



City of Conway Council Agenda

<u>Council Meeting Date:</u>	November 22nd, 2016
<u>5:30pm Committee Meeting:</u>	Discussion of City Hall Mural Project Discussion of Parks & Recreation 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>	November 8 th , 2016
<i>Employee Service Awards</i>	
<i>Approval of the monthly financial report ending October 31st, 2016</i>	

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. Public Hearings:

1. Public hearing to discuss the closing of a portion of the pathway and drainage right-of-way easement located within Lot 2 in Pediatrics Plus subdivision.
 - a. Ordinance closing a portion of the pathway and drainage right-of-way easement located within Lot 2 in Pediatrics Plus subdivision.

B. Community Development Committee (Airport, Planning & Development, Street & Engineering, Permits & Inspections, Code Enforcement, & Community Development)

1. Resolution requesting the Faulkner County Tax Collector place a certified lien on property located at 66 Briarwood Circle as a result of incurred expenses by the City.
2. Resolution requesting the Faulkner County Tax Collector place a certified lien on property located at 26 Briarwood Circle as a result of incurred expenses by the City.
3. Ordinance accepting and appropriating donation funds for the Conway Tree Board for Arbor Day.
4. Consideration to approve a change order (#1) for the Siebenmorgen Half Road Improvements for Community Development Department.
5. Consideration to enter into an agreement with Crafton, Tull & Associates for various landscapes of roundabouts, streets for the City of Conway.

C. Public Service Committee (Sanitation, Parks & Recreation & Physical Plant)

1. Ordinance to appropriate funds and enter into an agreement with Zagster for a bike share program.

2. Resolution of intent regarding the use of sanitation funds for loan payment and reimbursement in regards to the sale of the old airport property.

D. Public Safety Committee (Police, AWU, CEOC, Fire, District Court, , Information Technology, & City Attorney)

1. Consideration to enter into a master collocation license agreement with Conway Corporation.
2. Ordinance appropriating reimbursement funds from Recue Wagon for the Animal Welfare Unit.
3. Ordinance appropriating reimbursement funds from various entities for the Conway Police Department.

E. New Business

1. Ordinance appropriating funds for the employee appreciation bonuses for City employees.

Adjournment

Memo:

To: Mayor Tab Townsell
City Council Members

From: Conway Public Art Board

Date: 11/18/2016

Re: City Hall Mural Project

USFWS proposal to Conway Public Art Board:

The U.S. Fish and Wildlife Service Ecological Services Arkansas Field Office proposes to coordinate and support a public art mural depicting endangered species native to Arkansas in the City of Conway, Arkansas. The Service's intent is to foster a sense of community with nature and raise public awareness of the endangered and threatened species in Arkansas. Awareness of the rare species in Arkansas will promote an affinity for the natural world and an interest in conserving and recovering these at-risk species.

The work is intended as a collaborative effort with federal agencies, local government, colleges, businesses, and NGOs. Engaged partners include USFWS, City of Conway, Conway Public Art Board, Hendrix College, the Center for Biological Diversity. Potential partners include local public schools, Sherwin Williams, and Wal-Mart. Funding is obligated through The Center for Biological Diversity Endangered Species Mural Project with other potential funding through the Arkansas Arts Council, USFWS, and Hendrix College Odyssey program.

The mural will likely include a single threatened or endangered species native to Arkansas, name and brief information about the species, and acknowledgement of the project partners (City, Center for Biological Diversity, business owner, USFWS, etc.).





Timeline and Roles for Endangered Species Mural-Conway, AR

November 2016:

Location and design confirmation

Mayor and City Council presentation and approval

December 2016:

Confirm maintenance agreement with CBD if required

January 2017:

USFWS and CBD produce outreach and education materials (video, classroom tie-ins, hellbender information for community and school groups)

February 2017:

Early media releases-local newspapers (Tammy Keith), coordinate with schools for involvement in implementation or celebration

Hendrix College art students in communication with Roger/Tierra to be involved in the artistic side of mural development

Host community meeting to engage volunteers.

March 2017:

Immediately prior press releases, community outreach

April 2017: Mural implementation (exact dates to be determined by artist availability)

Preparation of surface-pressure wash and primer (clear?) (potential for community volunteers or donation)

Removal of awning (if city approves) and “poster” at corner of building

Artist(s) usually spend approximately one to two weeks on site.

The upper area of the wall is typically reached via scissor jack lift (potential donation here).

CBD will provide supplies (potential for donation of final clear coating-Sherwin Williams).

Hendrix students participate in mural implementation/painting.

Incorporation of school groups may be possible in earlier phases of the mural.

Host artist in Hendrix College Murphy House with dining on campus (funding provided with Odyssey grant).

Host on-site talks about the mural process.

Host on-site talks about endangered species of Arkansas

Sunday, after completion, public unveiling and reception-include crafts for kids, meet and greet with the artist, Hellbender information (consider hellbender costume from Purdue)-look at reserving Simon Park.

ToadSuck Daze is May 5-7, 2017. Mural must be completed before this or started after this time. We'll make sure to schedule around the festival, so no supplies or equipment are on site immediately before or during the weekend.

Financial Responsibilities:

Hendrix College: Odyssey grant (\$1,672.25)

artist housing, dining, contribution to reception

Center for Biological Diversity: (unknown, but the bulk of the project)

artist travel and labor, mural supplies, contribution to reception, planning and coordination, outreach and education materials

USFWS: (up to \$300)

planning and coordination, contribution to reception, outreach and education materials

City of Conway:

potential awning removal on west side city hall, "poster" removal west side city hall

Useful Links:

Center for Biological Diversity Endangered Species Mural Project

http://www.biologicaldiversity.org/about/creative_media/endangered_species_mural_project/

Knoxville, TN mural (video)

<https://www.youtube.com/watch?v=IK9kgKFK2PI>

U.S. Fish and Wildlife Service-Arkansas Ecological Services Field Office

<https://www.fws.gov/arkansas-es/>

Ozark Hellbender-USFWS information

<https://www.fws.gov/midwest/endangered/amphibians/ozhe/ozheFactSheet.html>

<https://www.fws.gov/midwest/endangered/esday/MOOZHE.html>

Bio/CV- Roger Peet

Roger Peet (<http://toosphexy.com/>) is a Portland-based artist, printmaker and muralist. He is a founding member of the Justseeds Artists' Cooperative, and the president of the board of directors at Flight 64 Studio in Portland, OR. His work tends to address issues related to the contemporary crisis of biodiversity, predator-prey relationships, hubris, and doom, as well as the millennial tension between human activities and the integrity of wild phenomena. He tries to make everything he does by hand, using analog methods as often as possible. He collaborates with artists, activists and scientists globally towards the goal of a more generous and a wilder world, and coordinates the Endangered Species Mural Project for the Center for Biological Diversity.

