No land, hangars, or buildings purchased with State Grant funds may be sold or disposed of without State Aeronautics Commission prior approval. All requests for sale or disposal of property will be considered on an individual case basis. No hangar (funded by a grant from the Department of Aeronautics) shall be used for non-aviation purposes without State Aeronautics Commission prior approval. All requests for non-aviation use will be considered on a case-by-case basis. Failure to receive prior approval from A.D.A. concerning land and/or building use could result in the commission requesting grant refund from the Sponsor. Additionally, all hgr/building grant applications must include proof of insurance coverage.

No airport accepting State Grant funding may issue an Exclusive Rights lease.

All applications for navigational aids (such as NDB or ILS) must have FAA site approval before a state grant can be approved.

All Grant applications involving Federal Airport Improvement Program (AIP) funding must be accompanied by the approved FAA grant agreement with grant number assigned.

If this project is approved by the Arkansas Department of Aeronautics, and is accepted by the sponsor, it is agreed that all developments and construction shall meet standard FAA construction practices as outlined in the specifications of this agreement. Runways, Taxiways, Parking Ramps, etc. shall have a base and a thickness that will accommodate the weight of aircraft expected to operate at this airport.

All grant applicants (City and/or County) are totally responsible for compliance with all Federal, State, County, and City laws, Statutes, Ordinances, Rules, Regulations, and Executive Orders concerning contracts and purchases for which this grant is approved and issued.

It is understood and agreed that the sponsor shall start this project immediately upon award of grant. It is also agreed that this project shall be completed within one year from the date of acceptance of this grant by the Arkansas Department of Aeronautics. Applications for extension will be entertained if circumstances beyond the sponsor's control occur. Amendment requests are to be made only under extraordinary circumstances.

Funds will be disbursed according to Department procedures and final inspection of completed project (See payment instruction page). *Payment of grant funds are contingent upon the Department's annual appropriation.*

IN WITNESS WHEREOF, the sponsor has caused this Application for State Airport Aid to be duly executed in its name, this _____ day of _____ June _____, 2016 .

City of Conway

Name of Sponsor

Authorized Signature

Mayor

Title

OUTLAY REPORT AND REQUEST FOR REIMBURSEMENT FOR CONSTRUCTION PROGRAMS		OMB APPROVAL NO. 0348-0002		PAGE 1 OF 1 PAGES			
(See instructions on back)		1. TYPE OF REQUEST <input checked="" type="checkbox"/> FINAL <input type="checkbox"/> PARTIAL		2. BASIS OF REQUEST <input type="checkbox"/> CASH <input checked="" type="checkbox"/> ACCRUAL			
3. FEDERAL SPONSORING AGENCY AND ORGANIZATIONAL ELEMENT TO WHICH THIS REPORT IS SUBMITTED FAA/DOT		4. FEDERAL GRANT OR OTHER IDENTIFYING NUMBER ASSIGNED BY FEDERAL AGENCY 3-05-0089-006-2013		5. PARTIAL PAYMENT REQUEST NO. 20			
6. EMPLOYER IDENTIFICATION NUMBER 71-6001898		7. RECIPIENT'S ACCOUNT NUMBER OR IDENTIFYING NUMBER		PERIOD COVERED BY THIS REQUEST FROM (Month, day, year) 11/18/2014 TO (Month, day, year) 06/08/2016			
8. RECIPIENT ORGANIZATION Name: City of Conway No. and Street: 1201 Oak Street City, State and ZIP Code: Conway, AR 72032		10. PAYEE (Where check is to be sent if different than item 8) Name: No. and Street: City, State and ZIP Code:					
11. STATUS OF FUNDS							
CLASSIFICATION	PROGRAMS --		FUNCTIONS --		TOTAL		
	(a)		(b)	(c)			
a. Administrative expense	\$	0.00	\$		\$ 0.00		
b. Preliminary expense					0.00		
c. Land, structures, right-of-way					0.00		
d. Architectural engineering basic fees		121,295.36			121,295.36		
e. Other architectural engineering fee		61,000.00			61,000.00		
f. Project inspection fees		366,665.68			366,665.68		
g. Land development					0.00		
h. Relocation expense					0.00		
i. Relocation payments to individuals and businesses					0.00		
j. Demolition and removal					0.00		
k. Construction and project improvement cost		7,037,697.52			7,037,697.52		
l. Equipment					0.00		
m. Miscellaneous cost		82,146.38			82,146.38		
n. Total cumulative to date (sum of lines a thru m)		7,668,804.94	0.00	0.00	7,668,804.94		
o. Deductions for program income		61,983.19			61,983.19		
p. Net cumulative to date (line n minus line o)		7,606,821.75	0.00	0.00	7,606,821.75		
q. Federal share to date		6,846,139.00			6,846,139.00		
r. Rehabilitation grants (100% reimbursement)					0.00		
s. Total Federal share (sum of lines q and r)		6,846,139.00	0.00	0.00	6,846,139.00		
t. Federal payments previously requested		6,568,000.00			6,568,000.00		
u. Amount requested for reimbursement	\$	278,139.00	\$		\$ 278,139.00		
v. Percentage of physical completion of project		100 %	%	%	100 %		
12. CERTIFICATION I certify that to the best of my knowledge and belief the billed costs or disbursements are in accordance with the terms of the project and that the reimbursement represents the Federal share due which has not been previously requested and that an inspection has been performed and all work is in accordance with the terms of the award.		a. RECIPIENT		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL			
				DATE REPORT SUBMITTED			
				TYPED OR PRINTED NAME AND TITLE		TELEPHONE (Area code, number, and extension)	
				Hon. Tab Townsell, Mayor		501-450-6110	
		b. REPRESENTATIVE CERTIFYING TO LINE 11V		SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL			
				DATE SIGNED			
				TYPED OR PRINTED NAME AND TITLE		TELEPHONE (Area code, number, and extension)	
				Mary Kennedy, Project Engineer			
				June 9, 2016			
				501-604-3827			

05.16.2016

Memo

To
Mayor Tab Townsell

From
B. Finley Vinson, P.E.

CC
Felicia Rogers

Re
Moto Grader Lease

Comments:

Four quotes have been obtained to lease a moto grader and are summarized below.

Vendor	Monthly Lease Payment
Riggs CAT	\$1,235.00
Stribling Equipment (4-wheel drive)	\$1,228.34
Stribling Equipment (6-wheel drive)	\$1,347.23
Scott Equipment	\$4,175.00

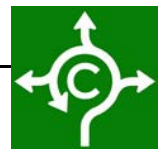
Our preferred grader is provided by Riggs CAT. This equipment includes blade float with cushion control, which allows the grader to be used for snow and ice removal with less damage to the equipment. In addition, the CAT is operated by a joystick rather than a steering wheel, which provides easier, more efficient operation with better visibility.

I request approval of the attached sample contract pending approval by the city attorney. The monthly lease payment will be as listed in the attached quote. Applicable taxes, however, are not included in the quote and will need to be added to the contract.

City of Conway Street & Engineering Department

(501) 450-6165
100 E Robins St, Conway, AR 72032

www.cityofconway.org/pages/street-department/
firstname.lastname@cityofconway.org



Riggs



April 4, 2016

City of Conway
ATTN Ben Brown

RE: 140M3 36 Month LTR Lease

Dear Ben Brown

We are pleased to quote the following for your purchase consideration.

One (1) Used CATERPILLAR Model: 140M3 Motor Graders with all standard equipment in addition to the additional specifications listed below: Cross Slope/Grade Control, Rear Ripper, Rear Vision Camera.

STOCK NUMBER 16091140R SERIAL NUMBER: TBD YEAR: 2016 SMU: 250

Sell Price	\$ 231000.00
After Tax Balance	\$ 231000.00

WARRANTY

Extended Warranty: 42 Month 3500 Hour Premier

PAYMENT TERMS

Lease Terms

CASH WITH ORDER	BALANCE TO LEASE	TERM	PERIOD PAYMENT	RATE	OPTIONAL BUY-OUT	DOCUMENT FEE	AMOUNT
\$0.00	\$231350.00	36 (Monthly)	\$1235.00	3.88%	N/A	\$350.00	\$231000.00

The above lease is based on the following: 36 month 1000 hours per year, 250 hour machine

- * Taxes are extra on the monthly payments
 - * Machine must be returned in average condition with normal wear-and-tear
 - * The customer is responsible for all maintenance and repairs on the machine using genuine Cat parts only
 - * Tires, undercarriage, and all ground engaging tools (i.e. teeth, cutting edges) must be at 50% remaining, minimum
 - * The above is subject to approval by Caterpillar Finance
- In Addition to all standard features, machine will include Ripper and Push Block



Jackson, Mississippi (601) 939-1000 • (800) 682-6409
408 Hwy 49 South • P.O. Box 6038 • Jackson, MS 39288-6038

March 3, 2016

City of Conway Street Dept.
Conway, AR

We are pleased to quote the following 2016 Deere 770GP Motor Grader for consideration:

- 2016 770GP Motor Grader
- Grade Pro Controls
- Automated Cross Slope Control
- JD Link
- Cab with Heat / Air Conditioning
- AM/FM Radio with Bluetooth
- 10 Working Lights
- Rear Camera
- 14 FT Moldboard
- Auto shift Transmission
- Front Push Block
- Rear Ripper
- 17.5R25 L2 1 Star Tires
- 48 Month Full Machine Warranty

36 Month Lease.....\$1,228.34

Lease is based on a 1000 hours per year.

Thank you for the opportunity to meet your equipment needs. If you have any questions, please contact me at 501-317-0166. **Note** this quote is good for period of 30 days from above date.

Craig Lincoln
Territory Manager
Stribling Equipment, LLC



Jackson, Mississippi (601) 939-1000 • (800) 682-6409
408 Hwy 49 South • P.O. Box 6038 • Jackson, MS 39288-6038



March 3, 2016

City of Conway Street Dept.
Conway, AR

We are pleased to quote the following 2016 Deere 772GP Motor Grader for consideration:

- 2016 772GP Motor Grader
- Grade Pro Controls
- Automated Cross Slope Control
- JD Link
- Cab with Heat / Air Conditioning
- AM/FM Radio with Bluetooth
- 10 Working Lights
- Rear Camera
- 14 FT Moldboard
- Auto shift Transmission
- Front Push Block
- Rear Ripper
- 17.5R25 L2 1 Star Tires
- 6 Wheel Drive
- 48 Month Full Machine Warranty

36 Month Lease.....\$1,347.23

Lease is based on a 1000 hours per year.

Thank you for the opportunity to meet your equipment needs. If you have any questions, please contact me at 501-317-0166. **Note** this quote is good for period of 30 days from above date.

Craig Lincoln
Territory Manager
Stribling Equipment, LLC



Mr. Ben Brown
City of Conway Street Dept

Date: 3/01/2016

Re: 36 Month Walk Away Lease on 865B Grader

We are pleased to submit our proposal for your consideration:

New CASE 865B Grader with ProCare Maintenance and Warranty

Standard Equipment Including the following:

Four Wheel Drive
Direct Drive Transmission
Front Dozer Blade
14' MoldBoard
Cab with Heat and Air
Additional Ripper Teeth

Price \$4,157 per month with a \$400 initial setup fee.

All freight and delivery charges are included. No applicable taxes are included.

I appreciate the opportunity to quote. If you have any questions or require additional information please contact me at (501) 515-3863 or by email at jhenry@scottcompanies.com.

Respectfully Submitted,

Jeff Henry

1. PARTIES

<p>LESSOR ("we", "us" or "our"):</p> <p>CATERPILLAR FINANCIAL SERVICES CORPORATION 2120 West End Avenue Nashville, TN 37203</p>	<p>LESSEE ("you" or "your"):</p> <p>Customer Legal Name Address , NM</p>
---	--

In reliance on your selection of the equipment described below (each, a "Unit"), we have agreed to acquire and lease the Units to you, subject to the terms of this Lease. **Until this Lease has been signed by our duly authorized representative, it will constitute an offer by you to enter into this Lease with us on the terms stated herein.**

2. DESCRIPTION OF THE UNITS

DESCRIPTION OF UNIT(s) <small>Whether the Unit is new or used, the model number, the manufacturer, and the model name.</small>	SERIAL/VIN <small>Unique ID number for this Unit.</small>	MONTHLY RENT <small>This is due per period, as stated below in Section 4.</small>	OPTION PURCHASE PRICE <small>Payment at end of lease for purchase of Unit (see Section 16).</small>	MAX ANNUAL HOURS/ MILEAGE <small>Maximum annual usage of Unit (see Application Survey).</small>	DELIVERY DATE <small>Enter date machine was delivered to you.</small>
<p>(None)</p> <div style="position: absolute; top: 50%; left: 50%; transform: translate(-50%, -50%); opacity: 0.2; font-size: 100px; pointer-events: none;">SAMPLE</div>					

LOCATION OF UNITS:

You acknowledge that the Units described above were delivered to you in good working condition and that you accepted them on the date indicated. The Application Survey ("Application Survey") submitted by you to us for each Unit is made a part of and incorporated into this Lease.

TERMS AND CONDITIONS

3. **Lease Term** The Lease Term will start on the date we sign the Lease and will continue for _____ months, unless earlier terminated or canceled as permitted herein.
4. **Rent** You will pay us the Monthly Rent beginning One month after the date we sign this Lease and on the same date of each month thereafter for the entire Lease Term. Monthly Rent will be due without demand. You will also pay us all other amounts payable under the terms of this Lease and under any other document executed in connection with this Lease, including each Application Survey (the "Lease Documents") ("Other Payments", and together with the Monthly Rent, collectively, the "Rent"). You will pay the Rent to us at _____ or such other location that we designate in writing. **You agree this Lease constitutes a non-cancelable net lease. You also agree that your duties and liabilities under this Lease and the other Lease Documents are absolute and unconditional. Your payment and performance obligations are not subject to cancelation, reduction, or setoff for any reason. You agree to settle all claims, defenses, setoffs, counterclaims and other disputes you may have with the Supplier (as defined below), the manufacturer of each Unit, or any other**
- third party directly with the Supplier, the manufacturer or the third party, as the case may be. You will not assert, allege or make any such claim, defense, setoff, counterclaim or other dispute against us or with respect to the payments due us under this Lease.
5. **Late Charges** If we do not receive a Rent payment or any payments under Section 14 on the date it is due, you will pay us, on demand, a late payment charge equal to five percent (5%) of the late Rent payment.
6. **Disclaimer of Warranties** You have selected each Unit based upon your own judgment. You understand that we are not the manufacturer or the seller of the Units. WE MAKE NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO THIS LEASE OR TO ANY UNIT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH UNIT IS LEASED "AS IS, WHERE IS." WE MAKE NO WARRANTIES AS TO THE QUALITY OF MATERIALS OR WORKMANSHIP OR THAT THE MATERIALS OR WORKMANSHIP COMPLY WITH THE TERMS OF ANY PURCHASE ORDER OR AGREEMENT. WE EXPRESSLY DISCLAIM, AND YOU WAIVE ALL OTHER WARRANTIES AND CLAIMS EXPRESS OR IMPLIED,



ARISING BY LAW OR OTHERWISE, WITH RESPECT TO ANY UNIT OR THIS LEASE, INCLUDING WITHOUT LIMITATION: (A) ANY IMPLIED WARRANTY THAT ANY UNIT IS MERCHANTABLE; (B) ANY IMPLIED WARRANTY THAT ANY UNIT IS FIT FOR A PARTICULAR PURPOSE; (C) ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE; (D) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY IN TORT; AND (E) ANY OBLIGATION, LIABILITY, RIGHT, CLAIM, OR REMEDY FOR LOSS OF OR DAMAGE TO ANY UNIT, FOR LOSS OF USE, REVENUE, OR PROFIT WITH RESPECT TO ANY UNIT, FOR ANY LIABILITY TO ANY THIRD PARTY, OR FOR ANY OTHER DIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING STRICT OR ABSOLUTE LIABILITY IN TORT. Nothing in this Lease takes away any rights you may have against any other parties (such as the Supplier or the manufacturer of any Unit). You agree to pursue only these third parties for any and all claims concerning any Unit except as to ownership and title. You are entitled to all the promises and warranties made by the Supplier to us with respect to the Units, and you may contact the Supplier in order to receive a description of those promises and warranties.

