

Handwritten signature/initials

ORDINANCE O-05-162

**AN ORDINANCE PROVIDING FOR THE LEASING OF THE
CITY ELECTRIC PLANT AND FACILITIES TO CONWAY
CORPORATION**

WHEREAS, the City of Conway and Conway Corporation wish to modernize their agreement for the lease of electric facilities owned by the City of Conway;

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

Section One. The City of Conway, Arkansas does hereby lease unto Conway Corporation the Electric Facilities owned by the City, said lease being as is hereinafter set out, and the Mayor and Clerk-Treasurer of said City shall be, and they are hereby, authorized and directed to execute, acknowledge and deliver the same in the name and on behalf of the City of Conway and to affix thereto the corporate seal of the City of Conway, said lease being as follows:

(a) The following lease made and entered into by and between the City of Conway, Arkansas, hereinafter designated as Lessor, and Conway Corporation, hereinafter designated as Lessee, WITNESSETH:

Unless the context specifically indicates otherwise, the following words and/or terms, when used in this ordinance, shall have the following meaning:

“Electric Plant” shall include all property, equipment and apparatus of every kind and nature, whether now owned or hereafter acquired and whether owned totally or in part, by the City of Conway, Arkansas, and/or Conway Corporation, which is necessary and/or incidental to the supplying of electric service within the City of Conway, Arkansas, elsewhere, including but not limited to generators and auxiliary equipment (whether owned in whole or in part), buildings, fixtures, substations, transmission and distribution pole lines, transformers, service wires and metering equipment.

“Electric Service” shall be the necessary power and energy delivered to a pre-determined metering point and, in the case of street lighting, shall include operation and maintenance of fixtures.

“Force Majeure” shall mean any cause or causes beyond the control of Corporation including, but not limited to, acts of God, or the public enemy, failure of Corporation’s facilities,

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flood, earthquake, storm, lightning, fire, epidemic, war, embargo, riot, civil disturbance, strikes, picketing, lockouts or other labor disputes or disturbances, sabotage, or restraint or prevention of performance by act of any Court, regulatory body or defense agency, which by the exercise of due diligence and foresight Corporation could not reasonably have been expected to avoid.

The Lessor does hereby lease and rent for the consideration hereinafter set forth unto the Lessee all real estate and personal property, located inside or outside of the City of Conway including buildings, substations and all property in the definition of "Electric Plant" above, whether owned currently or acquired after the date of this lease.

For a term beginning on January 1, 2006 and ending December 31, 2036

And for the rent of said property, the Lessee agrees and promises to pay to the Lessor the sum of ONE HUNDRED TWENTY THOUSAND (\$120,000.00) DOLLARS per year, which rental shall be paid in equal monthly installments during the term of this Lease. The Lessor agrees to pay for all utility services provided to its facilities by Lessee unless specifically excluded by the Franchise Agreement.

The Lessee agrees that it will at all times, during the period of this Lease, maintain the said Electric Plant in a high degree of efficiency, and that it will at its own expense from time to time replace and substitute, by exchange, worn out or defective or inadequate portions of the Electric Plant to the end that the said Electric Plant shall at all times during the term of this Lease and at the termination thereof be in as good condition for giving service as same are now in, necessary wear and tear alone being excepted. It is expressly provided that the Conway Corporation shall have full power and authority to remove, salvage, destroy, sell or otherwise dispose of, any and all equipment and facilities which, in its discretion, are no longer required for, of utility to, or benefit to the Electric Plant.

At the expiration of the term of this Lease, all property and the Electric Plant hereby leased, together with any additions thereto or replacements thereof, made by said Corporation and all supplies and all other net assets of Corporation, shall be surrendered to the City of Conway.


Lessee further agrees that it will, during the term of this Lease, make all necessary additions and extensions to the Electric Plant and that it will, through its own production or by purchase, make available to customers, such additional Electric Service as shall be necessary to take care of any increased electric loads caused by the growth of the City of Conway, or


otherwise, during the term of this Lease; provided, however, that Lessee shall not be responsible for power and energy shortages caused by Force Majeure, failure of equipment or governmental intervention.

The Lessee shall at all times during the term of this Lease keep an accurate set of books in conformance with the Federal Energy Regulatory Commission System of Accounts, showing all receipts and expenditures of said Corporation, and said books shall at all times be open to inspection by the City of Conway, or its designated agents

IN WITNESS WHEREOF, this Lease has been executed on behalf of the City of Conway, and the corporate seal of said City affixed hereto by its Mayor and Clerk-Treasurer hereunto duly authorized by ordinance of the City Council of the City of Conway, and has been executed by the Conway Corporation and the corporate seal of said Conway Corporation affixed hereto by its Chairman and its Secretary, hereunto duly authorized by Resolution of the Board of Directors of Conway Corporation on this 20th day of December, 2005; it being distinctly understood and agreed, however, that neither the Mayor nor Clerk-Treasurer, nor the Chairman or the Secretary of Conway Corporation shall in any manner be personally liable or responsible hereunder.

CONWAY CORPORATION

By 
Chairman

By 
Secretary

CITY OF CONWAY

By 
Mayor Fab Townsell

By 
Clerk-Treasurer

Section Two. There is hereby found and declared to be an immediate need for securing the present and future operation of the Electric Plant owned by the City of Conway in order to provide Electric Service to the City and its inhabitants, and the leasing of said Electric Plant authorized hereby and the taking of the other action authorized hereby are immediately necessary for the accomplishment of this purpose. It is, therefore, declared that an emergency exists and this ordinance being necessary for the immediate preservation of the public peace, health and safety shall be in force and effect immediately upon and after its passage.

PASSED this 13th day of December, 2005

APPROVED:



Mayor Tab Townsell

ATTEST:



Michael O. Garrett, City Clerk/Treasurer

CERTIFICATE

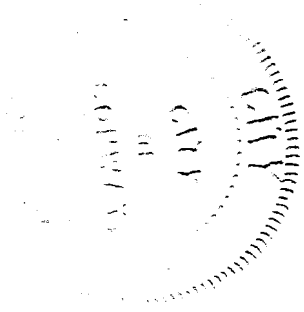
**STATE OF ARKANSAS
COUNTY OF FAULKNER
CITY OF CONWAY**

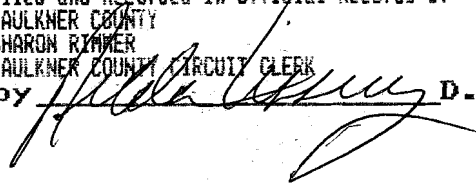
I, Michael Garrett, the duly elected, qualified, and acting: Clerk-Treasurer of the City of Conway, Arkansas, do hereby certify that the attached and foregoing is a true and correct copy of ordinance presented to the City Council of the City of Conway, Arkansas, at a meeting of that body held on the 13th day of December 2005, same is duly recorded in the minutes of meeting of said Council.

Witness, my hand and seal of the City of Conway, Arkansas, this 19th day of December 2005.


CITY CLERK-TREASURER

Seal



CERTIFICATE OF RECORD
Doc#2006- 227
01/04/2006
09:05:02 AM
Filed and Recorded in Official Records of
FAULKNER COUNTY
SHARON RYMER
FAULKNER COUNTY CIRCUIT CLERK
by  D.C.