ENDANGERED SPECIES MURAL PROJECT
http://www.biologicaldiversity.org/about/creative_media/endorsed_species_mural_project/

Just as nature inspires art, art inspires actions to defend wild places and the wild creatures that live in them. With this in mind, the Center for Biological Diversity's Endangered Species Mural Project teams up with artists, activists and scientists to bring endangered wildlife onto the streets of cities and towns around the country. Spearheaded by Portland artist Roger Peet, the mural project features wildlife species that are particular to their regions, promoting an affinity for the natural world and the diverse species that help define it. These murals are imagined as tools to help celebrate local endangered species within communities, and to encourage people to make connections between conservation and community strength.

The Endangered Species Mural Project has created nine murals so far — of the [mountain caribou](#) in Sandpoint, Idaho; the [Arctic grayling](#) in Butte, Montana; the [monarch butterfly](#) in Minneapolis, Minnesota; the watercress darter in Birmingham, Alabama; the gray whale *and* the yellow-billed cuckoo in Los Angeles; the [jaguar](#) in Tucson, Arizona; the pink mucket pearly [mussel](#) in Knoxville, Tennessee; and the [white fringeless orchid](#) in Berea, Kentucky.

Upcoming murals will depict the [hellbender](#) salamander in Little Rock, Arkansas; the [marbled murrelet](#) in Arcata, California; and the eulachon in Portland, Oregon. If we can obtain additional funding, the Center hopes to continue to work with more local artists and communities and expand our project to even more cities nationwide.

A Message From the Artist-Roger Peet - “Everywhere on Earth is unique, with qualities that distinguish it from other places both near and far. One of those qualities is biodiversity — the plants and animals that call a place home and may not be found anywhere else. Those species embody an area’s natural history and contribute to what makes it irreplaceable — and they also have something to say about the future, as many are in danger of going extinct. When we lose species, the places we inhabit and the lives we live become poorer and shallower as a result. To help bring these species into the light, we decided to paint them on the walls.

“The goal of this project is to foster connections between people and the other forms of life that surround them. Whether that’s a fish in a river, a butterfly flitting from plant to plant, or a caribou chewing lichen from a tree, we’re bringing together artists and communities to create big, bold images that will become part of the neighborhoods where they’re created, making it a little easier for people to care about the species struggling to survive in their midst.”





Selected Solo exhibits:

Predator Culture, Iron Tail Gallery, Lincoln NE, March 2016

In//Appropriate, Littman Gallery, Portland, OR, July 2015

The Burning World, Screaming Sky Gallery, Portland, OR, January 2015

Traps, Flows, Echoes, Pacific Northwest College of Art, Portland, OR, November 2014

Old Beginnings, Screaming Sky Gallery, Portland OR, January-March 2014

New Prints, Olympic Mills Commerce Center, Portland OR, July-September 2013

Extracto, Portland OR, July 2013

New Prints, Caldera Arts Center, Portland, OR, July 2013

A Hunger, Screaming Sky Gallery, Portland, OR, February 2013

Flight 64 Studio, Portland, OR, June 2012

Extracto, Portland OR, July 2012

Bioadversity, Vakiopaine gallery, Jyvaskyla, Finland, April 2012

Crema, Portland, OR, March 2012

Bioadversity, Screaming Sky Gallery, Portland OR, December 2011

Red and Black, Portland, OR, December 2011

Fresh Pot, Portland, OR, December 2011

Viande de Brousse, PLACE Gallery, Portland, OR, July-August 2011

Flight 64 studio, Portland OR, June 2011

Extracto, Portland, OR, May 2011

Prints, Land Gallery, Portland, OR, May 2011

We Agree: A Crisis in Common, Black Butte Center for Railroad Culture, Weed, CA, April 2011

Fresh Pot, Portland, OR, October 2010

Flight 64 studio, Portland, OR, May 2010

Berbati's Pan, Portland, OR, June 2010

We Agree: A Crisis in Common, SEA Change Gallery, Portland, OR August 2010

Prints, Bedlam Theatre, Minneapolis, MN, July 2009

Nuwandart Gallery, Ashland, OR, July 2008

Noxious, Bedlam Theater, Minneapolis, MN, July 2007

Red in Tooth and Claw, Amsterdam, Dijon, Montpelier, Dublin, Cork, London, March-May 2006

Mark Trail Gets It/ A Good Robot is Hard to Find, Portland, Seattle, Friday Harbor, Bellingham, Summer 2004

Autotomy, Bedlam Theater, Minneapolis, MN, December 2004

Prints and Stencils, Seward Cafe Gallery, Minneapolis, MN, January 2003

Selected Justseeds Exhibits:

Gathering Autonomy, 511 Gallery, Pacific Northwest College of Art, Portland, OR, March-June 2015

Uprisings: Images of Labor, Union Art Gallery, Milwaukee, March 2013

Sowing the Seeds of Love, Munch Gallery, NYC, NY Dec 7th-23rd, 2012

Migration Now, LeCagibi, Montreal, Quebec, Canada, October 20-Dec 2, 2012

War Is Trauma: Justseeds IVAW Collection, Upper Library Gallery, Central Texas College, Killeen, TX, June-Aug 30th 2012

Undocunation 2012, Yerba Buena Center for the Arts, San Francisco, CA, May 2012

Agit-prop and Intervention, Neurotitan Gallery, Berlin, April 2012

Justseeds, Miller Gallery, Pittsburgh Biennial, September 2011

Refuge, Grand Prix Winner Installation, Gallery Alkatraz, International Graphic Biennial, Ljubljana, Slovenia, September 2011

No More and Nothing Less, Screaming Sky Gallery, Portland OR, January 2011 (curator)

Justseeds: Birds and Cats, Lili Gallery, Pittsburgh, PA, December 2010

Justseeds Political Print Show, Brecht Forum, New York City, NY, November 2010

Resourced, Marketplace Gallery, Albany, NY, August 2010

Birdbrains, Knitting Factory, Brooklyn, NY, August 2010

RESOURCED Portfolio Launch, Justseeds HQ, Pittsburgh, PA, August 2010

Firebrands, Book Thug Nation, Brooklyn, NY, July 2010

Exposicion sobre Los Presos Politicos, Radio Zapote, Mexico City, May 2010

Celebrating and Collaborating: The Graphic Work of Justseeds, Michigan State University, East Lansing, MI, April 2010

Justseeds Group Show, Riverwest Food Coop, Milwaukee, WI, March 2010

Justseeds: Paper Politics for a New Decade, Hillyer Gallery, Washington, DC, January 2010

Justseeds Group Show, Z.A.M, Mexico City, January 2010

Charting Our Course, Reading Frenzy, Portland, OR, November 2009 (co-curator)