7. Possession, Use, and Maintenance (a) At your own expense, you will use and keep the Units in good operating order and condition and at least in accordance with Supplier's and manufacturer's recommendations and all maintenance and operating manuals and service agreements, and in accordance with all applicable laws and regulations, including the rules or limits on idling, fleet average or site based exhaust emissions, or operational limitations, for which you have sole responsibility for compliance. (b) You will not abandon a Unit. (c) You will not sublease a Unit or permit the use of a Unit by anyone other than you. (d) You will not change the use of a Unit from that specified in the Application Survey, without our prior written consent. (e) You will not change the Location of a Unit from that specified above, without our prior written consent. (f) You will not sell, assign, transfer, create or allow to exist a lien, claim, security interest, or encumbrance on any of your rights under this Lease or with respect to a Unit (including any Additional Collateral). Each Unit is and will remain personal property regardless of its use or manner of attachment to realty. We have the right (but not the obligation) to inspect each Unit and its maintenance records. We also have the right to observe the use of each Unit and determine its mileage. You will not alter a Unit or affix any accessory or equipment to a Unit if doing so will impair its originally intended function or use or reduce its value. You will not make any "non-severable" addition (as defined for federal income tax purposes) to a Unit without our prior written consent. If added to a Unit, the following will immediately become our property: (i) replacement parts; (ii) parts essential to the operation of the Unit; and (iii) parts that cannot be detached from the Unit without interfering with the operation of the Unit or adversely affecting the value or utility the Unit would have had without the addition. All such parts will be deemed incorporated in the Unit and will be subject to the terms of this Lease as if originally leased under this Lease. If an Event of Default has occurred and is continuing, all parts, accessories, and equipment affixed to a Unit will become our property.

8. Taxes Rent includes all taxes arising from, or due in connection with, this Lease or the Units. You will pay when due, or promptly reimburse us for payment of, all taxes (other than our federal, state, or local net income taxes) imposed on a Unit, or the Rent. You will also pay or reimburse us for all (i) license and registration fees, (ii) fines, penalties, interest, or additions to any tax, (iii) charges similar to those stated in clauses (i) and (ii) that are imposed in connection with the ownership, possession, use, or lease of a Unit from the time we purchase the Unit until it is returned to us or purchased by you. You will remain responsible for the payment, or reimbursement of, any such charges, regardless of when we receive notice of the charge. You will prepare and file, in a manner satisfactory to us, all reports or returns required with respect to a Unit. You will reimburse us in full for any amounts that we pay or advance without regard to early payment discounts. We may estimate the amount of, and bill you periodically in advance for, any charge. You will be responsible, however, for any difference between the estimated amount and the actual amount. Except as provided in this section, you agree that we are entitled to receive any and all federal, state, or local tax credits and benefits, if any, applicable to a Unit. We are entitled to income tax depreciation deduction for each Unit based on the use as described in the Application Survey.

9. Tax Indemnity This Lease is entered into on the basis that we are entitled to claim certain depreciation deductions on the Units in accordance with Section 168(a) of the Internal Revenue Code of 1986, as amended, (the "Code") based upon the applicable depreciation method and recovery period specified in Code Sections 168(b) and (c), and to similar state and local income tax deductions (collectively, the "Tax Benefits"). Our classification of a Unit under Code Section 168(e), our determination of the applicable depreciation method and recovery period, and our claim for an entitlement to the Tax Benefits are based solely upon your representations in Section 7 and the applicable Application Survey. If we do not receive nor retain all of the Tax Benefits anticipated with respect to any Unit (a "Tax Loss"), because (a) of a change in the US federal income tax rate, (b) you move any Unit outside the United States, or (c) you use any Unit for a different purpose than stated in the applicable Application Survey; you will pay us, within thirty (30) days after we provide you written notice of such Tax Loss, an amount which, in our opinion, will cause our net after-tax rate of return over the Lease Term in respect to the Unit to equal the net after-tax rate of return we would have realized if such Tax Loss had not occurred. For purposes of this section, we may be included in any affiliated group (within the meaning of Section 1504 of the Code) of which we are a member for any year in which a consolidated or combined income tax return is filed for the affiliated group.

10. Loss or Damage (a) You bear the risk of loss or damage to a Unit from the time we purchase the Unit (or from the beginning of the Lease Term, if earlier) until the Unit is returned to us or purchased by you in accordance with this Lease. Should any loss or damage occur, you will not be released from your obligations under the Lease or any other Lease Document. (b) You will provide prompt, written notice to us of any Total Loss (as defined below) or any material damage to any Unit. Any such notice will include any damage reports provided to any governmental authority, an insurer, or the Supplier, and any documents pertaining to the repair of such damage, including copies of work orders and all invoices for related charges. (c) Without limiting any other term in this Lease, you will promptly repair all damage that does not constitute a Total Loss, to restore the Unit to the condition required by this Lease. (d) A Unit has incurred a "Total Loss" upon: (i) the disappearance, theft or destruction or any other total loss of such Unit; (ii) damage to the Unit that is uneconomical to repair; or (iii) the condemnation, confiscation, or other taking of title to or use of a Unit or the imposition of any lien on such Unit by any governmental authority. On the next Rent due date following a Total Loss (a "Loss Payment Date"), you will pay us the Monthly Rent due on that date plus the Casualty Loss Value of the Unit with respect to which the Total Loss has occurred (the "Lost Units"), together with any Other Payments due with respect to the Lost Units. Until such payment is made, you will continue to pay us the Monthly Rent on the due dates set forth in Section 4. Upon making the full payment required on the Loss Payment Date, your obligation to pay future Monthly Rent on the Lost Units will terminate, but you will remain liable for all Monthly Rent and all Other Payments on any remaining Units. Furthermore, upon receipt of the full payment required on the Loss Payment Date, we convey to you all of our right, title, and interest in the Lost Units, "AS IS WHERE IS", but subject to the requirements of any third party insurance carrier in order to settle an insurance claim. "Residual Value" means the future fair market value of a Unit at the end of the Lease Term (determined at Lease inception). "Casualty Loss Value" means the sum of: (i) all amounts then due under this Lease with respect to the Lost Units (including all Other Payments then owing and unpaid); (ii) the discounted present value of all unpaid future Rent for the Lost Units; and (iii) the discounted present value of the Lost Unit's Residual Value as determined by us. If the Total Loss occurs after the final Rent due date of the Lease Term, the Casualty Loss Value will be determined as of the last Monthly Rent due date during the Lease Term. (e) We are not required to pursue any claim against any person in connection with a Total Loss or other loss or damage. (f) If we receive a payment under an insurance policy required under this Lease in connection with any Total Loss or other loss or damage to a Unit, and such payment is both unconditional and infeasible, then provided you have complied with the applicable provisions of this section, we will either (i) if the payment results from a Total Loss, send you proceeds up to an amount equal to the Casualty Loss

Value you previously paid us, or credit the proceeds against any amounts you owe us or (ii) if the payment results from repairs made pursuant to Section 10(c), send you proceeds up to an amount equal to the amount of your actually incurred costs of repair.

11. Waiver and Indemnity You release and agree to indemnify, defend, and keep harmless, us (including any assignee of ours) and our directors, officers, agents and employees (each, an "Indemnitee"), from and against any and all Claims (defined below) (other than those directly resulting from the actual gross negligence or willful misconduct of the Indemnitee). To meet this obligation, you will pay, on a net after-tax basis, or otherwise discharge such Claims, when and as they become due. We will give you prompt notice of a Claim. You are entitled to control the defense of or to settle a Claim, so long as: (a) no Event of Default has occurred and is then continuing; (b) you are financially capable of satisfying your obligations under this section; and (c) we approve your proposed defense counsel. "Claims" means all claims, allegations, judgments, settlements, suits, actions, damages (whether incidental, consequential or direct), demands (for compensation, indemnification, reimbursement or otherwise), losses, penalties, fines, liabilities (including strict liability), and charges that we incur or for which we are or may be responsible, in the nature of interest, liens, and costs (including attorneys' fees and disbursements and any other legal or non-legal expenses of investigation or defense of any Claim, whether or not the Claim is ultimately defeated, or enforcing the rights, remedies, or indemnities provided for hereunder, or otherwise available at law or in equity to us), of whatever kind or nature, contingent or otherwise, matured or unmatured, foreseeable or unforeseeable, by or against any person. Claims include any of the foregoing arising from: (i) a Lease Document; (ii) a Unit, including the contents and any regulated or hazardous substances at any time contained in a Unit or emitted from a Unit, (iii) the premises at which any Unit may be located from time to time; (iv) the ordering, acquisition, delivery, installation, or rejection of a Unit; (v) the possession of a Unit or any property to which the Unit may be attached from time to time; (vi) the maintenance, use, condition, ownership or operation of any Unit, during the Lease Term; (vii) the existence of a latent or other defect (whether or not discoverable by you or us) with respect to a Unit; (viii) any Claim in tort for negligence or strict liability in relation to a Unit; (ix) any Claim for patent, trademark or copyright infringement in relation to a Unit; (x) the Total Loss or damage, return, surrender, sale, or other disposition of any Unit or any part thereof; or (xi) any Claim involving or alleging environmental damage, or any criminal or terrorist act, relating in any way to a Unit. To the extent necessary under law or regulation, in order to eliminate liability for us, we transfer and you accept the transfer from us of any and all liability associated with exhaust emissions in connection with the Units. If any Claim is made against you or an Indemnitee, the party receiving notice of the Claim will promptly notify the other. If the party receiving notice of the Claim fails to notify the other, however, your obligations are still in effect. You agree to be responsible for all costs and expenses, including reasonable attorneys' fees, incurred by us or our directors, officers, employees, agents, or assigns in defending such claims or in enforcing this section. Under no condition or cause of action will we be liable for any loss of actual or anticipated business or profits or any special, indirect, or consequential damages.

12. Insurance You, at your expense, must keep each Unit (including any Additional Collateral) insured with a commercial physical damage insurance policy for our benefit. This insurance will protect each Unit against all risks for an amount at least equal to the then-applicable Casualty Loss Value. You will also maintain comprehensive public liability insurance (including product and broad form contractual liability) covering each Unit (including any Additional Collateral) for at least \$1,000,000 combined coverage for bodily injury and property damage per occurrence. All insurance must be in a form and with companies approved by us. The insurance shall specify you as named insured and us as loss payee. The insurance shall be primary, without the right of contribution from any insurance carried by us and will have a deductible amount reasonably acceptable to us. The insurance must provide that it may not be canceled or altered so as to affect our interest without at least ten (10) days' prior written notice to us. The insurance carrier must have a minimum rating of A- by A.M. Best or a credit rating of "BBB" by Standard & Poor's or Fitch with an A.M. Best Financial Size Category of 7 or higher. You cannot make adjustments with insurers without our prior written consent. You irrevocably appoint us as your attorney-in-fact to receive payment of and to endorse all

checks, drafts, and other documents and to take any other actions necessary to pursue insurance claims and recover payments if you fail to promptly do so. You must promptly notify us of any occurrence that may become the basis of a claim. You must also provide us with all requested pertinent data. Upon demand, you must promptly deliver to us evidence of insurance coverage. If you fail to provide and maintain any of the required insurance coverage or fail to furnish us with required evidence of such insurance, we are authorized, but not required, to obtain such insurance on your behalf and you agree to pay us for the cost of the insurance as invoiced or, alternatively, we may terminate the Lease as provided in Section 14.

If any hazardous property or material will be transported with a Unit, you will provide and maintain environmental liability coverage at all times during the Lease Term, at your expense and in your own name as primary insured, for the greater of \$5,000,000 or the statutory minimum coverage. This environmental liability coverage will have a deductible amount reasonably acceptable to us and will provide a waiver of subrogation by the insurance carrier in favor of us. The insurance carrier must have a minimum rating of A- by A.M. Best or a credit rating of "BBB" by Standard & Poor's or Fitch with an A.M. Best Financial Size Category of 7 or higher.

13. Events of Default Each of the following is an event of default ("Event of Default"): (a) You fail to make a payment when due. (b) A representation or warranty made to us in connection with this Lease is incorrect or misleading. (c) You fail to observe or perform a covenant, agreement, or warranty and the failure continues for ten days after written notice to you. (d) A default occurs under any other agreement between you or a guarantor of this Lease (each a "Guarantor") and us or an affiliate of ours. (e) You, or a Guarantor, cease to do business, die, become insolvent, make an assignment for the benefit of creditors or file a petition or action under a bankruptcy, reorganization, insolvency or moratorium law, or a law for the relief of, or relating to, debtors. (f) Any filing of an involuntary petition under a bankruptcy statute against you or a Guarantor, or appointment of a receiver, trustee, custodian or similar official to take possession of your properties or those of a Guarantor, unless the petition or appointment ceases to be in effect within thirty days after filing or appointment. (g) There is a material adverse change in your, or a Guarantor's, financial condition, business operations or prospects. (h) There is a termination, breach, or repudiation of a Guarantor's guaranty.

14. Remedies (a) If an Event of Default occurs, we will have the rights and remedies provided by this Lease and under the Uniform Commercial Code ("UCC") and any other law. Among these rights and remedies are to: (i) proceed at law or in equity, to enforce specifically your performance or to recover damages; (ii) declare this Lease in default, and cancel this Lease or otherwise terminate your right to use any Unit and your other rights, but not your obligations, (iii) require you to assemble Units and make them available to us at a place we designate; (iv) enter premises where a Unit may be located and take immediate possession of such Unit and remove (or disable in place) such Unit (and any unattached parts) without notice, liability, or legal process; (v) use your premises for storage without liability; (vi) sell or lease any of the Units, whether or not in our possession, at public or private sale, with or without notice to you, and apply or retain the net proceeds of such disposition in accordance with this Lease; (vii) enforce any or all of the preceding remedies with respect to any related collateral, and apply any deposit or other cash collateral, or any proceeds of any such collateral, at any time to reduce any amounts you owe us; (viii) demand and recover from you all Liquidated Damages (as defined below) and all Other Payments whenever they are due; and (ix) if we financed your obligations under a warranty agreement such as an Equipment Protection Plan, Customer Service Agreement, or similar agreement, we may cancel the agreement on your behalf and receive the refund of the fees that we financed but had not received from you as of the date of the Event of Default. As used herein, "Liquidated Damages" means the liquidated damages (all of which, you hereby acknowledge, are damages to be paid in lieu of future Monthly Rent and expected Residual Values and are reasonable in light of the anticipated harm arising by reason of an Event of Default, and are not a penalty) described in the first sentence of parts (i) or (ii) of Section 14(b) below, depending upon the recovery and disposition of the Units.

(b) If an Event of Default occurs and:

(i) we recover a Unit and dispose of it by a lease or elect not to dispose of the Unit after recovery, you will pay us on demand an amount equal to the *sum* of (A) any accrued and unpaid Rent as of the date we recover the Unit, *plus* (B) the present value as of such date of the total Monthly Rent for the then remaining Lease Term, *minus* (C) either (1) the present value, as of the commencement date of any substantially similar re-lease of the Unit, of the re-lease rent payable to us for the period, commencing on such commencement date, which is comparable to the then remaining Lease Term or (2) the present value of the "market rent" for such Unit (as computed pursuant to Article 2A of the UCC ("Article 2A")) in the continental United States as of the date on which we have a reasonable opportunity to remarket the Unit for the period, commencing on such date, which is comparable to the then remaining Lease Term, as applicable; provided, however, you acknowledge that if we are unable after a reasonable effort to dispose of the Unit at a reasonable price and pursuant to other reasonable terms, or the circumstances reasonably indicate that such an effort will be unavailing, the "market rent" in such event will be deemed to be \$0.00, but in the event that we do eventually re-lease or otherwise dispose of the Unit, we will apply the net proceeds of such disposition, to the extent received in good and indefeasible funds, as a credit or reimbursement, as applicable, in a manner consistent with the terms of this Lease and the applicable provisions of Article 2A. Any amounts discounted to present value, shall be discounted at the rate of three percent (3%) per annum, compounded annually;

(ii) you fail to return a Unit in the manner and condition required by this Lease, or we recover and sell the Unit, you will pay to us on demand an amount calculated as the Casualty Loss Value of the Unit (determined as of the next Monthly Rent payment date after the date of the Event of Default), together with all costs and expenses (as defined below), *less* a credit for any disposition proceeds, if applicable pursuant to the application provisions in the next sentence. If we demand the Liquidated Damages under this part (ii) and recover and sell the Unit, we will apply any proceeds received in good and indefeasible funds: first, to pay all costs and expenses not already paid; second, to pay us an amount equal to any unpaid Rent due and payable, together with the Liquidated Damage amounts specified in this part (ii), to the extent not previously paid; third, to pay us any interest accruing on the amounts covered by the preceding clauses, plus late charges, from and after the date the same becomes due, through the date of payment; fourth, to pay us an amount equal to any remaining obligations that you owe us whether related hereto or unrelated to this Lease; fifth, to reimburse you for any amount paid as Liquidated Damages pursuant to this part (ii) by applying any surplus to any other existing indebtedness or obligations of Lessee to Lessor.

The remedies provided to us are cumulative and in addition to all other remedies at law or in equity. You will remain liable for any deficiency and we will retain any excess after our exercise of these remedies. To the extent you are entitled to a refund from us, you agree we have the right to offset any obligation that you have with us or our affiliates with such refund.

15. Return of Unit On expiration of the Lease Term or if we demand possession of a Unit pursuant to the terms of the Lease, you will, at your expense, promptly deliver the Unit to us properly protected and in the condition required by Section 7 and the applicable Application Survey. You will deliver the Unit, at our option, (a) to the nearest Caterpillar dealer selling equipment of the same type as the Unit; or (b) on board a carrier named by us and shipping the Unit, freight collect, to a destination designated by us. If the Unit is not in the condition required by Section 7 and the applicable Application Survey or if the Unit is not in the same operating order, repair, condition, and appearance as it was on the date of the applicable Delivery Supplement (excepting ordinary wear and tear from proper use), you must pay us, on demand, all costs and expenses incurred by us to bring the Unit into the required condition. You are obligated to pay holdover rent in the amount equal to 1/30th of the Monthly Rent plus any other costs and expenses for each day following the end of the Lease Term on any Unit that is not returned or purchased pursuant to the terms of this Lease.

16. Purchase Option At the expiration of the Lease, if no Event of Default has occurred and is continuing, you may choose to purchase

any Unit for the Option Purchase Price set forth on the front of this Lease if this Lease includes an Option Purchase Price. In order to exercise a purchase option, you must send written notice to us at least sixty (60) days prior to the end of the Lease Term. Upon receipt of the Option Purchase Price and all other amounts owing under the Lease, plus any taxes or our other costs and expenses arising from the sale of the Unit or the delivery of the bill of sale, we will deliver to you, upon request, a bill of sale without warranties except that the Unit is free of all encumbrances of any person claiming through us. You agree to purchase the Unit "**AS IS, WHERE IS, WITH ALL FAULTS.**" Any applicable purchase option must be exercised as of the last day of the Lease Term and it is not available during any holdover period.

17. Your Assurances and Representations Each of us intends that: (i) this Lease constitutes a true "lease" and a "finance lease" as such terms are defined in Article 2A and not a sale or retention of a security interest; (ii) you have selected the "Supplier" (as defined in Article 2A) and have directed us to purchase each Unit (excluding any Additional Collateral) from this Supplier; (iii) you were informed, before your execution of this Lease and are hereby informed in writing that you are entitled under Article 2A to the promises and warranties, including those of any third party, provided to us by the Supplier in connection with or as part of the purchase of the Units, and that you may communicate directly with the Supplier and receive an accurate and complete statement of those promises and warranties, including any disclaimers and limitations on remedies relating thereto; and (iv) we are and shall remain the owner of each Unit (unless sold by us pursuant to any Lease Document), and you shall not acquire any right, title or interest in or to such Unit except the right to use it in accordance with the terms hereof.

You represent and warrant to us that: (a) You will use each Unit for business purposes only and not for personal, family or household use. (b) You will provide all financial information and reporting as we may reasonably require. (c) All credit, financial and other information submitted by you or on your behalf to us in connection with this Lease is and shall be true, correct and complete. (d) You will not change your name, principal place of business or primary residence and, if you are a business entity, your state of formation or form of business organization (including by merger, consolidation, reincorporation or restructure) without prior written notice to us. (e) We may share any of your information provided by you, or gathered by us, with any affiliate of ours that has or may extend credit to you. (f) You will not assign this Lease or any right or obligation under it without our prior written consent.

You agree, at your expense, to do any act and execute, acknowledge, authorize, deliver, file, register, and record any documents that we deem desirable in our reasonable discretion to protect our title or rights in a Unit and our rights and benefits under this Lease. You hereby irrevocably appoint us as your attorney-in-fact for the signing and filing of such documents and authorize us to delegate these limited powers.

You will not remove, disable, or impair any Unit monitoring system such as Cat® Product Link, if the Unit is equipped with such system. You agree to permit Caterpillar Inc. or its subsidiaries or affiliates, including us (collectively "Caterpillar") and Caterpillar dealers to access data concerning the Unit, its condition, and its operation transmitted from the monitoring system. The information may be used: (1) to administer, implement, and enforce the terms of this Lease, (2) to recover the Unit if necessary, and (3) to improve Caterpillar's products and services. You agree that information transmitted may include, among other things, the serial number, VIN, location, and operational and other data, including but not limited to fault codes, emissions data, fuel usage, service meter hours, software and hardware version numbers, and installed attachments.

18. Assignment; Counterparts We may assign, sell or encumber all or any part of this Lease, the Rent, and the Units with or without notice to you. THE RIGHTS OF ANY SUCH ASSIGNEE WILL NOT BE SUBJECT TO ANY DEFENSE, COUNTERCLAIM OR SET OFF WHICH YOU MAY HAVE AGAINST US. If requested by us, you will assist us in the assignment of any of our rights under this Lease. If requested by us, you will also sign a notice of assignment in a form approved by us. If notified by us, you will make all payments due

under this Lease to the party designated in the notice without offset or deduction. In connection with any potential or actual assignment, you consent to the sharing of your credit file information, including personal information relating to your principals, with any potential assignee. Upon any assignment by us of our rights under this Lease, and except as may otherwise be provided herein, all references in this Lease to "Lessor", "we", "us", and "our" will mean the assignee. This Lease is for the benefit of, and is binding upon, your and our respective successors and assigns. Though multiple counterparts of this document may be signed, only the counterpart accepted, acknowledged, and certified by us on the signature page as the original will constitute original chattel paper. A photocopy or facsimile of this Lease will be legally admissible under the "best evidence rule." A signed copy of this Lease and any related document sent electronically will be treated as an original document and will be admissible as evidence thereof, and all signatures thereon will be binding as if manual signatures were personally delivered. You are hereby notified that we may assign our rights (but not our obligations) under this Lease and in the Units to CF Exchange, LLC, a qualified intermediary, as part of a 1031 exchange.

19. Effect of Waiver; Entire Agreement; Notices; Applicable Law Our delay or omission in exercising any right or remedy will not impair such right or remedy. A delay or omission by us will not be construed as a waiver of any Event of Default. Any waiver or consent by us must be in writing. This Lease and the Lease Documents completely state our and your rights and supersedes all prior agreements with respect to a Unit. All notices must be in writing, addressed to the other party at the address stated on the front of this Lease or at such other address as may be furnished in writing. This

Lease is governed by and construed under the laws of the State of Tennessee, without giving effect to the conflict-of-laws principles. You consent to the jurisdiction of any state or federal court located within the State of Tennessee. **THE PARTIES WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATED TO THIS LEASE, THE OBLIGATIONS, OR THE UNITS (INCLUDING ANY ADDITIONAL COLLATERAL).**

20. No Agency; Modification of Lease; Miscellaneous No person or entity, including, without limitation, the supplier or the manufacturer of the Units, is authorized to act as our agent regarding this Lease. No waiver, modification, or change in this Lease will bind us unless provided by us in writing. Oral agreements are not binding. You agree that we may correct patent errors in this Lease and the Lease Documents and fill in blanks including for example correcting or filling in serial numbers, VIN numbers, and dates. Headings in this Lease are inserted for convenience only. Headings do not affect the meaning or interpretation of this Lease. If a provision of this Lease is invalid under any law, it shall be deemed omitted. Any such omission will not invalidate the remaining provisions. To the extent any payment due us under this Lease is deemed to be usurious, the payment obligation shall be amended and limited to the maximum lawful amount. All obligations under this Lease survive the expiration or termination of the Lease if necessary to give full effect to the terms of this Lease.

By signing this Lease, you certify that you have read this Lease and all the other Lease Documents, including each Application Survey.

SIGNATURES

LESSOR
Caterpillar Financial Services Corporation

Signature _____
 Name (print) _____
 Title _____
 Date _____

LESSEE
Customer Legal Name

Signature _____
 Name (print) _____
 Title _____
 Date _____

06.7.2016

Memo

To
Mayor Tab Townsell

From
B. Finley Vinson, P.E.

CC
Felicia Rogers

Re
Licensed Professional
Civil Engineer
Compensation

Comments:

During the June 9, 2015 city council meeting, Alderwoman Mehl asked me to come back to allow the council to address other inequities within the department after the engineering vacancies had been filled. At this time, one additional engineer has been hired, and I am currently conducting interviews in preparation for filling the second vacancy. While I realize that the salary range for new hires has already been established, I believe it is important to establish a system that justifies different levels of compensation.

This is important, not just for hiring purposes, but also as it relates to existing employees. For example, our existing Civil Engineer recently received his professional engineering license. Without question, this warrants a promotion, but the level of compensation that should accompany this promotion is unclear.

I see three options that clarify this situation:

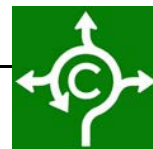
1. The salary range that was established for hiring purposes could be expanded to existing employees. The majority of municipalities with professional staff use a similar system. Salary for City Engineer and/or Department Director could be established at either a fixed number or at independent range(s).
2. An engineering certificate pay scale could be established. If this path is chosen, I recommend using the Arkansas Highway and Transportation Department (AHTD) salary grid for guidance. As an alternative, the most recent Johanson Group salary study could be consulted.
3. The salary for all licensed professional civil engineers with similar job duties could be set at the rate established by the most recent hire. This would establish a rate of pay for all current and future employees with the exception of the City engineer and/or Department Director.

I appreciate your assistance in the creation of a fair and equitable work environment.

City of Conway Street & Engineering Department

(501) 450-6165
100 E Robins St, Conway, AR 72032

www.cityofconway.org/pages/street-department/
firstname.lastname@cityofconway.org





City of Conway, Arkansas
Ordinance No. O-16-_____

AN ORDINANCE TO GRANT RITTER COMMUNICATIONS HOLDINGS, INC., AND ITS SUBSIDIARIES A FRANCHISE TO OCCUPY PUBLIC RIGHTS-OF-WAY AND PROVIDE TELECOMMUNICATIONS SERVICES; TO SET FORTH THE TERMS AND CONDITIONS FOR THE USE AND RENTAL OF SUCH RIGHT-OF-WAY; AND FOR OTHER PURPOSES.

Whereas, the City has been requested by Ritter Communications to grant it a franchise to use the public streets, rights-of-way and airspace to construct and maintain a telecommunications network.

Whereas, the City is willing to grant Ritter Communications a franchise for the use of the public streets and rights-of-way.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

Section 1. Authority to Execute Franchise. The Mayor, City Council and City Clerk, are authorized to take all steps necessary to execute a franchise agreement in substantially the form set forth within this ordinance, as approved by the City Attorney, to Ritter Communications Holdings, Inc., a utility headquartered in Jonesboro, Arkansas, to provide telecommunication services and for any other purposes permitted by local, state or federal law.

Section 2. Definitions. For the purposes of this ordinance, the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- (a) "City" - means the City of Conway, Arkansas.
- (b) "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication or data transmission services.
- (c) "Grantee" - means Ritter Communications Holdings, Inc. and its subsidiaries, a telecommunications service provider, providing service within the City. References to Grantee shall also include, as appropriate, any and all successors and assigns.
- (d) "Gross Revenues" – All revenues, (excluding sales tax, extension, terminal equipment, toll, access, yellow pages and miscellaneous equipment revenues) collected by the Grantee: for local intrastate wireline telecommunications services and/or video services provided by the Grantee and billed to its end user customers, in both respects, within the corporate limits of the City and from operation of the Company's Network installed pursuant to this ordinance.

Notwithstanding the foregoing definition, the term Gross Revenues shall not include the following: (1) those revenues that the Grantee has received or will receive from another

telecommunications service provider and upon which the other telecommunications provider has paid or will pay a franchise fee, and (2) revenues that the Grantee has received from its corporate parent, subsidiary, or an affiliate.