Opposable Thumb, Sea Change Gallery, Portland, OR, November 2009 (co-curator)

Confronting the Capitalist Crisis, University of Arizona, Phoenix, AZ, August 2009 (co-curator)

Which Side Are You On? Justseeds group installation, University Of Wisconsin Milwaukee, Union Gallery, March 2009

Justseeds Print Show, Tuscan Cafe Warwick, NY September 2008

Out of the Shell of the Old, Justseeds group installation, Space 1026, Philadelphia, PA, July 2008

Mayday Political Poster Show, Kismet Gallery, Troy, NY, May 2008

Changing Landscapes, City Club of Portland, May 2008

Justseeds Print Show, Kismet Gallery, Troy, NY, March 2008

Awards/Recognition:

Ucross Residency, Ucross, Wyoming, October 2015

RACC Artistic Focus Grant, December 2014

Sitka Center for Art and Ecology residency, November 2014

RACC Artistic Focus grant, December 2013

Caldera Arts Center Residency, February 2013

Ford Family Foundation Grant, September 2012

Signal Fire Residency, July 2011

RACC Public Art Murals Grant, 2011

Oregon Arts Council Opportunity Grant, 2011

RACC Artistic Focus grant, 2010

Grand Prix at International Print Biennial, Ljubljana, 2009 (as member of Justseeds)

Puffin Foundation Grant, 2008

Best Puppet Show, City Pages, Minneapolis, MN, December 2004

Publications/Press:

"Whiteness Goggles" set out to change how you see cultural appropriation, http://www.huffingtonpost.com/entry/whiteness-goggles-cultural-appropriation-roger-peet_us_55a7f7d3e4b04740a3df470c

Northeast Portland Artist Roger Peet takes on Democratic Republic of Congo Conservation, http://www.oregonlive.com/portland/index.ssf/2014/04/northeast_portland_artist_roger.html

Printmaker Roger Peet at Caldera, <http://www.opb.org/artsandlife/article/gallery-slideshow-printmaker-roger-peet-at-caldera/>

Warlords, Sorcery and Wildlife: an Environmental Artist Ventures into the Congo, Mongabay.com, <http://news.mongabay.com/2013/0225-hance-peet-interview.html>

Bandanas for Congo: Planning for Park Crosses the Fabric of Culture, Bear Deluxe Magazine, Portland, Oregon, issue 34, Spring 2013

Nothing Shy in the Art of Occupy, Washington Post, Dec. 6, 2011

An Artistic Alliance, The Jakarta Post Weekender, Jakarta, Indonesia, February 2010

Monkey Business, Bear Deluxe Magazine, Portland, Oregon, issue 31, Winter 2010

Firebrands, Microcosm Publications, Portland OR, 2010

Whole Terrain, Antioch University New England, Vol. 16, 2009

Paper Politics, PM Press, Oakland CA 2009

Taring Padi, in *Realizing the Impossible,* AK Press, Oakland CA 2007

Jar of Mold, Tempest press, Minneapolis, MN, 2005

City Pages Best of the Twin Cities, Minneapolis, Dec, 2004

Lectures:

Conservation Theater in Dangerous Environments, the Alleyway, Portland OR, Jan 2014

Art and Conservation in the Congo, The Waypost, Portland OR, March 2013

Printernational at Justseeds Shadow Conference, SGCI, Milwaukee, March 2013

Caldera Arts Center Artists in Residence program, February 2013

Pacific Northwest College of Art Printmaking class, Paul Mallowney, March 2011

Portland State University MFA Program Monday Night Lecture Series, January 2011

PNCA Intro to Design class, Ryan Pierce, 2010

PNCA Printmaking department, Heather McLaughlin, August 2010

Project Websites:

Justseeds Artists' Cooperative – <http://www.justseeds.org/>

Migration Now!: A portfolio addressing migrant issues – <http://migrationnow.com/>

Lomami Bandanas: Art and Conservation Projects in DR Congo –
<http://lomamibandanas.tumblr.com/>

Viande de Brousse: A Bushmeat Food-Cart - <http://www.viandedebrousse.com/>

We Agree: A Crisis in Common; a Collaboration with Taring Padi Printmaking Cooperative,
Yogyakarta, Indonesia - <http://crisis-in-common.blogspot.com/>

Endangered Species Mural

Project Sponsors



Because life is good.

Center for Biological Diversity
Roger Peet, artist



Hendrix College
Odyssey Program
Maxine Payne, Professor of Art



U.S. Fish and Wildlife Service
Arkansas Ecological Service Field Office



City of Conway



Conway Public Art Board



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

Date: November 17, 2016

To: Steve Ibbotson
Jody Spradlin

Cc: Brandy Arnold
Rhonda Sutton

From: Lisa Mabry-Williams

Subject: Years of Service Recognition – Presentation of Pins

The City will present service pins in recognition of employees with 5, 10, 15, 20, 25 and 30 years of service at the 2nd City Council Meeting of each month. Mayor Townsell will present the pins to the employees. During the Council meeting on Tuesday, November 22nd at 6:30 p.m. the following employees are eligible to receive a pin:

Years of Service	Name	Date of Hire	Department
5	Officer Tim Gray	11/07/2011	Police
10	Jim Elliott, Parks Development Manager	1/06/2006	Parks & Recreation

We would like to extend an invitation to the above listed employees to attend the City Council meeting at 6:30 p.m. on Tuesday, November 22nd, 2016. The service pin presentation will be the first item on the Council agenda.



City of Conway, Arkansas
Monthly Financial Reports
October 31, 2016

City of Conway
 Monthly Financial Report - General Fund
 For the month ended October 31, 2016