- (e) "Public Improvement" - means any existing or contemplated facility, building, or Capital Improvement Project, owned, occupied or used by the City, including without limitation streets, alleys, sidewalks, sewer, water, drainage, Rights-of-Way improvements, and Public Projects.
- (f) "Public Project" - means any project, or that portion thereof, planned, undertaken or financed through the City or any governmental entity for construction, reconstruction, maintenance, or repair of Public Improvements, or for any other purpose of a public nature or in the public interest. In designating a project as a Public Project, the City shall use reasonable discretion.
- (g) "Public Right-of-Way" - means all City real property, including air rights, as well as any area of real property in which the City has a dedicated or acquired right-of-way interest in the real property, excluding properties in which the City's interest is merely an easement for public pedestrian and bicycle ingress and egress. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (h) "Private Development Project" - means a project, or that portion thereof, planned, undertaken or financed by a non-governmental third-party that is primarily for the benefit and use of the third party. As used herein, the term Private Development Project does not include any project or portion that is a Public Project.
- (i) "Telecommunication Services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Section 3. Basic Grant of Franchise.

(a) Contingent upon Grantee's execution of a separate franchise agreement in substantially the form set forth within this ordinance, there shall be granted to Grantee a nonexclusive license to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of supplying Telecommunication Services to the consumers or recipients of such service located within the corporate boundaries of the City for the Franchise Term, as defined in Section 8 of this Ordinance, which shall be subject to the terms and conditions set forth herein (hereinafter the "Franchise").

(b) The grant of the Franchise by the City shall not convey title, equitable or legal, in the Public Right-of-way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and

for the period stated in this ordinance. This ordinance does not:

(1) Grant the right to use Facilities or any other property, telecommunications related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

(2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public Right-of-Way, specifically including, but not limited to, parkland property, City Hall property, public works facility property, or the Tucker Creek trail system and any easement merely authorizing public ingress and egress to and from that trail system; or

(3) Excuse Grantee from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party; or,

(4) Negate any provision of the City's utility relocation policy as it may exist as of the passage of this ordinance, or as it may be created or amended in the future.

(c) As a condition of the grant of the Franchise, Grantee is required to obtain and is responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity. Grantee shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public property).

(d) This authority to occupy the Public Right-of-Way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with State or Federal Law.

Section 4. Use of Public Right-of-Way.

(a) The Franchise shall afford Grantee the right to construct, maintain and operate its Facilities along, across, upon and under the Public Right-of-Way. Such Facilities shall be so constructed and maintained as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct legal use of the Public Right-of-Way by the City or other utilities.

(b) Grantee's use of the Public Right-of-Way shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its powers in its administration and regulation related to the management of the Public Right-of-Way. Grantee shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances adopted or hereinafter adopted by the City, relating to the construction and use of the Public Right-of-Way.

(c) Further, Grantee shall comply with the following:

(1) Grantee's use of the Public Right-of-Way shall in all matters be subordinate to the City's use or occupation of the Public Right-of-Way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested or granted in the City. Grantee shall coordinate the installation of its Facilities in the Public Right-of-Way in a manner which minimizes adverse impact on

Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvement as defined in the City's engineering design standards and construction specifications.

(2) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Public Right-of-Way damaged or removed by Grantee in its activities under this ordinance shall be fully repaired or replaced promptly by Grantee without cost to the City to the reasonable satisfaction of the City; however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto. Nothing in this ordinance shall require Grantee to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with Grantee's access to any of its Facilities located in a utility easement. Any excavation, back filling, repair and restoration, and all other work performed in the rights-of-way shall be done in conformance with the City's engineering design standards and construction specifications, as promulgated by the City. The City has the authority to inspect the repair or replacement of the damage, and if necessary, to require Grantee to do the additional necessary work. At the time of any inspection, the City Engineer may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or wellbeing of the public. Notice of the unsatisfactory restoration and the deficiencies found will be provided to Grantee and a reasonable time not to exceed thirty (30) days will be provided to allow for the deficiencies to be corrected.

(3) Except in the event of an emergency, as reasonably determined by the City, Grantee shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be properly signed, barricaded, and otherwise protected.

(4) Grantee shall maintain and file with the City updated maps, in such form as may be required by the City, providing the location and sufficient detail of all existing and new facilities in the Public Right-of-Way, and such other related information as may be reasonably required by the City. Such maps shall be updated and kept current with the City at all times during the Franchise Term as defined in Section 8 of this Ordinance.

(5) Grantee shall be responsible for its costs that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Public Right-of-Way.

(6) Grantee shall be responsible for its own costs incurred in removing or relocating its Facilities when required by the City for purposes of a Public Project consistent with the City utility relocation policy in effect at the time. If Grantee wishes to challenge that a project is a Public Project, it shall relocate its facilities pursuant to this subsection immediately upon written request, and shall resolve any questions as to whether the project is a Public Project at a later time. FAILURE TO DO SO CAN RESULT IN THE TERMINATION OF THIS FRANCHISE AND AN ORDER TO REMOVE ALL FACILITIES AT GRANTEE'S EXPENSE WITHOUT RESCOURSE AGAINST THE CITY.

(7) Grantee shall take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Grantee fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City.

(8) At a minimum, and without limitation, Grantee shall comply with all building and zoning codes currently in force or hereafter enacted in the City.

(9) Grantee shall comply with all technical and zoning standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Public Right-of-Way, as required by present and future Federal, State, and City Laws and Regulations.

(10) Permission is hereby granted to the Grantee to trim trees upon and overhanging the Right-of-Way if such trimming is necessary to prevent imminent damage to the Facilities. For routine trimming operations, customers shall be contacted at least one (1)-week in advance by either personal contact or by informational door hanger.

(11) The Grantee shall pay to the City franchise fees beginning with the calendar year immediately following its generation of Gross Revenues, an amount equal to 5.0% of Gross Revenues as defined in this Ordinance. The rate shall remain 5.0% for the Franchise Term, as defined in Section 8 of this Ordinance, or until agreed otherwise by both the City and Grantee, or until otherwise changed by law. In addition, the Grantee will provide the City with four (4) dark pairs of fiber for the City's use for public purposes, provided that this obligation applies only to fiber placed by Grantee and does not apply where Grantee has leased fiber in the facilities of another entity with which the City has a franchise. Grantee, at the City's cost, shall perform all splicing, maintenance, and repairs to the City Fibers. Cost to the City shall be the actual invoice cost for such splicing, maintenance, and repairs plus ten percent (10%). Grantee shall provide actual documentation for splicing, maintenance, and repair which shall be included with the invoice to the City.

Section 5. Indemnity and Hold Harmless Requirements.

(a) Grantee (the "Indemnifying Party") shall indemnify, defend and hold harmless the City, its directors, officers, employees, representatives, members, partners, trustees and affiliates (collectively

the “Indemnified Party”) from and against any and all costs, liabilities, losses and expenses (including, but not limited, reasonable attorneys’ fees) resulting from any claim, demand, suit, action, judgment, loss or proceeding brought against the Indemnified Party for:

- (1) personal injury including death;
- (2) the damage to any personal or real property;
- (3) any unauthorized use of the facilities of the Indemnified Party; or
- (4) a violation of any United States intellectual property right including patents, copyrights, trademarks, or service marks all of which must be established under United States Law, arising directly or indirectly from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, employees, contractors, representatives or agents. If Grantee and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the state of Arkansas without, however, waiving any governmental immunity available to the City under State Law and without waiving any defenses of the parties under State or Federal Law.

(b) During any construction phase, Grantee shall have in place commercial, general liability, and automobile liability insurance in amounts acceptable to the City. Evidence of such insurance shall be presented to the City for its approval as a condition precedent to the commencement of any construction or installation of Facilities within the Public Right-of-Way pursuant to the franchise hereby granted.

Section 6. Reservation of Rights.

(a) The City specifically reserves its right and authority as a customer of Grantee and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Grantee’s rates and services to ensure the rendering of efficient Telecommunications Service and any other services at reasonable rates, and the maintenance of Grantee’s property in good repair.

Section 7. Failure to Enforce. The failure of either the City or the Grantee to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Ordinance shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or the Grantee unless said waiver or relinquishment is in writing and signed by both the City and the Grantee. This provision does not apply to Grantee’s requirements under Section 4 (c) (4) above, nor shall it preclude the City from declaring that the franchise is abandoned should Grantee declare bankruptcy, enter into receivership, or have any action occur which leads to its continued failure to meet all of the terms of this franchise for a period of three (3) consecutive months.

Section 8. Term and Termination Date.

(a) The Franchise shall be effective for a term of ten (10) years from the effective date of this ordinance (the “Franchise Term”). Thereafter, the Franchise will renew for additional five (5)-year terms, unless either party notifies the other party of its intent to terminate or renegotiate the franchise at

least 180 days before the termination of the then current term. Any such additional term shall be deemed a continuation of the Franchise Term and not as a new franchise or amendment.

(b) Upon written request of either the City or Grantee, the terms of the Franchise shall be renegotiated at any time, in accordance with the requirements of State Law, if any of the following events occur: changes in Federal, State, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Grantee.

(c) In the event the parties are actively negotiating in good faith new franchise terms or an amendment to the Franchise when the Franchise Term expires, the parties may by written mutual agreement extend the Franchise Term to allow for further negotiations. Any such extension period shall be deemed a continuation of the Franchise Term and not a new franchise license or amendment.

(d) The franchise hereby granted and the exercise of any power under it by the Grantee shall be subject to any changes in local, state, or federal law or regulation, as well as to any City utility relocation policy which may be currently in effect or enacted in the future.

Section 9. Point of Contact and Notices. Grantee shall at all times maintain with the City a local point of contact who shall be available at all times to act on behalf of Grantee in the event of an emergency. Grantee shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Grantee to the City may be made by telephone to the City Clerk or the City Engineer. All other notices between the City and Grantee shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Grantee observed holidays excepted.

If to City:

Office of the Mayor
1201 Oak Street
Conway, Arkansas 72032
(501) 450-6100

If to Ritter Communications:

Ritter Communications Holdings, Inc.
Attn: John D. Strode
2400 Ritter Drive
Jonesboro, AR 72401
(870) 336-2345

Section 10. Transfer and Assignment. The franchise hereby created is granted solely to the Grantee and shall not be transferred or assigned without the prior written approval of the City which shall be in accordance with applicable law; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, between wholly owned subsidiaries, or to an

entity acquiring all or substantially all of Grantee's assets, upon notice to the City.

Section 11. Force Majeure. Each and every provision hereof shall be reasonably subject to acts of God, fires, strikes, riots, floods, war and other disasters beyond Grantee's or the City's control.

Section 12. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase or word of this ordinance is declared or adjudged to be invalid or unconstitutional such declaration or adjudication shall not affect the remaining portions of the ordinance which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the ordinance.

Section 13. Repealer. All laws, ordinances, resolutions, and parts of the same that are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

PASSED this 14th day of June, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer

FRANCHISE AGREEMENT

This Franchise Agreement (hereinafter "Agreement") is entered into between the City of Conway (hereinafter "City") and Ritter Communications Holdings, Inc., and its subsidiaries (hereinafter "Ritter").

WHEREAS, City has been requested by Ritter to grant it a franchise to use the public streets, rights-of-way and airspace to construct and maintain a telecommunications network.

WHEREAS, City is willing to give Ritter a franchise for the use of the public streets and rights-of-way.

Now, therefore, for and in consideration of the mutual covenants of the parties, and other good and valuable consideration as set forth herein, the parties agree as follows:

Section 1. Definitions. For the purposes of this Agreement, the following words and phrases shall have the meaning given herein. When not inconsistent within the context, words used in the present tense include the future tense and words in the single number include the plural number. The word "shall" is always mandatory, and not merely directory.

- (a) "Facilities" - means telephone and telecommunication lines, conduits, manholes, ducts, wires, cables, pipes, poles, towers, vaults, appliances, optic fiber, and all equipment used to provide telecommunication or data transmission services.
- (b) "Gross Revenues" – All revenues, (excluding sales tax, extension, terminal equipment, toll, access, yellow pages and miscellaneous equipment revenues) collected by Ritter: for local intrastate wireline telecommunications services and/or video services provided by Ritter and billed to its end user customers, in both respects, within the corporate limits of the City and from operation of the Company's Network installed pursuant to this Agreement.

Notwithstanding the foregoing definition, the term Gross Revenues shall not include the following: (1) those revenues that Ritter has received or will receive from another telecommunications service provider and upon which the other telecommunications provider has paid or will pay a franchise fee, and (2) revenues that Ritter has received from its corporate parent, subsidiary, or an affiliate.

- (c) "Public Improvement" - means any existing or contemplated facility, building, or Capital Improvement Project, owned, occupied or used by the City, including without limitation streets, alleys, sidewalks, sewer, water, drainage, Rights-of-Way improvements, and Public Projects.
- (d) "Public Project" - means any project, or that portion thereof, planned, undertaken or financed through the City or any governmental entity for construction, reconstruction, maintenance, or repair of Public Improvements, or for any other purpose of a public

nature or in the public interest. In designating a project as a Public Project, the City shall use reasonable discretion.

- (e) "Public Right-of-Way" - means all City real property, including air rights, as well as any area of real property in which the City has a dedicated or acquired right-of-way interest in the real property, excluding properties in which the City's interest is merely an easement for public pedestrian and bicycle ingress and egress. It shall include the area on, below or above the present and future streets, alleys, avenues, roads, highways, parkways or boulevards dedicated or acquired as right-of-way. The term does not include the airwaves above a right-of-way with regard to wireless telecommunications or other non-wire telecommunications or broadcast service, easements obtained by utilities or private easements in platted subdivisions or tracts.
- (f) "Private Development Project" - means a project, or that portion thereof, planned, undertaken or financed by a non-governmental third-party that is primarily for the benefit and use of the third party. As used herein, the term Private Development Project does not include any project or portion that is a Public Project.
- (g) "Ritter" - means Ritter Communications Holdings, Inc. and its subsidiaries, a telecommunications service provider, providing service within the City. References to Ritter shall also include, as appropriate, any and all successors and assigns.
- (h) "Telecommunication Services" - means providing the means of transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

Section 2. Agreement to Grant Franchise.

(a) In exchange for consideration described herein, the City shall grant to Ritter by separate ordinance a nonexclusive license to construct, maintain, extend and operate its Facilities along, across, upon or under any Public Right-of-Way for the purpose of supplying Telecommunication Services to the consumers or recipients of such service located within the corporate boundaries of the City for the Franchise Term, as defined in Section 7 of this Agreement, which shall be subject to the terms and conditions stated herein (hereinafter the "Franchise").

(b) The grant of the Franchise by the City shall not convey title, equitable or legal, in the Public Right-of-way, and shall give only the right to occupy the Public Right-of-Way, for the purposes and for the period stated in this Agreement. Further, the grant of the Franchise by the City shall not:

- (1) Grant the right to use Facilities or any other property, telecommunications-related or otherwise, owned or controlled by the City or a third-party, without the consent of such party;

- (2) Grant the authority to construct, maintain or operate any Facility or related appurtenance on property owned by the City outside of the Public Right-of-Way, specifically including, but not limited to, parkland property, City Hall property, public works facility property, or the Tucker Creek trail system and any easement merely authorizing public ingress and egress to and from that trail system; or
- (3) Excuse Ritter from obtaining appropriate access or attachment agreements before locating its Facilities on the Facilities owned or controlled by the City or a third-party; or,
- (4) Negate any provision of the City's utility relocation policy as it may exist as of the execution of this Agreement, or as it may be created or amended in the future.

(c) As a condition of the grant of the Franchise, Ritter shall obtain and be responsible for any necessary permit, license, certification, grant, registration or any other authorization required by any appropriate governmental entity. Ritter shall also comply with all applicable laws, statutes and/or City regulations (including, but not limited to those relating to the construction and use of the Public Right-of-Way or other public property).

(d) The authority to occupy the Public Right-of-Way shall be granted in a competitively neutral and nondiscriminatory basis and not in conflict with State or Federal Law.

Section 3. Use of Public Right-of-Way.

(a) As part of the Franchise, Ritter shall be granted the right to construct, maintain and operate its Facilities along, across, upon and under the Public Right-of-Way. Such Facilities shall be so constructed and maintained by Ritter as not to obstruct or hinder the usual travel or public safety on such public ways or obstruct legal use of the Public Right-of-Way by the City or other utilities.

(b) Ritter's use of the Public Right-of-Way under the Franchise shall always be subject and subordinate to the reasonable public health, safety and welfare requirements and regulations of the City. The City may exercise its powers in its administration and regulation related to the management of the Public Right-of-Way. Ritter shall be subject to all applicable laws and statutes, and/or rules, regulations, policies, resolutions and ordinances currently in effect or hereinafter adopted by the City relating to the construction and use of the Public Right-of-Way.

(c) In exchange for the grant of the Franchise, Ritter shall comply with the following:

- (1) Ritter's use of the Public Right-of-Way under the Franchise shall in all matters be subordinate to the City's use or occupation of the Public Right-of-Way. Without limitation of its rights, the City expressly reserves the right to exercise its governmental powers now and hereafter vested or granted in the City. Ritter

shall coordinate the installation of its Facilities in the Public Right-of-Way in a manner which minimizes adverse impact on Public Improvements, as reasonably determined by the City. Where installation is not otherwise regulated, the Facilities shall be placed with adequate clearance from such Public Improvements so as not to impact or be impacted by such Public Improvement as defined in the City's engineering design standards and construction specifications.

- (2) All earth, materials, sidewalks, paving, crossings, utilities, Public Improvements, or improvements of any kind located within the Public Right-of-Way damaged or removed by Ritter in its activities under this Agreement or the Franchise shall be fully repaired or replaced promptly by Ritter without cost to the City to the reasonable satisfaction of the City; however, when such activity is a joint project of utilities or franchise holders, the expenses thereof shall be prorated among the participants, and to the reasonable satisfaction of the City in accordance with the ordinances and regulations of the City pertaining thereto. Nothing in this Agreement shall require Ritter to repair or replace any materials, trees, flowers, shrubs, landscaping or structures that interfere with Ritter's access to any of its Facilities located in a utility easement. Any excavation, back filling, repair and restoration, and all other work performed in the rights-of-way shall be done in conformance with the City's engineering design standards and construction specifications, as promulgated by the City. The City has the authority to inspect the repair or replacement of the damage, and if necessary, to require Ritter to do the additional necessary work. At the time of any inspection, the City Engineer may order the immediate cessation of any work, which poses a serious threat to the life, health, safety, or wellbeing of the public. Notice of the unsatisfactory restoration and the deficiencies found will be provided to Ritter and a reasonable time not to exceed thirty (30) days will be provided to allow for the deficiencies to be corrected.
- (3) Except in the event of an emergency, as reasonably determined by the City, Ritter shall comply with all laws, rules, regulations, policies, resolutions, or ordinances now or hereinafter adopted or promulgated by the City relating to any construction, reconstruction, repair, or relocation of Facilities which would require any street closure which reduces traffic flow. Notwithstanding the foregoing exception all work, including emergency work performed in the traveled way or which in any way impacts vehicular or pedestrian traffic shall be

properly signed, barricaded, and otherwise protected.

- (4) Ritter shall maintain and file with the City updated maps, in such form as may be required by the City, providing the location and sufficient detail of all existing and new facilities in the Public Right-of-Way, and such other related information as may be reasonably required by the City. Such maps shall be updated and kept current with the City at all times during the Franchise Term as defined in Section 7 of this Agreement.
- (5) Ritter shall be responsible for its costs that are directly associated with its installation, maintenance, repair, operation, use, and replacement of its Facilities within the Public Right-of-Way.
- (6) Ritter shall be responsible for its own costs incurred in removing or relocating its Facilities when required by the City for purposes of a Public Project consistent with the City utility relocation policy in effect at the time. If Ritter wishes to challenge that a project is a Public Project, it shall relocate its facilities pursuant to this subsection immediately upon written request, and shall resolve any questions as to whether the project is a Public Project at a later time. FAILURE TO DO SO CAN RESULT IN THE TERMINATION OF THIS AGREEMENT AND THE FRANCHISE AND AN ORDER TO REMOVE ALL FACILITIES AT RITTER'S EXPENSE WITHOUT RESCOURSE AGAINST THE CITY.
- (7) Ritter shall take adequate measures to protect and defend its Facilities in the Public Right-of-Way from harm or damage. If Ritter fails to accurately locate Facilities when requested, it shall have no claim for costs or damages against the City.
- (8) At a minimum, and without limitation, Ritter shall comply with all building and zoning codes currently in force or hereafter enacted in the City.
- (9) Ritter shall comply with all technical and zoning standards governing construction, reconstruction, installation, operation, testing, use, maintenance, and dismantling of the Facilities in the Public Right-of-Way, as required by present and future Federal, State, and City ordinances and regulations.
- (10) Permission shall be granted to Ritter to trim trees upon and overhanging the Right-of-Way if such trimming is necessary to prevent imminent damage to the Facilities. For routine trimming operations, customers shall be contacted by Ritter at least one (1)-week in advance by either personal contact or by informational door hanger.
- (11) Ritter shall pay to the City franchise fees beginning with the calendar year

immediately following its generation of Gross Revenues, an amount equal to 5.0% of Gross Revenues as defined in this Agreement. The rate shall remain 5.0% for the Franchise Term, as defined in Section 7 of this Agreement, or until agreed otherwise by both the City and Ritter, or until otherwise changed by law. In addition, Ritter will provide the City with four (4) dark pairs of fiber for the City's use for public purposes, provided that this obligation applies only to fiber placed by Ritter and does not apply where Ritter has leased fiber in the facilities of another entity with which the City has a franchise. Ritter, at the City's cost, shall perform all splicing, maintenance, and repairs to the City Fibers. Cost to the City shall be the actual invoice cost for such splicing, maintenance, and repairs plus ten percent (10%). Ritter shall provide actual documentation for splicing, maintenance, and repair which shall be included with the invoice to the City.

Section 4. Indemnity and Hold Harmless Provisions.

(a) Ritter (the "Indemnifying Party") shall indemnify, defend and hold harmless the City, its directors, officers, employees, representatives, members, partners, trustees and affiliates (collectively the "Indemnified Party") from and against any and all costs, liabilities, losses and expenses (including, but not limited, reasonable attorneys' fees) resulting from any claim, demand, suit, action, judgment, loss or proceeding brought against the Indemnified Party for:

- (1) personal injury including death;
- (2) damage to any personal or real property;
- (3) any unauthorized use of the facilities of the Indemnified Party; or
- (4) a violation of any United States intellectual property right including patents, copyrights, trademarks, or service marks all of which must be established under United States Law, arising directly or indirectly from the negligence or intentional acts or omissions of the Indemnifying Party or its directors, officers, employees, contractors, representatives or agents. If Ritter and the City are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with the laws of the state of Arkansas without, however, waiving any governmental immunity available to the City under State Law and without waiving any defenses of the parties under State or Federal Law.

(b) During any construction phase, Ritter shall have in place commercial, general liability, and automobile liability insurance in amounts acceptable to the City. Evidence of such insurance shall be presented to the City for its approval as a condition precedent to the commencement of any

construction or installation of Facilities within the Public Right-of-Way pursuant to the franchise hereby granted.

Section 5. Reservation of Rights.

(a) The City specifically reserves its right and authority as a customer of Ritter and as a public entity with responsibilities towards its citizens, to participate to the full extent allowed by law in proceedings concerning Ritter's rates and services to ensure the rendering of efficient Telecommunications Service and any other services at reasonable rates, and the maintenance of Ritter's property in good repair.

(b) In entering into this Agreement, neither the City's nor Ritter's present or future legal rights, positions, claims, assertions or arguments before any administrative agency or court of law are in any way prejudiced or waived. By entering into this Agreement, neither the City nor Ritter waive any rights, but instead expressly reserve any and all rights, remedies, and arguments the City or Ritter may have at law or equity, without limitation, to argue, assert, and/or take any position as to the legality or appropriateness of any present or future laws, non-franchise ordinances and/or rulings.

Section 6. Failure to Enforce. The failure of either the City or Ritter to insist in any one or more instances upon the strict performance of any one or more of the terms or provisions of this Agreement shall not be construed as a waiver or relinquishment for the future of any such term or provision, and the same shall continue in full force and effect. No waiver or relinquishment shall be deemed to have been made by the City or Ritter unless said waiver or relinquishment is in writing and signed by both the City and Ritter. This provision does not apply to Ritter's requirements under Section 3 (c) (4) above, nor shall it preclude the City from declaring that the franchise is abandoned should Ritter declare bankruptcy, enter into receivership, or have any action occur which leads to its continued failure to meet all of the terms of this franchise for a period of three (3) consecutive months.

Section 7. Term and Termination Date.

(a) The Franchise granted shall be effective for a term of ten (10) years from the effective date of the ordinance granting it (the "Franchise Term"). Thereafter, this Agreement and the Franchise granted will renew for additional five (5)-year terms, unless either party notifies the other party of its intent to terminate or renegotiate the franchise at least 180 days before the termination of the then current term. Any such additional term shall be deemed a continuation of the Franchise Term and not as a new franchise or amendment.

(b) Upon written request of either the City or Ritter, the terms of the Franchise to be granted shall be renegotiated at any time, in accordance with the requirements of State Law, if any of the following events occur: changes in Federal, State, or local laws, regulations, or orders that materially affect any rights or obligations of either the City or Ritter.

(c) In the event the parties are actively negotiating in good faith new franchise terms or an

amendment to the franchise hereby granted when the Franchise Term expires, the parties may by written mutual agreement extend the Franchise Term to allow for further negotiations. Any such extension period shall be deemed a continuation of the Franchise Term and not a new franchise license or amendment.

(d) The franchise hereby granted and the exercise of any power under it by Ritter shall be subject to any changes in local, state, or federal law or regulation, as well as to any City utility relocation policy which may be currently in effect or enacted in the future.

Section 8. Point of Contact and Notices. Ritter shall at all times during the Franchise Term maintain with the City a local point of contact who shall be available at all times to act on behalf of Ritter in the event of an emergency. Ritter shall provide the City with said local contact's name, address, telephone number, fax number and e-mail address. Emergency notice by Ritter to the City may be made by telephone to the City Clerk or the City Engineer. All other notices between City and Ritter shall be in writing and shall be made by personal delivery, depositing such notice in the U.S. Mail, Certified Mail, return receipt requested, or by facsimile. Any notice served by U.S. Mail or Certified Mail, return receipt requested, shall be deemed delivered five (5) calendar days after the date of such deposit in the U.S. Mail unless otherwise provided. Any notice given by facsimile is deemed received by the next business day. "Business day" for purposes of this section shall mean Monday through Friday, City and/or Ritter observed holidays excepted.

If to City:

Office of the Mayor
1201 Oak Street
Conway, Arkansas 72032
(501) 450-6100

If to Ritter:

Ritter Communications Holdings, Inc.
Attn: John D. Strode
2400 Ritter Drive
Jonesboro, AR 72401
(870) 336-2345

Section 9. Transfer and Assignment. The Franchise shall be granted solely to Ritter and shall not be transferred or assigned without the prior written approval of the City, which shall be in accordance with applicable law; provided that such transfer or assignment may occur without written consent of the City to a wholly owned parent or subsidiary, between wholly owned subsidiaries, or to an entity acquiring all or substantially all of Ritter's assets, upon notice to the City.

Section 10. Force Majeure. Each and every provision hereof shall be reasonably subject to acts of

God, fires, strikes, riots, floods, war and other disasters beyond Ritter's or the City's control.

Section 11. Severability. In the event any title, section, paragraph, item, sentence, clause, phrase or word of this Agreement is declared or adjudged to be invalid or unconstitutional, such declaration or adjudication shall not affect the remaining portions of the Agreement which shall remain in full force and effect as if the portion so declared or adjudged invalid or unconstitutional were not originally a part of the Agreement

Section 12. Conflict with Franchise Ordinance. In the event of any conflict between the provisions of this Agreement and those of the ordinance granting the Franchise herein described, the City and Ritter agree that the provisions of the ordinance shall govern.

Section 13. Entire Agreement. This Agreement represents the entire understanding between the City and Ritter and all prior negotiations, discussions and representations are merged and incorporated herein. It may not be altered, amended or modified in any respect except by written instrument signed by the party to be bound, and shall be construed in accordance with the laws of the State of Arkansas. This Agreement may be executed in more than one counterpart, each of which shall be deemed to be an original, but all of such counterparts shall constitute one and the same instrument.

Agreed:

Tab Townsell, Mayor
City of Conway, Arkansas

Date

Date

Ritter Communications Holdings, Inc.



DEPARTMENT OF THE ARMY
LITTLE ROCK DISTRICT, CORPS OF ENGINEERS
Post Office Box 867
LITTLE ROCK, ARKANSAS 72203-0867

May 20, 2016

REPLY TO
ATTENTION OF:

Real Estate Division

Honorable Tab Townsell
Mayor, City of Conway
1201 Oak Street
Conway, Arkansas 72032

Dear Mayor Townsell:

Please refer to your request to lease Old Ferry Landing Park, Toad Suck Lock and Dam, McClellan-Kerr Arkansas River Navigation System, for public park and recreational purposes.

We have no objections to your proposal to lease this park, therefore enclosed in duplicate, is a draft of a lease for Old Ferry Landing Park. The lease is for public park and recreational purposes for a seventeen year, one month, and ten day term that is designed to expire concurrently with your Cadron Settlement Park Lease. If the terms and conditions are satisfactory, please have both copies of the lease signed on page 18, have the signature witnessed, insert the date of signing, sign the Preliminary Assessment Screening (PAS) which is Exhibit "E", and return all copies to us.

Upon receipt of all signed documents the lease will be executed on behalf of the United States, and a copy will be furnished for your records.

If you have any questions please contact Mr. Wayne Crawford, of this office, at 501-340-1209.

Sincerely,

A handwritten signature in blue ink that reads "LaTasha Rideout".

LaTasha Rideout
Chief, Management & Disposal Branch

Enclosures

NO. DACW03-1-16-6025

DEPARTMENT OF THE ARMY

**LEASE TO NON-STATE GOVERNMENTAL AGENCIES
FOR PUBLIC PARK AND RECREATIONAL PURPOSES**

OLD FERRY LANDING

TOAD SUCK LOCK AND DAM

FAULKNER COUNTY, ARKANSAS

THIS LEASE is made on behalf of the United States, between the **SECRETARY OF THE ARMY**, hereinafter referred to as the Secretary, and the **City of Conway, Arkansas**, hereinafter referred to as the Lessee,

WITNESSETH:

That the Secretary, by authority of Title 16, United States Code, Section 460d, and for the consideration hereinafter set forth, hereby leases to the Lessee, the property identified in **Exhibits "A" and "B"**, attached hereto and made a part hereof, hereinafter referred to as the premises, for public park and recreational purposes.