Revenues	Budget	Month	Year to	Encumbered	(Over)/Under	
		Activity	Date		Budget	%
					Budget	Expend/Collect
Ad Valorem Tax	3,800,000	374,692	1,908,491		1,891,509	50%
Payments in Lieu of Tax	31,250	212,788	238,468		(207,218)	763%
State Tax Turnback	883,250	64,220	812,517		70,733	92%
Insurance Tax Turnback - LOPFI	1,100,000	242,680	1,255,364		(155,364)	114%
Sales Tax	18,200,000	1,527,755	15,050,145		3,149,855	83%
Beverage Tax	400,000	30,327	331,533		68,467	83%
Franchise Fees	3,511,000	274,078	2,673,033		837,967	76%
Permits	298,000	33,981	494,437		(196,437)	166%
ACIEA Revenues	5,000	1,331	5,581		(581)	112%
Dog Tags & Fees	25,000	2,580	24,393		607	98%
Municipal Court Fines and Fees	1,042,500	72,259	825,681		216,819	79%
Law Enforcement	802,402	28,258	508,413		293,989	63%
State Grant Revenues	-	-	292,529		(292,529)	-
Parks	552,500	33,401	486,156		66,344	88%
Interest Income	17,000	4,039	24,281		(7,281)	143%
Proceeds from Sale of Assets	-	-	432		(432)	-
Insurance Proceeds	30,726	-	30,765		(39)	100%
Donations	23,019	5,000	24,723		(1,704)	107%
Act 833 Revenue	90,000	26,303	72,375		17,625	80%
Miscellaneous Revenues	124,150	17,052	114,428		9,722	92%
Transfers from Other Funds	423,000	35,250	352,500		70,500	83%
Total Revenues	31,358,797	2,985,993	25,526,242	-	5,832,555	81%
Expenditures						
Admin (Mayor, HR)	637,529	38,637	466,962	1,025	169,542	73%
Finance	464,407	36,490	384,982	669	78,757	83%
City Clerk/Treasurer	171,569	10,753	110,667	-	60,901	65%
City Council	91,913	7,564	63,811	-	28,102	69%
Planning	390,360	29,862	291,653	23	98,685	75%
Physical Plant	547,813	37,469	355,107	1,452	191,255	65%
Fleet Maintenance	133,182	14,457	114,047	3,682	15,452	86%
Information Technology	1,128,312	70,616	803,691	89,438	235,183	71%
Airport	-	(22,680)	123,742	-	(123,742)	-
Permits and Inspections	671,437	56,763	494,564	256	176,617	74%
Nondepartmental	605,700	13,694	600,870	2,174	2,655	99%
Police	11,145,696	855,621	8,661,725	85,595	2,398,376	78%
CEOC	1,029,201	77,882	793,128	134	235,938	77%
Animal Welfare	450,362	35,173	328,071	734	121,556	73%
Municipal District Court	871,042	65,057	664,447	-	206,595	76%
City Attorney	493,622	33,733	386,063	53	107,506	78%
Fire	9,578,309	702,294	7,731,752	49,154	1,797,403	81%
Parks	2,920,566	267,955	2,091,675	32,732	796,158	72%
Total Expenditures	31,331,019	2,331,339	24,466,958	267,121	6,596,940	78%
Net Revenue/(Expense)	27,778		1,059,285			

*All figures are unaudited

Notes:

1) Budget column is current budget which includes all year-to-date adjustments, if any.

City of Conway
General Fund
2016
Fund Balance Appropriations



<u>Ordinance</u>	<u>Date</u>	<u>Description</u>	<u>Amount</u>
O-16-18	2/23/16	Planning Dept interim Deputy Director	14,000
O-16-37	4/12/16	Entry level police officer/firefighter promotional testing	5,000
O-16-38	4/26/16	Mosquito abatement program	150,000
O-16-63	5/24/16	Contract with Jeff West for IT support	8,000
O-16-65	6/14/16	Remodel City Attorney's office	27,064
O-16-87	7/26/16	Entry level firefighter and police promotional testing	13,400
O-16-104	9/13/16	HVAC Repairs at City Hall	8,000
			<u>\$ 225,464</u>

City of Conway
 Balance Sheet - General Fund
 For the month ended October 31, 2016



Cash - Operating	6,435,023
Cash - Reserve	2,011,965
Petty Cash	715
Taxes Receivable	3,226,136
Accounts Receivable	2,810,220
Due from Other Funds	1,197
Due from Street	21,324
Due from Component Unit	187,858
Fleet Inventory	15,539
Fuel Inventory	15,094
General Inventory	585
<i>Assets</i>	<u>14,725,657</u>
Accounts Payable	145,555
Salaries Payable	223,136
Insurance and Benefits Payable	94,853
Event Deposits	520
Deferred Revenue	3,009,536
<i>Liabilities</i>	<u>3,473,601</u>
Fund Balance - Committed to cash flow	2,000,000
Fund Balance - Committed to reserve	2,000,000
Fund Balance - Unassigned	7,252,056
<i>Fund Balance</i>	<u>11,252,056</u>
<i>Total Liabilities & Fund Balance</i>	<u>14,725,657</u>

*All figures are unaudited

City of Conway
 Monthly Financial Report - Street Fund
 For the month ended October 31, 2016



	<u>Budget</u>	<u>Month Activity</u>	<u>Year to Date</u>	<u>Encumbered</u>	<u>(Over)/Under Budget</u>	<u>% Expend/Collect</u>
Revenues						
Ad Valorem Tax	1,440,000	138,256	789,693		650,307	55%
Payments in Lieu of Tax	15,000	-	-		15,000	0%
State Tax Turnback	3,579,020	328,645	3,160,012		419,008	88%
Severance Tax	250,000	15,091	93,396		156,604	37%
Sales Tax	250,000	21,407	210,879		39,121	84%
Sign Permits	500	-	300		200	60%
Engineering Fees	10,000	2,420	5,570		4,430	56%
Insurance Proceeds	-	-	19,775		(19,775)	-
Interest Income	20,000	2,049	19,995		6	100%
Miscellaneous Revenues	5,050	-	9,546		(4,496)	189%
Total Revenues	5,569,570	507,868	4,309,165	-	1,260,405	77%
Expenditures						
Personnel Costs	2,385,177	144,917	1,590,121	-	795,055	67%
Other Operating Costs	<u>1,987,471</u>	<u>141,575</u>	<u>1,004,233</u>	<u>38,578</u>	<u>944,661</u>	<u>51%</u>
Total Operating Costs	4,372,648	286,492	2,594,354	38,578	1,739,716	59%
Capital Outlay	<u>3,365,277</u>	<u>-</u>	<u>2,174,608</u>	<u>119,900</u>	<u>1,070,769</u>	<u>65%</u>
Total Expenditures	7,737,925	286,492	4,768,962	158,478	2,810,485	62%
Net Revenue/(Expense)	(2,168,355)		<u>(459,797)</u>			

*All figures are unaudited

Notes:

- 1) Budget column is current budget which includes all year-to-date adjustments, if any.