THIS LEASE is granted subject to the following conditions:

1. TERM

Said premises are hereby leased for a term of (17) seventeen years (1) one month and (10) ten days, beginning May 20, 2016, and ending June 29, 2033.

2. CONSIDERATION

The consideration for this lease is the operation and maintenance of the premises by the Lessee for the benefit of the United States and the general public in accordance with the conditions herein set forth.

3. NOTICES

All correspondence and notices to be given pursuant to this lease shall be addressed, if to the Lessee, to the City of Conway, 1201 Oak Street, Conway, Arkansas 72032, and if to the United States, to the Chief, Real Estate Division, Little Rock District Corps of Engineers, P.O. Box 867, Little Rock, Arkansas 72203-0867, hereinafter referred to as the Said Officer, or as may from time to time otherwise be directed by the parties. Notice shall be deemed to have been duly given if and when enclosed in a properly sealed envelope, or wrapper, addressed as aforesaid, and deposited postage prepaid in a post office or branch post office regularly maintained by the United States Postal Service.

4. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army", "Chief, Real Estate Division", "Real Estate Contracting Officer", "said officer" or "Lessor" shall include their duly authorized representatives. Any reference to the "Lessee" shall include sublessees, assignees, transferees, concessionaires, and its duly authorized representatives.

5. DEVELOPMENT PLANS

a. The Lessee shall be guided by an annual Plan of Operation and Maintenance in furtherance of the Lessee's implementing Plan of Recreation Development and Management (Development Plan) attached as Exhibit "C" which shows the facilities and services necessary to meet the current and potential public demand and the management and development activities to be undertaken by the Lessee and any sublessees. No later than **March 15th** of each year, the Lessee will submit the annual plan to be mutually agreed on between the Lessee and the Lessor. Such annual plan shall include but is not limited to the following:

a. Plans for management, maintenance and development activities to be undertaken by the Lessee and any sublessees.

b. Report of the management, maintenance and development accomplishments of the Lessee for the preceding year.

c. Report on any significant modification of policies or procedures which are planned for the following year as well as those implemented in the preceding year.

d. Minor modifications to the Development Plan. Major modifications are to be

accomplished by amendment to the plan before proceeding to implement any changes in the development or management of the leased premises.

e. Budget of the Lessee for carrying out all activities for the upcoming year.

f. Personnel to be used in the management of the leased premises.

g. Annual certification that all water and sanitary systems on the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitation Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

6. SUPERVISION BY THE CONTRACTING OFFICER

The use and occupation of the premises shall be subject to the general supervision and approval of the contracting officer. During the term of the lease, the Lessor will notify the Lessee of any updates to the existing project Master Plan affecting the premises and the Lessee may provide comments.

7. STRUCTURES AND EQUIPMENT

The Lessee shall have the right, during the term of the lease, to erect such structures and to provide such equipment upon the premises as may be necessary to furnish the facilities and services authorized. Those structures and equipment shall be and remain the property of the Lessee, except as otherwise provided in the Condition on **RESTORATION**. However, no structures may be erected or altered upon the premises unless and until the type of use, design, and proposed location or alteration thereof shall have been approved in writing by the Lessor. The Lessor may require the Lessee, upon the completion of each of the proposed developments to furnish complete "as built" construction plans for all facilities.

8. APPLICABLE LAWS AND REGULATIONS

a. The Lessee shall comply with all applicable Federal laws and regulations with all applicable laws, ordinances, and regulations of the state, county, and municipality wherein the premises are located, including, but not limited to, those regarding construction, health, safety, food service, water supply, sanitation, use of pesticides, and licenses or permits to do business. The Lessee shall make and enforce such regulations as are necessary and within its legal authority in exercising the privileges granted in this lease, provided that such regulations are not inconsistent with those issued by the Secretary of the Army or with the provisions of 16 U.S.C. § 460d.

b. The Lessee will provide an annual certification that all water and sanitary systems on

the premises have been inspected and comply with Federal, state and local standards. Lessee will also provide a statement of compliance with the Rehabilitations Act and the Americans with Disabilities Act, as required in the condition on **NON-DISCRIMINATION**, noting any deficiencies and providing a schedule for correction.

9. CONDITION OF PREMISES

a. The Lessee acknowledges that it has inspected the premises, knows its condition, and understands that the same is leased without any representations or warranties whatsoever and without obligations on the part of the United States to make any alterations, repairs, or additions thereto.

b. As of the date of this lease, an inventory and condition report of all personal property and improvements of the United States included in this lease shall be made by the Lessor and the Lessee to reflect the condition of said property and improvements. A copy of said report is attached hereto as **Exhibit "D"** and made a part hereof. Upon the expiration, revocation, or termination of this lease, another inventory and condition report shall be similarly prepared. This report shall constitute the basis for settlement for property damaged or destroyed. Any such property must be either replaced or restored to the condition required by the Condition on **PROTECTION OF PROPERTY**.

10. FACILITIES AND SERVICES

The Lessee shall provide the facilities and services as agreed upon in the Development Plan referred to in the Condition on **DEVELOPMENT PLANS** either directly or through subleases or concession agreements that have been reviewed or accepted by the Lessor. These subleases or agreements shall state: (1) that they are granted subject to the provisions of this lease; and (2) that the agreement will not be effective until the third party activities have been approved by the Lessor. The Lessee will not allow any third party activities with a rental to the Lessee or prices to the public which would give the third party an undue economic advantage or circumvent the intent of the Development Plan. The rates and prices charged by the Lessee or its sub-lessees or concessionaires shall be reasonable and comparable to rates charged for similar goods and services by others in the area. The use of sublessees and concessionaires will not relieve the Lessee from the primary responsibility for ensuring compliance with all of the terms and conditions of this lease.

11. TRANSFERS, ASSIGNMENTS, SUBLEASES

a. Without prior written approval of the Lessor, the Lessee shall neither transfer nor assign this lease nor sublet the premises or any part thereof, nor grant any interest, privilege, or license whatsoever in connection with this lease.

b. The Lessee will not sponsor or participate in timeshare ownership of any structures,

facilities, accommodations, or personal property on the premises. The Lessee will not subdivide nor develop the premises into private residential development.

12. FEES

Fees may be charged by the Lessee for the entrance to or use of the premises or any facilities, however, no user fees may be charged by the Lessee or its sub-lessees for use of facilities developed in whole or part with federal funds if a user charge by the Corps of Engineers for the facility would be prohibited under law.

13. ACCOUNTS, RECORDS AND RECEIPTS

All monies received by the Lessee from operations conducted on the premises, including, but not limited to, entrance, admission and user fees and rental or other consideration received from its concessionaires, may be utilized by the Lessee for the administration, maintenance, operation and development of the premises. Beginning 5 years from the date of this lease and continuing at 5-year intervals, any such monies not so utilized or programmed for utilization within a reasonable time shall be paid to the Lessor. The Lessee shall provide an annual statement of receipts and expenditures to the Lessor. Annual or weekly entrance fees not collected on the Project, which also are honored at other recreational areas operated by the Lessee, are excluded from this requirement. The Lessor shall have the right to perform audits or to require the Lessee to audit the records and accounts of the Lessee, third party concessionaires and sublessees, in accordance with auditing standards and procedures promulgated by the American Institute of Certified Public Accountants or by the state, and furnish the Lessor with the results of such an audit.

14. PROTECTION OF PROPERTY

The Lessee shall be responsible for any damage that may be caused to property of the United States by the activities of the Lessee under this lease and shall exercise due diligence in the protection of all property located on the premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Lessee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Lessee to the satisfaction of the Lessor, or, at the election of the Lessor, reimbursement may be made therefor by the Lessee in an amount necessary to restore or replace the property to a condition satisfactory to the Lessor.

15. RIGHT TO ENTER AND FLOOD

The right is reserved to the United States, its officers, agents, and employees to enter upon the premises at any time and for any purpose necessary or convenient in connection with Government work; to make inspections; to remove timber or other material, except property of the Lessee; to flood the premises; to manipulate the level of the lake or pool in any manner

whatsoever; and/or to make any other use of the land as may be necessary in connection with project purposes, and the Lessee shall have no claim for damages on account thereof against the United States or any officer, agent, or employee thereof.

16. LIGHTS, SIGNALS AND NAVIGATION

There shall be no unreasonable interference with navigation by the exercise of the privileges granted by this lease. If the display of lights and signals on any work hereby authorized is not otherwise provided for by law, such lights and signals as may be prescribed by the Coast Guard or by the Lessor shall be installed and maintained by and at the expense of the Lessee.

17. LIABILITY INSURANCE

a. At the commencement of this lease, the Lessee, unless self-insured, and its sublessees and concessionaires at the commencement of operating under the terms of this lease as third parties, shall obtain from a reputable insurance company or companies contracts of liability insurance. The insurance shall provide an amount not less than that which is prudent, reasonable and consistent with sound business practices or a minimum Combined Single Limit of **\$1,000,000**, whichever is greater, for any number of persons or claims arising from any one incident with respect to bodily injuries or death resulting therefrom, property damage, or both, suffered or alleged to have been suffered by any person or persons, resulting from the operations of the sublessees and concessionaires under the terms of this lease. The Lessee shall require its insurance company to furnish to the Lessor a copy of the policy or policies, or, if acceptable to the Lessor, certificates of insurance evidencing the purchase of such insurance. The Lessor shall have the right to review and revise the amount of minimum liability insurance required.

b. The insurance policy or policies shall specifically provide protection appropriate for the types of facilities, services and products involved; and shall provide that the Lessor by given thirty (30) days notice of any cancellation or change in such insurance.

c. In the event the Lessee is self-insured, the Lessee shall certify such self-insurance in writing in the minimum amount specified above to the Lessor. The Lessee's insurance status shall not eliminate the requirement for its sub-lessees and concessionaires to have insurance from a reputable insurance carrier as set out above.

d. The Lessor may require closure of any or all of the premises during any period for which the sublessees and concessionaires do not have the required insurance coverage.

18. RESTORATION

On or before the date of expiration of this lease or its termination by the Lessee, the Lessee shall vacate the premises, remove the property of the Lessee, and restore the premises to a

condition satisfactory to the Lessor. If, however, this lease is revoked, the Lessee shall vacate the premises, remove said property therefrom, and restore the premises to the aforesaid condition within such time as the Lessor may designate. In either event, if the Lessee shall fail or neglect to remove said property and so restore the premises, then, at the option of the Lessor, said property shall either become the property of the United States without compensation therefor, or the Lessor may cause the property to be removed and no claim for damages against the United States or its officers or agents shall be created by or made on account of such removal and restoration work. The Lessee shall also pay the United States on demand any sum which may be expended by the United States after the expiration, revocation, or relinquishment of this lease in restoring the premises.

19. NON-DISCRIMINATION

a. The Lessee shall not discriminate against any person or persons or exclude them from participation in the Lessee's operations, programs or activities conducted on the leased premises, because of race, color, religion, sex, age, handicap, or national origin. The Lessee will comply with the Americans with Disabilities Act and attendant Americans with Disabilities Act Accessibility Guidelines (ADAAG) published by the Architectural and Transportation Barriers Compliance Board.

b. The Lessee, by acceptance of this lease, is receiving a type of Federal assistance and, therefore, hereby gives assurance that it will comply with the provisions of Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. § 2000d); the Age Discrimination Act of 1975 (42 U.S.C. § 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794); and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 CFR Part 300) issued as Department of Defense Directives 5500.11 and 1020.1, and Army Regulation 600-7. This assurance shall be binding on the Lessee, its agents, successors, transferees, sub-lessees and assignees.

20. SUBJECT TO EASEMENTS

This lease is subject to all existing easements, easements subsequently granted, and established access routes for roadways and utilities located, or to be located, on the premises, provided that the proposed grant of any new easement or route will be coordinated with the Lessee, and easements will not be granted which will, in the opinion of the Lessor, interfere with developments, present or proposed, by the Lessee. The Lessee will not close any established access routes without written permission of the Lessor.

21. SUBJECT TO MINERAL INTERESTS

This lease is subject to all outstanding mineral interests. As to federally owned mineral interests, it is understood that they may be included in present or future mineral leases issued by the Bureau of Land Management (BLM), which has responsibility for mineral development on

Federal lands. The Department of the Army will provide lease stipulations to BLM for inclusion in such mineral leases that are designed to protect the premises from activities that would interfere with the Lessee's operations or would be contrary to local laws.

22. COMPLIANCE, CLOSURE, REVOCATION AND RELINQUISHMENT

a. The Lessee and/or sub-lessees are charged at all times with full knowledge of all the limitations and requirements of this lease, and the necessity for correction of deficiencies, and with compliance with reasonable requests by the Lessor . This lease may be revoked in the event the Lessee violates any of the terms and conditions and continues and persists in such non-compliance, or fails to obtain correction of deficiencies by sub-lessees or licensees. The Lessee will be notified of any non-compliance, which notice shall be in writing or shall be confirmed in writing, giving a period of time in which to correct the non-compliance. Failure to satisfactorily correct any substantial or persistent non-compliance within the specified time is grounds for closure of all or part of the premises, temporary suspension of operation, or revocation of the lease, after notice in writing of such intent. Future requests by the Lessee to extend the lease, expand the premises, modify authorized activities, or assign the lease shall take into consideration the Lessee's past performance and compliance with the lease terms.

b. This lease may be relinquished by the Lessee by giving one (1) year prior written notice to the United States in the manner prescribed in the Condition on **NOTICES**.

23. HEALTH AND SAFETY

a. The Lessee shall keep the premises in good order and in a clean, sanitary, and safe condition and shall have the primary responsibility for ensuring that any sub-lessees and concessionaires operate and maintain the premises in such a manner.

b. In addition to the rights of revocation for non-compliance, the Lessor , upon discovery of any hazardous conditions within the area covered by the lease that presents an immediate threat to health and/or danger to life or property, will so notify the Lessee and will require that the affected part or all of the premises be closed to the public until such condition is corrected and the danger to the public eliminated. If the condition is not corrected, the Lessor will have the option to:

(1) correct the hazardous conditions and collect the cost of repairs from the Lessee; or,

(2) revoke the lease. The Lessee and its assignees or sub-lessees shall have no claim for damages against the United States, or any officer, agent, or employee thereof on account of action taken pursuant to this condition.

24. PUBLIC USE

No attempt shall be made by the Lessee, or any of its sub-lessees or concessionaires, to forbid the full use by the public of the premises and of the water areas of the project, subject, however, to the authority and responsibility of the Lessee under this lease to manage the premises and provide safety and security to the visiting public.