City of Conway
Street Fund
2016



Fund Balance Appropriations

<u>Ordinance</u>	<u>Date</u>	<u>Description</u>	<u>Amount</u>
O-16-40	4/26/16	Contribution to AHTD for Dave Ward Dr project	2,000,000
O-16-47	5/10/16	Demolish house at 2901 College Ave	5,700
			<u>\$ 2,005,700</u>

City of Conway
Balance Sheet - Street Fund
For the month ended October 31, 2016



Cash - Operating	3,740,730
Taxes Receivable	102,826
Accounts Receivable	1,603,427
<i>Assets</i>	<u>5,446,983</u>
Accounts Payable	21,167
Salaries Payable	18,797
Insurance and Benefits Payable	14,798
Due to General	18,029
Deferred Revenue	1,294,270
<i>Liabilities</i>	<u>1,367,060</u>
<i>Fund Balance</i>	4,079,923
<i>Total Liabilities & Fund Balance</i>	<u>5,446,983</u>

*All figures are unaudited

City of Conway
 Monthly Financial Report - Sanitation
 For the month ended October 31, 2016



Revenues	<u>Budget</u>	<u>Month</u> <u>Activity</u>	<u>Year to</u> <u>Date</u>	<u>Encumbered</u>	<u>(Over)/Under</u> <u>Budget</u>	<u>%</u> <u>Expend/Collect</u>
Sanitation Fees	8,750,000	760,100	7,413,046		1,336,954	85%
Proceeds - Recycled Materials	400,000	29,089	457,338		(57,338)	114%
Landfill Fees - General	225,000	(17,589)	138,290		86,710	61%
Insurance Proceeds	181,078	-	181,078		-	100%
Interest Income	55,000	6,760	64,043		(9,043)	116%
Miscellaneous Revenues	-	-	58,211		(58,211)	=
Total Revenues	9,611,078	778,360	8,312,006	-	1,299,072	86%
Expenditures						
Personnel Costs	4,000,646	264,606	3,026,241	-	974,404	76%
Other Operating Costs	2,984,375	203,965	1,822,655	77,470	1,084,250	61%
Total Operating Costs	6,985,021	468,572	4,848,896	77,470	2,058,655	69%
Capital Outlay	3,864,815	-	1,137,455	616,699	2,110,661	29%
Total Expenditures	10,849,837	468,572	5,986,351	694,170	4,169,316	55%
Net Revenue/(Expense)	(1,238,758)		2,325,655			

***All figures are unaudited**

Notes:

- 1) Budget column is current budget which includes all year-to-date adjustments, if any.
- 2) Capital outlay is shown here for budgeting purposes, but only depreciation expense will be recorded at year end.

City of Conway
Sanitation Fund
2016

Fund Balance Appropriations



<u>Ordinance</u>	<u>Date</u>	<u>Description</u>	<u>Amount</u>
			<u>\$ -</u>

City of Conway
 Balance Sheet - Sanitation
 For the month ended October 31, 2016



Cash - Operating	5,975,483
Petty Cash	200
Post Closure Cash Account	5,583,580
Accounts Receivable	735
Due from Other Funds	11,500
Due from Component Unit	862,034
General Inventory	2,122
Land & Buildings	2,590,795
Infrastructure	1,090,182
Machinery and Equipment	4,200,890
Vehicles	100,710
<i>Assets</i>	<u>20,418,232</u>
Accounts Payable	35,498
Salaries Payable	195,124
Insurance and Benefits Payable	16,646
Net Pension Obligation	1,286,026
Due to Other Funds	(5,743)
Landfill Close/Post Close	7,926,380
<i>Liabilities</i>	<u>9,453,930</u>
<i>Net Assets</i>	<u>10,964,302</u>
<i>Total Liabilities and Net Assets</i>	<u>20,418,232</u>

***All figures are unaudited**

Note: Capital assets shown at book value (cost less accumulated depreciation).

City of Conway
 Monthly Financial Report - Airport
 For the month ended October 31, 2016



	<u>Budget</u>	<u>Month</u> <u>Activity</u>	<u>Year to</u> <u>Date</u>	<u>Encumbered</u>	<u>(Over)/Under</u> <u>Budget</u>	<u>%</u> <u>Expend/Collect</u>
Revenues						
Airport Fuel Sales	761,000	55,800	518,338		242,662	68%
Sales Tax	18,000	1,022	10,956		7,044	61%
T-Hangar Rent	118,000	11,321	80,301		37,699	68%
Community Hangar Rent	15,000	1,660	9,891		5,109	66%
Ground Leases	135,000	8,712	119,033		15,968	88%
Miscellaneous Revenues	9,000	675	7,621		1,379	85%
Total Revenues	1,056,000	79,190	746,140	-	309,860	71%
Expenditures						
Personnel Costs	204,700	37,820	161,129	-	43,571	79%
Fuel for Resale	550,000	70,290	368,835	-	181,165	67%
Other Operating Costs	149,800	7,613	59,869	10,738	79,193	40%
Total Operating Costs	904,500	115,722	589,832	10,738	303,930	65%
Capital Outlay	-	110,295	110,295	18,500	(128,795)	0%
Total Expenditures	904,500	226,017	700,127	29,237	175,135	77%
Net Revenue/(Expense)	151,500		<u><u>46,013</u></u>			

*All figures are unaudited

Notes:

- 1) Budget column is current budget which includes all year-to-date adjustments, if any.
- 2) Capital outlay is shown here for budgeting purposes, but only depreciation expense will be recorded at year end.

City of Conway
Airport Fund
2016



Fund Balance Appropriations

<u>Ordinance</u>	<u>Date</u>	<u>Description</u>	<u>Amount</u>
			<u>\$ -</u>

City of Conway
Balance Sheet - Airport
For the month ended October 31, 2016



Cash - Operating	184,260
Taxes Receivable	2,020
Accounts Receivable - Fuel Vendor	39,072
Due from Other Funds	733
<i>Assets</i>	<u>226,085</u>
Salaries Payable	1,855
Insurance and Benefits Payable	1,468
Due to General	601
<i>Liabilities</i>	<u>3,924</u>
<i>Fund Balance</i>	<u>222,161</u>
<i>Total Liabilities & Fund Balance</i>	<u>226,085</u>

*All figures are unaudited

City of Conway
Monthly Financial Report - Major Project Funds
For the month ended October 31, 2016



Parks and Rec A&P Tax

Balance, 9/30/16	2,401,024
Receipts	262,292
Payments	(539,682)
Balance, 10/31/16	\$2,123,634

Pay as you go Sales Tax

Balance, 9/30/16	3,413,791
Receipts	283,694
Payments	(559,914)
Balance, 10/31/16	\$3,137,571

Street Impact Fees

Balance, 9/30/16	577,932
Receipts	19,973
Payments	-
Balance, 10/31/16	\$ 597,905

Parks Impact Fees

Balance, 9/30/16	338,851
Receipts	5,027
Payments	-
Balance, 10/31/16	\$ 343,878



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

AN ORDINANCE CLOSING A PORTION OF THE PATHWAY AND DRAINAGE RIGHT-OF-WAY AND EASEMENT LOCATED WITHIN LOT 2 PEDIATRICS PLUS SUBDIVISION; AND FOR OTHER PURPOSES;

Whereas, a petition was duly filed with the City Council of the City of Conway, Arkansas on the 19th day of October, 2016 asking the City Council to vacate and abandon all the portion of the “Right of Way and Easement” for pedestrian/bike trail and drainage purposes along Tucker Creek as described in Document 2012-342 that extends into and is located within Lot 2 Pediatrics Plus Subdivision (Plat L-267) as described below.