25. PROHIBITED USES

a. The Lessee shall not permit gambling on the premises or install or operate, or permit to be installed or operated thereon, any device which is illegal, or use the premises or permit them to be used for any illegal business or purpose. There shall not be carried on or permitted upon the premises any activity which would constitute a nuisance.

b. As an exception, some games of chance, such as raffles, games and sporting events, may be conducted by nonprofit organizations under special use permits issued in conjunction with special events, if permissible by state and local law. Any request to conduct such activities must be submitted in writing to the Lessor.

c. In accordance with state and local laws and regulations, the Lessee may sell, store, or dispense, or permit the sale, storage, or dispensing of beer, malt beverages, light wines or other intoxicating beverages on the premises in those facilities where such service is customarily found. Bar facilities will only be permitted if offered in connection with other approved activities. Advertising of such beverages outside of buildings is not permitted. Carry out package sales of hard liquor is prohibited.

26. NATURAL RESOURCES

The Lessee shall cut no timber, conduct no mining operations, remove no sand, gravel, or kindred substances from the ground, commit no waste of any kind, nor in any manner substantially change the contour or condition of the premises, except as may be authorized under and pursuant to the Development Plan described in the Condition on **DEVELOPMENT PLANS** herein. The Lessee may salvage fallen or dead timber; however, no commercial use shall be made of such timber. Except for timber salvaged by the Lessee when in the way of construction of improvements or other facilities, all sales of forest products will be conducted by the United States and the proceeds therefrom shall not be available to the Lessee under the provisions of this lease.

27. DISPUTES CLAUSE

a. Except as provided in the Contract Disputes Act of 1978 (41 U.S.C. 601-613) (the Act), all disputes arising under or relating to this lease shall be resolved under this clause and the provisions of the Act.

b. "Claim," as used in this clause, means a written demand or written assertion by the Lessee seeking, as a matter of right, the payment of money in a sum certain, the adjustment of interpretation of lease terms, or other relief arising under or relating to this lease. A claim arising under this lease, unlike a claim relating to the lease, is a claim that can be resolved under a lease clause that provides for the relief sought by the Lessee. However, a written demand or written assertion by the Lessee seeking the payment of money exceeding \$50,000 is not a claim under the Act until certified as required by subparagraph c.(2) below.

c. (1) A claim by the Lessee shall be made in writing and submitted to the Lessor for a written decision. A claim by the Government against the Lessee shall be subject to a written decision by the Lessor.

(2) For Lessee claims exceeding \$50,000, the Lessee shall submit with the claim a certification that:

(i) The claim is made in good faith;

(ii) Supporting data are accurate and complete to the best of the Lessee's knowledge and belief; and

(iii) The amount requested accurately reflects the lease adjustment for which the Lessee believes the Government is liable.

(3) If the Lessee is an individual, the certification shall be executed that individual. If the Lessee is not an individual, the certification shall be executed by:

(i) A senior company official in charge at the Lessee's location involved; or

(ii) An officer or general partner of the Lessee having overall responsibility of the conduct of the Lessee's affairs.

d. For Lessee claims of \$50,000 or less, the Lessor must, if requested in writing by the Lessee, render a decision within 60 days of the request. For Lessee-certified claims over \$50,000, the Lessor must, within 60 days, decide the claim or notify the Lessee of the date by which the decision will be made.

e. The Lessor's decision shall be final unless the Lessee appeals or files a suit as provided in the Act.

f. At the time a claim by the Lessee is submitted to said officer or a claim by the Government is presented to the Lessee, the parties, by mutual consent, may agree to use alternative means of dispute resolution. When using alternate dispute resolution procedures, any

claim, regardless of amount, shall be accompanied by the certificate described in paragraph c.(2) of this clause, and executed in accordance with paragraph c.(3) of this clause.

g. The Government shall pay interest on the amount found due and unpaid by the Government from (1) the date the Lessor received the claim (properly certified if required), or (2) the date payment otherwise would be due, if that date is later, until the date of payment. Simple interest on claims shall be paid at the rate, fixed by the Secretary of the Treasury, as provided in the Act, which is applicable to the period during which the Lessor receives the claim, and then at the rate applicable for each 6-month period as fixed by the Treasury Secretary during the pendency of the claim.

h. The Lessee shall proceed diligently with the performance of the lease, pending final resolution of any request for relief, claim, appeal, or action arising under the lease, and comply with any decision of the Lessor.

28. ENVIRONMENTAL PROTECTION

a. Within the limits of their respective legal powers, the parties to this lease shall protect the project against pollution of its air, ground, and water. The Lessee shall comply promptly with any laws, regulations, conditions or instructions affecting the activity hereby authorized, if and when issued by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency having jurisdiction or abate or prevent pollution. The disposal of any toxic or hazardous materials within the leased area is specifically prohibited. Such regulations, conditions, or instructions in effect or prescribed by the Environmental Protection Agency, or any Federal, state, interstate or local governmental agency, are hereby made a condition of this lease. The Lessee shall require all sanitation facilities on boats moored at the Lessee's facilities, including rental boats, to be sealed against any discharge into the lake. Services for waste disposal, including sewage pump-out of watercraft, shall be provided by the Lessee as appropriate. The Lessee shall not discharge waste or effluent from the premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The Lessee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the lessee's activities, the Lessee shall be liable to restore the damaged resources.

c. The Lessee must obtain approval in writing from the Lessor before any pesticides or herbicides are applied to the premises.

29. PRELIMINARY ASSESSMENT SCREENING

A preliminary Assessment Screening (PAS) documenting the known history of the property with regard to the storage, release or disposal of hazardous substances attached hereto and made a part hereof as Exhibit "E". Upon expiration, revocation or termination of this lease, another PAS shall be prepared which will document the environmental condition of the property at that time. A comparison of the two assessments will assist the Lessor in determining any environmental restoration requirements. Any such requirements will be completed by the lessee in accordance with the condition on **RESTORATION**.

30. HISTORIC PRESERVATION

The Lessee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archaeological, architectural or other cultural artifacts, relics, vestiges, remains, or objects of antiquity. In the event such items are discovered on the premises, the Lessee shall immediately notify the Lessor and protect the site and the material from further disturbance until the Lessor gives clearance to proceed.

31. SOIL AND WATER CONSERVATION

The Lessee shall maintain in a manner satisfactory to the Lessor, all soil and water conservation structures that may be in existence upon said premises at the beginning of, or that may be constructed by the Lessee during the term of, this lease, and the Lessee shall take appropriate measures to prevent or control soil erosion within the premises. Any soil erosion occurring outside the premises resulting from the activities of the Lessee shall be corrected by the Lessee as directed by the Lessor.

32. TRANSIENT USE

a. Camping, including transient trailers or recreational vehicles, at one or more campsites for a period longer than thirty (30) days during any sixty (60) consecutive day period is prohibited. The Lessee will maintain a ledger and reservation system for the use of any such campsites.

b. Occupying any lands, building, vessels or other facilities within the premises for the purpose of maintaining a full- or part-time residence is prohibited, except for employees residing on the premises for security purposes, if authorized by the Lessor .

33. COVENANT AGAINST CONTINGENT FEES

The Lessee warrants that no person or selling agency has been employed or retained to solicit or secure this lease upon an agreement or understanding for a commission, percentage, brokerage, or

contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by the Lessee for the purpose of securing business. For breach or violation of this warranty, the United States shall have the right to annul this lease without liability or, in its discretion, to require the Lessee to pay, in addition to the lease rental or consideration, the full amount of such commission, percentage, brokerage, or contingent fee.

34. OFFICIALS NOT TO BENEFIT

No Member of or Delegate to Congress or Resident Commissioner shall be admitted to any share or part of this lease or to any benefits to arise therefrom. However, nothing herein contained shall be construed to extend to any incorporated company if the lease be for the general benefit of such corporation or company.

35. MODIFICATIONS

This lease contains the entire agreement between the parties hereto, and no modification of this agreement, or waiver, or consent hereunder shall be valid unless the same be in writing, signed by the parties to be bound or by a duly authorized representative; and this provision shall apply to this clause as well as all other conditions of this lease.

36. DISCLAIMER

This lease is effective only insofar as the rights of the United States in the premises are concerned; and the lessee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this lease does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (30 Stat. 1151; 33 U.S.C. § 403), or Section 404 of the Clean Water Act (33 U.S.C. § 1344).

37. Executive Order 13658

(a) Any reference in this section to "prime contractor" or "contractor" shall mean the Lessee and any reference to "contract" shall refer to the Lease. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

(b) Minimum Wages.

(1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

(c) Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

(d) Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10,

the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

(e) The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(f) Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

(g) Payroll Records.

(1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1)(i) through (vi) of this section for each worker and shall make the records available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s).
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour

Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

(h) The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

(i) Certification of Eligibility.

(1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

(j) Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

(k) Antiretaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

(l) Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

(m) Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(n) If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

38. The single lane boat ramp will be operated at no charge to the public. If the boat ramp becomes unsafe for use it may be closed if funds are not available to return the structure to an operable condition.

39. The agreement for the MKARNS Project Office to pay for water supply is based upon normal and customary charges of water usage. Any abnormal fees due to water leaks or other causes shall be the responsibility of the City of Conway.

IN WITNESS WHEREOF, I have hereunto set my hand by authority of the Secretary of the Army, this _____ day of _____, 2016.

LaTasha Rideout
Chief, Management & Disposal Branch
Little Rock District

THIS LEASE is also executed by the Lessee this _____ day of _____, 2016.

ATTEST:

City of Conway

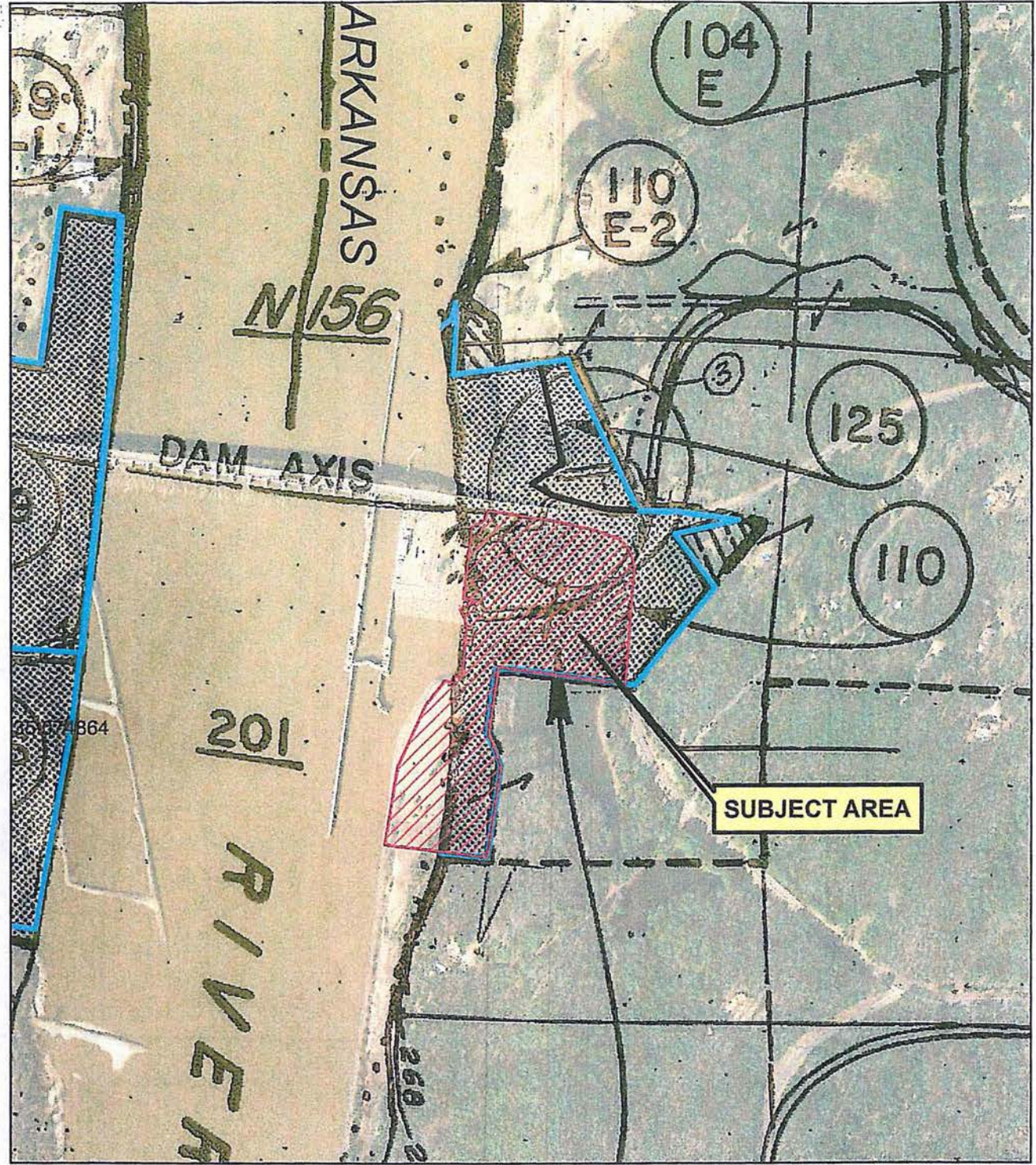
BY: _____

TITLE: _____



Address

R. 14 W.

T. 5 N.



LEGEND:

-  SUBJECT AREA
-  FEE ACQUISITION LINE

TOAD SUCK LOCK AND DAM
 ARKANSAS RIVER
 LEASE FOR OLD FERRY LANDING
 (TOAD SUCK PARK EAST)
 TRACT NO. 110

COUNTY: FAULKNER
 STATE: ARKANSAS

1 inch = 600 feet

DATE: DECEMBER 16, 2015
 FN: DACW03-1-16-6025
 EXHIBIT "A"

Toad Suck Lock and Dam
Faulkner County, Arkansas

Arkansas River
Document #DACW03-1-16-6025
Tract No. 110
EASEMENT -ACRES -12.40

EASEMENT FOR
Ferry Landing Park Lease
(Toad Suck Ferry Dam Site Park-East)

A part of the N1/2 of Section 18, Township 5 North, Range 14 West, Faulkner County, Arkansas, more particularly described as commencing at the SE corner of the NW 1/4 of said Section 18; thence South 88 degrees 55 minutes 53 seconds East a distance of 432.81 feet to a point on the south right of way of State Highway No.60; (also known as Dave Ward Drive); thence easterly along the southern right-of-way of Highway 60, to the east line of Section 18; thence north to the north right-of-way of Highway 60; thence west along the north right-of-way of Highway 60, to the east line of the NW 1/4 of Section 18, Township 5 North, Range 14 West; thence continue northwesterly along the northeastern and eastern right-of-way of Highway 60 to a point on the north line of the SE 1/4 NW 1/4, Section 18, Township 5 North, Range 13 West; thence north 82 degrees 11 minutes 32 seconds west approximately 80 feet to a found 1 inch iron pipe to point of beginning; thence North 82 degrees 11 minutes 32 seconds West a distance of 486.22 feet to a 3 inch brass monument; thence South 08 degrees 02 minutes 41 seconds West a distance of 270.00 feet to a brass monument; thence South 17 degrees 00 minutes 52 seconds East a distance of 138.94 feet to a brass monument; thence South 08 degrees 02 minutes 13 seconds West a distance of 368.20 feet to a brass monument; thence North 88 degrees 42 minutes 12 seconds West a distance of 395.05 feet, thence northerly along the high water mark of the Arkansas River 727 feet to the edge of existing boatramp; thence southeasterly along said boatramp 165 feet to edge of existing parking lot; thence northerly along fence/post line of parking lot approximately 527 feet to northern edge of access road to Toad Suck Lock offices; thence westerly along said access road edge 158 feet; thence northerly along existing parcel line 250 feet to southern edge of access road to Toad Suck Lock and Dam off of AR-60; thence northeasterly along said access road edge 365 feet to Southerly Right-of- Way of AR-60; thence meandering easterly and southerly along AR-60 Right-of- Way 1,077 feet to point of beginning, containing 12.40 acres, more or less.