Whereas, after due notices as required by law, the Council has, at the time and place mentioned in the notice, heard all persons desiring to be heard on the question and has ascertained that the easement or portion thereof, hereinbefore described, has heretofore been dedicated to the public use as an easement herein described; has not been actually used by the public generally for a period of at least 5 years subsequent to the filing of the plat; that all property owners of the property abutting upon the portion of the Right of Way to be vacated have filed with their council their written consent to the abandonment; and that public interest and welfare will not be adversely affected by the abandonment of the portion Right of Way.

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

Section 1. The City of Conway, Arkansas releases, vacates, and abandons all its rights, together with the rights of the public generally, in and to the portion of the “Right of Way and Easement” for pedestrian/bike trail and drainage purposes along Tucker Creek as described in Document 2012-342 that extends into and is located within Lot 2 Pediatrics Plus Subdivision (Plat L-267), designated as follows:

A portion of an existing Right of Way and Easement for Pedestrian / Bike Trail and Drainage purposes as described in Document 2012-342 that extends into and is located within Lot 2 Pediatrics Plus Subdivision (Plat L-267) being situated in part of the NW 1/4 SW 1/4 Section 11, T-5-N, R-14-W, Faulkner County, Arkansas being more particularly described as follows:

Commencing at the northwest corner of the NW 1/4, SW 1/4 Section 11, T-5-N, R-14-W, Faulkner County, Arkansas, thence S87°51'42”E, along the north line of said NW 1/4, SW 1/4 Section 11, 557.02 feet; thence S01°58'50”W, 40.00 feet to the northwest corner of Lot 3 Pediatrics Plus Subdivision; thence S87°51'42” E along said north line Lot 3, 115.07 feet to the northwest corner of Lot 2 Pediatrics Plus Subdivision and the point of beginning; thence continuing S87°51'42”E along the north line of said Lot 2, 54.60 feet;

thence S02°08'18"E, 70.00 feet; thence N87°51'42"W, 63.65 feet to the westerly line of said Lot 2, thence N09°35'02"E, 70.62 feet along said west line to the point of beginning and containing 0.095 acres, more or less.

Section 2. A copy of the ordinance, duly certified by the City Clerk, shall be filed in the office of the recorder of the county and recorded in the deed records of the county.

PASSED this 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer

00348

②
City

RIGHT OF WAY AND EASEMENT
With Relinquishment of Dower

KIDS PLAY PROPERTIES, LLC

To

THE CITY OF CONWAY, ARKANSAS

KNOW ALL MEN BY THESE PRESENTS:

Doc#2012- 342
Date 01/09/2012
12:27:43 PM
Filed & Recorded in 362620
Official Records of
Faulkner County
RHONDA WHARTON
FAULKNER COUNTY CIRCUIT CLERK
Fees \$20.00
by LP D.C.

That I, Kids Play Properties, LLC, (GRANTOR), for and in consideration of the sum of One Dollar, to me paid by the City of Conway, Arkansas, a City of the first class, (GRANTEE), cash in hand, the receipt of which is hereby acknowledged, do hereby grant, bargain, sell and convey unto said GRANTEE, its successors and assigns, forever, a right of way and easement for pedestrian/bike trail and drainage purposes along Tucker Creek, across, over and through the following described lands, owned by me and situated in Faulkner County, Arkansas, to-wit:

LEGAL DESCRIPTION

A strip of land across the portion of a parcel of land situated in part of the NW ¼, SW ¼, Section 11, T-5-N, R-14-W, Faulkner County, Arkansas, said strip being more particularly described as follows:

Commencing at the Northwest Corner of said Northwest Quarter of the Southwest Quarter and run thence S 87°51'42" E along the north line of said Northwest Quarter of the Southwest Quarter for a distance of 557.02 feet; thence S 01°58'00" W for a distance of 40.64 feet; thence S 87°51'42" E for a distance of 24.52 feet to the Point of Beginning; continue thence S 87°51'42" E for a distance of 145.25 feet; thence S 02°08'18" W for a distance of 70.00 feet; thence N 87°51'42" W for a distance of 83.50 feet, thence N 02°08'18" E for a distance of 65.84 feet; thence S 63°21'24" W for a distance of 41.82 feet; thence S 01°55'33" W for a distance of 56.00 feet; thence S 19°42'34" W for a distance of 110.52 feet; thence N 87°51'42" W for a distance of 15.92 feet; thence N 01°58'18" E for a distance of 32.25 feet; thence N 19°42'34" E a distance of 80.69 feet; thence N 01°55'33" E a distance of 76.48 feet to the Point of Beginning, containing 0.25 Acres more or less

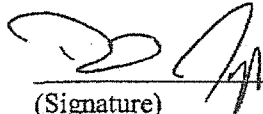
Together with the rights, easements and privileges in or to said lands that may be required for the full enjoyment of the right herein granted.

TO HAVE AND TO HOLD the same unto the said City of Conway, Arkansas, and to its successors and assigns forever.

AND I, hereby covenant with the said City of Conway, Arkansas that I will forever warrant and defend the title to said lands and property against the lawful claims of any and all persons whomsoever.

AND I, do hereby release and relinquish unto the said grantee all my right of dower or courtesy and homestead in and to said lands.

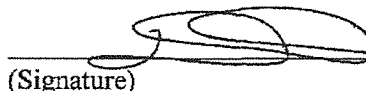
Witness my signature on this 30th day of December, 2011.



(Signature)
David Tapp

(Printed Name)
2740 college Ave

(Address)
Conway, AR 72037



(Signature)
Todd Denton

(Printed Name)
2740 College Ave

(Address)
Conway, AR 72037

ACKNOWLEDGMENT

STATE OF ARKANSAS
County of Faulkner.

BE IT REMEMBERED, That on this day came before the undersigned, a Notary Public within and for the County aforesaid, duly commissioned and acting, David Tapp and Todd Denton to me well known as the GRANTOR in the foregoing instrument, and acknowledged that they had executed the same for the consideration and purposes therein mentioned and set forth.

WITNESS my hand and seal as such Notary Public this 30th day of December, 2011.



Notary Public

My Commission Expires:

5 May 2020



CERTIFICATE OF RECORD
Doc#2012- 342

01/09/2012

12:27:43 PM

Filed and Recorded in Official Records of

FAULKNER COUNTY

RHONDA WRIGHT

FAULKNER COUNTY CIRCUIT CLERK

by 

D.C.

**Petition of written consent for the Vacating the
Portion of Pathway and Drainage Right of Way and Easement
Located on Lot 2 Pediatrics Plus Subdivision
For the intent of Public Use**

Name of Right of Way and Easement, (or portion thereof), to be vacated:

The portion of the "Right of Way and Easement" for Pedestrian/Bike Trail and Drainage Purposes along Tucker Creek as described in Document 2012-342 that extends into and is located within Lot 2 Pediatrics Plus Subdivision (Plat L-267)

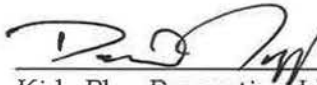
Legal Description of Easement to be vacated:

LEGAL DESCRIPTION

A portion of an existing Right of Way and Easement for Pedestrian / Bike Trail and Drainage Purposes as described in Document 2012-342 that extends into and is located within Lot 2 Pediatrics Plus Subdivision (Plat L-267) being situated in part of the NW ¼, SW ¼ Section 11, T-5-N, R-14-W, Faulkner County, Arkansas being more particularly described as follows:

Commencing at the Northwest Corner of the NW 1/4, SW 1/4 Section 11, T-5-N, R-14-W, Faulkner County, Arkansas, thence S87°51'42"E, along the north line of said NW 1/4, SW 1/4 Section 11, 557.02 feet; thence S01°58'50"W, 40.00 feet to the Northwest Corner of Lot 3 Pediatrics Plus Subdivision; thence S87°51'42"E along said north Line Lot 3, 115.07 feet to the Northwest Corner of Lot 2 Pediatrics Plus Subdivision and The Point of Beginning; Thence continuing S87°51'42"E along the north line of said Lot 2 feet, 54.60 feet.; thence S02°08'18"E, 70.00 feet; thence N87°51'42"W, 63.65 feet to the westerly line of said Lot 2; thence N09°35'02"E, 70.62 feet along said west line to the Point of Beginning and containing 0.095 acres more or less.

Signature of abutting property owners:

Name	Address
 Kids Play Properties, LLC -Owner Lot 2 Ped Plus Sub.	2725 College Ave. Conway, Ar. 72034
_____	_____
_____	1201 Oak Street Conway , AR. 72032
City of Conway, Arkansas - Owner Lot 3 Ped Plus Sub.	_____
_____	_____

2802 COLLEGE

2760 COLLEGE AVE

COLLEGE AVE

PROPOSED EASEMENT CLOSURE

2823 COLLEGE

2755 COLLEGE AVE

2755 COLLEGE AVE

2725 COLLEGE AVE

10 LAURA LN

8 LAURA LN

6 LAURA LN

4 LAURA LN

2 LAURA LN





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

A RESOLUTION REQUESTING THE FAULKNER COUNTY TAX COLLECTOR PLACE A CERTIFIED LIEN AGAINST REAL PROPERTY AS A RESULT OF INCURRED EXPENSES BY THE CITY OF CONWAY; AND FOR OTHER PURPOSES.

Whereas, in accordance with Ark. Code Ann. § 14-54-901, the City of Conway has corrected conditions existing on 66 Briarwood Circle within the City of Conway and is entitled to compensation pursuant to Ark. Code § 14-54-904: and

Whereas, State law also provides for a lien against the subject property, with the amount of lien to be determined by the City Council at a hearing held after the notice to the owner thereof by certified mail with said amount \$193.95 (\$149.05 + Penalty-\$14.90 + filing fee-\$30.00) to be thereafter certified to the Faulkner County Tax Collector; and

Whereas, a hearing for the purpose of determine such lien has been set for **November 22, 2016** in order to allow for service of the attached notice of same upon the listed property owners, by certified or publication as is necessary.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Conway, Arkansas that:

Section 1: That after said public hearing the amount listed above is hereby certified and is to be forwarded to the Faulkner County Tax Collector and Assessor by the City of Conway.

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

ADOPTED this 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer

City of Conway
Code Enforcement
1201 Oak Street
Conway, Arkansas 72032



Missy Lovelady
Phone: 501-450-6191
Fax: 501-450-6144

MEMO:

To: Mayor Tab Townsell
CC: City Council Members

From: Missy Lovelady
Date: November 8, 2016

Re: 66 Briarwood Circle

- October 6, 2016– Warning Violation written regarding grass in the yard by Kim Beard.
- Property Owner is listed as Arthur Buras.
- Property was rechecked on 10/13/2016 with no progress made.
- Final Cleanup completed on 10/19/2016.
- Certified and regular letters were sent including date, time & place of the City Council meeting.

If you have any questions please advise.

INVOICE

City of Conway
Code Enforcement

DATE: NOVEMBER 18, 2016

1201 Oak Street
Conway, AR 72032
Phone: 501-450-6191
Fax 501-450-6144
missy.schrag@cityofconway.org

TO Arthur Buras
66 Briarwood Cir
Conway AR 72034

Description: Mowing/Clean-up/Admin Fees associated with the nuisance abatement at 66 Briarwood Circle, Conway Arkansas

CODE ENFORCEMENT OFFICER	PARCEL NUMBER	PAYMENT TERMS	DUE DATE
Kim Beard	710-09029-000		November 22, 2016

HOURS	DESCRIPTION	UNIT PRICE	LINE TOTAL
2	2 Employee -Mowing/Cleanup	16.62	33.24
2	2 PT Employee -Mowing/Cleanup	10.94	21.88
1	1 Employee - Mowing/Cleanup	18.82	18.82
1	Maintenance fee (mower)	15.00	15.00
1	Administrative Fee (Missy Lovelady)	20.49	20.49
1	Administrative Fee (Kim Beard)	17.46	17.46
1	Administrative Fee (Michelle Collins)	10.94	10.94
2	Certified Letter	5.13	10.26
2	Regular letter	.48	.96

TOTAL BY 11/22/16 \$149.05

- Total amount due after November 22, 2016 includes collection penalty & filing fees

TOTAL AFTER 11/8/16 \$193.95

Make all checks payable to City of Conway Code Enforcement @ 1201 Oak Street Conway Arkansas 72032

City of Conway
Code Enforcement

1201 Oak Street
Conway, Arkansas 72032
www.cityofconway.org



Missy Lovelady
Conway Permits & Code Enforcement
Phone 501-450-6191
Fax 501-450-6144

October 21, 2016

Parcel # 710-09029-000

Arthur Buras
66 Briarwood Cir
Conway AR 72034

RE: Nuisance Abatement at 66 Briarwood Cir., Conway AR
Cost of Clean-Up, Amount Due: \$149.05

To whom it may concern:

Because you failed or refused to remove, abate or eliminate certain conditions on the aforementioned real property in the City of Conway, after having been given seven (7) days notice in writing to do so, the City of Conway was forced to undertake the cleanup of this property to bring it within compliance of the Conway Municipal Code.