December 16, 2015

EXHIBIT "B"



City of Conway, Arkansas
Mayor Tab Townsell
Faulkner County
Judge Jim Baker



Plan of Recreational Development and Management Old Ferry Landing Park

The City of Conway in cooperation with Faulkner County will:

Short Range Goals:

- Maintain grounds by mowing, cleaning grass areas, and picking up litter
- Repair and maintain playgrounds, pavilions, swings, benches, tables, grills and other equipment as needed
- Repair and maintain restrooms as needed
- Remove hazardous limbs from and maintain trees
- Repair park entrance sign

Long Range Goals:

- Renovate restrooms and surrounding area to be ADA compliant
- Replace roofs on pavilions as needed
- Improve nature trail and fences
- Renovate playgrounds to comply with current safety standards
- Replace swing sets and remove see saws

Joint Inventory and Condition Survey

**Project: Toad Suck Ferry Lock and Dam
Old Ferry Landing Park**

<u>Item</u>	<u>Number Existing</u>	<u>Condition</u>
Park Entrance Sign - <i>City plans to repair deteriorating wood.</i>	1	Fair
Stop Sign	2	Good
Double Arm Gate	1	Good
Pavilions - <i>City plans to repair both pavilion roofs.</i>	2	Fair
Restrooms	1	Good
Grill @ Pavilion	3	Good
See Saws (Playground)- <i>City plans to remove both sets of See Saws.</i>	4	Good
Swings - <i>City plans to replace all 4 swings.</i>	4	Fair
Wood Bench	3	Good
Slides (Playground)	2	Good
Wooden Playground Equipment	1	Good
Fire Rings-(4) <i>Removed by USACE.</i>	-	-
Covered Picnic Area	8	Good
Handicap Parking Sign	3	Good
Day Use Facility Sign	1	Good
Fee Collection Sign	1	Good
Elevated Grill	4	Good
Light and Pole	2	Good
Water Tank	1	Good
Pump House Building	1	Good
Historical Markers (Rock and Plaque)	2	Good
Anchor on Display	1	Good
Boat Ramp	1	Good
Bank Rip Rap - Not in Lease Area		


 City of Conway Representative
 Position: Director
 Date: 1/11/16


 Ryan King, USACE
 Natural Resource Specialist
 Date: 1/11/16

PRELIMINARY ASSESSMENT SCREENING
(PAS)

Project: Toad Suck Lock and Dam, McClellan-Kerr Arkansas River Navigation System
Outgrant No.: DACW03-1-16-6025

A complete search of the District files revealed no evidence that hazardous substances have been stored, released, or disposed of on the property involved.

A site investigation revealed no evidence that hazardous substances have been stored, released or disposed of on the property involved. No unusual odors, suspicious seepage, or other evidence of the presence of hazardous waste were observed.

LaTasha Rideout
Chief, Management & Disposal Branch

Date

I/We, the undersigned, made a site investigation of the subject easement area which revealed no evidence that hazardous substances have been stored, released, or disposed of on the property involved. No unusual odors, suspicious seepage, or other evidence of hazardous waste were observed.

City of Conway

BY: _____

Date

TITLE: _____

EXHIBIT "E"



City of Conway, Arkansas
Ordinance No. O-16-___

AN ORDINANCE APPROPRIATING FUNDS & ACCEPTING THE BID FOR REMODELING OF THE CITY ATTORNEY'S OFFICE LOCATED AT 1234 MAIN STREET; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.

Whereas, the City of Conway has an immediate need to remodel the City Attorney's office to provide additional and adequate workspace; and

Whereas, this project was competitively bid on June 2nd, 2016 and two bids were received along with a partial bid for electrical only; and

Whereas, Hiegel Building Solutions was the low bid in the amount of \$26,340; and

Whereas, the funding for this purchase has not previously been appropriated by Council action.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

Section 1. The City of Conway shall accept the bid from Hiegel Building Solutions in the amount of \$26,340 for the remodeling of the City Attorney's Office.

Section 2. The City of Conway shall appropriate funds in the amount of \$26,430 from the General Fund Balance Appropriation (001.119.4900) to the City Attorney's Building Improvements Account (001.129.5904)

Section 3. All ordinances in conflict herewith are repealed to the extent of the conflict.

Section 4. This ordinance is necessary for the protection of the public peace, health and safety and an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

Passed this 14th day of June, 2016

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer



**City of Conway, Arkansas
Ordinance No. O-16-____**

**AN ORDINANCE APPROPRIATING FUNDING FOR THE CITY’S INCREASE IN WORKERS COMP PREMIUMS;
AND FOR OTHER PURPOSES**

Whereas, the Municipal League Workers Compensation Trust has notified the City of Conway that additional funding will be required in 2016 due to premium calculation based on actual payroll expense rather than estimated payroll expense.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

Section 1. The City of Conway shall appropriate total funds of \$68,627 respectively from the Fund Balances of the following funds into the Workers Comp (xxx.xxx.5181) expenditure line items:

General	\$38,127
Street	\$11,500
Sanitation	\$18,500
Airport	\$ 500

Section 2. All ordinances in conflict herewith are repealed to the extent of the conflict.

PASSED this 14th day of June, 2016.

Approved:

Mayor Tab Townsell

Attest:

**Michael O. Garrett
City Clerk/Treasurer**



City of Conway
Human Resources Department
City Hall
 1201 Oak Street
 Conway, Arkansas 72032
www.cityofconway.org

Date: June 9, 2016

To: Andy Hawkins David Grimes Wesley Pruitt Shelly Mehl
 Mark Ledbetter Mary Smith Theo Jones Shelia Whitmore

Cc: Mayor Tab Townsell

From: Lisa Mabry-Williams

Subject: 2016 Medical Benefits – Mid Year Increase

As previously discussed during the City Council meeting on May 24, we received notice that the Arkansas Municipal Health Benefit Fund premium rates for the City of Conway will increase effective July 1. The premium rates will increase eleven percent (11%). This increase is due to our claims experience, the current loss ratio for the City of Conway is one hundred and fifty-seven percent (157%).

The attached spreadsheet shows the current employee and city cost plus three (3) scenarios of the cost to the City and the impact on the 2016 budget. The scenarios are as follows:

- Scenario #1 – The percentage the city and the employee pay remain unchanged. The additional impact on the 2016 budget will be approximately \$118,300.
- Scenario #2 – The city absorbs 100% of the premium increase, the employee contribution remains unchanged. The additional impact on the 2016 budget will be approximately \$148,600.
- Scenario #3 – The employee absorbs 100% of the premium increase, the city contribution remains unchanged. There will be no additional impact on the 2016 budget.

We respectfully request that the City Council determine the premium rate structure that the city will use for the remainder of 2016 due to the AML MHBF premium increase.

City of Conway

2016 Medical Benefit Rates

Current Rates						
2016 AML MHBFB	Employee	Employee	City	City	Total	
Municipal Health Benefit Fund \$500 Deductible	Employee Cost/Mo	Employee Cost/Pay Period	City Cost/Mo.	City Cost/Pay Period	Total Premium	% Paid by City
Employee Only	\$19.50	\$9.75	\$293.50	\$146.75	\$313.00	93.8%
Employee + Spouse	\$149.75	\$74.88	\$545.75	\$272.88	\$695.50	78.5%
Employee + Children	\$126.00	\$63.00	\$569.50	\$284.75	\$695.50	81.9%
Employee + Family	\$194.50	\$97.25	\$501.00	\$250.50	\$695.50	72.0%
Scenario # 1 - Percentage the City and employee pay remain unchanged						
2016 AML MHBFB	Employee	Employee	City	City	Total	
Mid Year Increase Municipal Health Benefit Fund \$500 Deductible	Employee Cost/Mo	Employee Cost/Pay Period	City Cost/Mo.	City Cost/Pay Period	Total Premium	% Paid by City
Employee Only	\$21.50	\$10.75	\$325.00	\$162.50	\$346.50	93.8%
<i>difference</i>	<i>\$2.00</i>	<i>\$1.00</i>	<i>\$31.50</i>		<i>\$33.50</i>	
Employee + Spouse	\$164.50	\$82.25	\$602.00	\$301.00	\$766.50	78.5%
<i>difference</i>	<i>\$14.75</i>	<i>\$7.38</i>	<i>\$56.25</i>		<i>\$71.00</i>	
Employee + Children	\$138.50	\$69.25	\$628.00	\$314.00	\$766.50	81.9%
<i>difference</i>	<i>\$12.50</i>	<i>\$6.25</i>	<i>\$58.50</i>		<i>\$71.00</i>	
Employee + Family	\$214.50	\$107.25	\$552.00	\$276.00	\$766.50	72.0%
<i>difference</i>	<i>\$20.00</i>	<i>\$10.00</i>	<i>\$51.00</i>		<i>\$71.00</i>	
Scenario #1 - Additional impact on 2016 Budget \$118,300						
Scenario #2 - City absorbs 100% premium increase, employee contribution remains unchange						
2016 AML MHBFB	Employee	Employee	City	City	Total	
Mid Year Increase Municipal Health Benefit Fund \$500 Deductible	Employee Cost/Mo	Employee Cost/Pay Period	City Cost/Mo.	City Cost/Pay Period	Total Premium	% Paid by City
Employee Only	\$19.50	\$9.75	\$327.00	\$163.50	\$346.50	94.4%
<i>difference</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$33.50</i>		<i>\$33.50</i>	
Employee + Spouse	\$149.75	\$74.88	\$616.75	\$308.38	\$766.50	80.5%
<i>difference</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$71.00</i>		<i>\$71.00</i>	
Employee + Children	\$126.00	\$63.00	\$640.50	\$320.25	\$766.50	83.6%
<i>difference</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$71.00</i>		<i>\$71.00</i>	
Employee + Family	\$194.50	\$97.25	\$572.00	\$286.00	\$766.50	74.6%
<i>difference</i>	<i>\$0.00</i>	<i>\$0.00</i>	<i>\$71.00</i>		<i>\$71.00</i>	
Scenario #2 - Additional impact on 2016 Budget \$ 148,600						
Scenario #3 - Employee absorbs 100% premium increase, City contribution remains unchange						
2016 AML MHBFB	Employee	Employee	City	City	Total	
Mid Year Increase Municipal Health Benefit Fund \$500 Deductible	Employee Cost/Mo	Employee Cost/Pay Period	City Cost/Mo.	City Cost/Pay Period	Total Premium	% Paid by City
Employee Only	\$53.00	\$26.50	\$293.50	\$146.75	\$346.50	84.7%
<i>difference</i>	<i>\$33.50</i>	<i>\$16.75</i>	<i>\$0.00</i>		<i>\$33.50</i>	
Employee + Spouse	\$220.75	\$110.38	\$545.75	\$272.88	\$766.50	71.2%
<i>difference</i>	<i>\$71.00</i>	<i>\$35.50</i>	<i>\$0.00</i>		<i>\$71.00</i>	
Employee + Children	\$197.00	\$98.50	\$569.50	\$284.75	\$766.50	74.3%
<i>difference</i>	<i>\$71.00</i>	<i>\$35.50</i>	<i>\$0.00</i>		<i>\$71.00</i>	
Employee + Family	\$265.50	\$132.75	\$501.00	\$250.50	\$766.50	65.4%
<i>difference</i>	<i>\$71.00</i>	<i>\$35.50</i>	<i>\$0.00</i>		<i>\$71.00</i>	
Scenario #3 - Additional impact on 2016 Budget \$ 0						



**City of Conway, Arkansas
Ordinance No. O-16-_____**

AN ORDINANCE APPROPRIATING FUNDING FOR THE CITY’S PORTION OF THE AML MUNICIPAL HEALTH BENEFIT FUND PREMIUMS; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES

Whereas, the Municipal League Municipal Health Benefit Fund has notified the City of Conway that additional funding will be required in 2016 due to an eleven percent (11%) premium increase effective July 1, 2016 based on City of Conway’s claims experience and loss ratio.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS THAT:

Section 1. The City of Conway shall appropriate total funds of \$_____ respectively from the Fund Balances of the following funds into the Medical Benefits (xxx.xxx.5160) expenditure line items:

Scenario #1		Scenario #2	
General	\$ 90,900	General	\$ 114,800
Street	\$ 7,600	Street	\$ 9,700
Sanitation	\$ 18,800	Sanitation	\$ 23,000
Airport	\$ <u>1,000</u>	Airport	\$ <u>1,100</u>
Total	\$ 118,300	Total	\$ 148,600

Section 2. All ordinances in conflict herewith are repealed to the extent of the conflict.

Section 3. This ordinance is necessary for the protection of the public peace, health and safety and that in order to avoid project delays to this Project, it is essential to the ability of the City to efficiently conduct business and have the necessary funds to pay for this Project and therefore, an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from and after its passage and approval.

PASSED this 14th day of June, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer



**City of Conway, Arkansas
Resolution No. R-16-___**

A RESOLUTION AUTHORIZING THE MAYOR TO SIGN A SALES AGREEMENT WITH VERMEER FOR THE PURCHASE OF A HORIZONTAL GRINDER AND ASSOCIATED EXTENDED PRODUCT WARRANTY FOR USE BY THE SANITATION DEPARTMENT.

Whereas, due to a recent catastrophic loss to the grinder which is essential to the operations of the Sanitation Department, a replacement is needed;

Whereas, a suitable replacement machine (HG6000 Horizontal Grinder) is being sold through Vermeer MidSouth located in Little Rock, Arkansas; and

Whereas, bidding is not required because this piece of equipment may be procured through the National Joint Powers Alliance; and

Whereas, the City Council approves and authorizes the mayor to execute the required documentation for the purchase of the machine and extended product warrant in the warranty in the amount of \$604,028.91; and

Whereas, the City Council has previously approved the 2016 annual budget for the Sanitation Department which includes funds for equipment purchases; and

Whereas, sufficient funds are available in the Sanitation Department's budget to make for the full purchase price of the machine and extended warranty.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CONWAY, ARKANSAS:

Section 1: That the City Council of the City of Conway hereby approves the purchase of the HG6000 Horizontal Grinder and associated extended warranty for the Sanitation Department from Vermeer MidSouth for \$604,028.91.

Section 2: That the City Council of the City of Conway hereby authorizes the mayor to execute all required documentation to purchase the HG6000 Horizontal Grinder and the associated extended warranty.

PASSED this 14th day of June, 2016.

Approved:

Mayor Tab Townsell

Attest:

**Michael O. Garrett
City Clerk/Treasurer**