The City of Conway is requesting payment for all costs expended in correcting said condition. If after thirty (30) days from the receipt of this letter notifying you of the cost to correct said condition, such payment has not been remitted to the City, the City has the authority to file a lien against real estate property for the cost expended after City Council approval.

At its **November 22, 2016 Meeting**, 6:30 p.m. located at 810 Parkway Street, the City Council will conduct a public hearing on three items:

1. Consideration of the cost of the clean-up of your real property.
2. Consideration of placing a lien on your real property for this amount.
3. Consideration of certifying this amount determined at the hearing, plus a ten percent (10%) penalty for collection & filing fees, to the Tax Collector of Faulkner County to be placed on the tax books as delinquent taxes and collected accordingly.

None of these actions will be necessary if full payment is received before the meeting date. Please make check payable to the **City of Conway** and mail to **1201 Oak Street Conway Arkansas 72032** with the **attention to Missy Lovelady**. If you have any questions, please feel free to call me at 501-450-6191.

Sincerely,

Missy Lovelady

**Conway Code Enforcement
Incident Report**

Date of Violation: 10/06/16

Violator Name: Arthur Buras

Address of Violation: 66 Briarwood Circle

Violation Type: Grass

Warning #: CE9246

Description of Violation and Actions Taken: On 10/06/16 Code Enforcement Officer Kim Beard wrote a warning violation to correct grass. Property was rechecked on 10/13/16 with no progress made. Final cleanup was completed on 10/19/16.

Code Enforcement Officer: Kim Beard

Officer Signature: _____

Date:

Time:



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

A RESOLUTION REQUESTING THE FAULKNER COUNTY TAX COLLECTOR PLACE A CERTIFIED LIEN AGAINST REAL PROPERTY AS A RESULT OF INCURRED EXPENSES BY THE CITY OF CONWAY; AND FOR OTHER PURPOSES.

Whereas, in accordance with Ark. Code Ann. § 14-54-901, the City of Conway has corrected conditions existing on 26 Briarwood Circle within the City of Conway and is entitled to compensation pursuant to Ark. Code § 14-54-904: and

Whereas, State law also provides for a lien against the subject property, with the amount of lien to be determined by the City Council at a hearing held after the notice to the owner thereof by certified mail with said amount **\$265.74** (\$214.31 + Penalty-\$21.43 + filing fee-\$30.00) to be thereafter certified to the Faulkner County Tax Collector; and

Whereas, a hearing for the purpose of determine such lien has been set for **November 22, 2016** in order to allow for service of the attached notice of same upon the listed property owners, by certified or publication as is necessary.

NOW THEREFORE BE IT RESOLVED that the City Council of the City of Conway, Arkansas that:

Section 1: That after said public hearing the amount listed above is hereby certified and is to be forwarded to the Faulkner County Tax Collector and Assessor by the City of Conway.

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

ADOPTED this 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer

City of Conway
Code Enforcement
1201 Oak Street
Conway, Arkansas 72032



Missy Lovelady
Phone: 501-450-6191
Fax: 501-450-6144

MEMO:

To: Mayor Tab Townsell
CC: City Council Members

From: Missy Lovelady
Date: November 8, 2016

Re: 26 Briarwood Circle

- October 6, 2016– Warning Violation written regarding grass; rubbish & trash in the yard by Kim Beard.
- Property Owner is listed as Elizabeth Jackson.
- Property was rechecked on 10/13/2016 with no progress made.
- Final Cleanup completed on 10/19/2016.
- Certified and regular letters were sent including date, time & place of the City Council meeting.

If you have any questions please advise.

INVOICE

City of Conway
Code Enforcement

DATE: NOVEMBER 18, 2016

1201 Oak Street
Conway, AR 72032
Phone: 501-450-6191
Fax 501-450-6144
missy.schrag@cityofconway.org

TO Elizabeth M Jackson
26 Briarwood Circle
Conway AR 7234

Description: Mowing/Clean-up/Admin Fees
associated with the nuisance abatement at
26 Briarwood Circle, Conway Arkansas

CODE ENFORCEMENT OFFICER	PARCEL NUMBER	PAYMENT TERMS	DUE DATE
Kim Beard	710-09038-000		November 22, 2016

HOURS	DESCRIPTION	UNIT PRICE	LINE TOTAL
2	2 Employee -Mowing/Cleanup	16.62	33.24
2	2 PT Employee -Mowing/Cleanup	10.94	21.88
1	1 Employee - Mowing/Cleanup	18.82	18.82
	Sanitation ticket #572497 & 572524		65.26
1	Maintenance fee (mower)	15.00	15.00
1	Administrative Fee (Missy Lovelady)	20.49	20.49
1	Administrative Fee (Kim Beard)	17.46	17.46
1	Administrative Fee (Michelle Collins)	10.94	10.94
2	Certified Letter	5.13	10.26
2	Regular letter	.48	.96

TOTAL BY 11/22/16 \$214.31

- Total amount due after November 22, 2016 includes collection penalty & filing fees

TOTAL AFTER 11/8/16 \$265.74

Make all checks payable to City of Conway Code Enforcement @ 1201 Oak Street Conway Arkansas 72032

City of Conway
Code Enforcement

1201 Oak Street
Conway, Arkansas 72032
www.cityofconway.org



Missy Lovelady
Conway Permits & Code Enforcement
Phone 501-450-6191
Fax 501-450-6144

October 21, 2016

Parcel # 710-09038-000

Elizabeth M Jackson
26 Briarwood Cir
Conway AR 72034

RE: Nuisance Abatement at 66 Briarwood Cir., Conway AR
Cost of Clean-Up, Amount Due: \$214.31

To whom it may concern:

Because you failed or refused to remove, abate or eliminate certain conditions on the aforementioned real property in the City of Conway, after having been given seven (7) days notice in writing to do so, the City of Conway was forced to undertake the cleanup of this property to bring it within compliance of the Conway Municipal Code.

The City of Conway is requesting payment for all costs expended in correcting said condition. If after thirty (30) days from the receipt of this letter notifying you of the cost to correct said condition, such payment has not been remitted to the City, the City has the authority to file a lien against real estate property for the cost expended after City Council approval.

At its **November 22, 2016 Meeting**, 6:30 p.m. located at 810 Parkway Street, the City Council will conduct a public hearing on three items:

1. Consideration of the cost of the clean-up of your real property.
2. Consideration of placing a lien on your real property for this amount.
3. Consideration of certifying this amount determined at the hearing, plus a ten percent (10%) penalty for collection & filing fees, to the Tax Collector of Faulkner County to be placed on the tax books as delinquent taxes and collected accordingly.

None of these actions will be necessary if full payment is received before the meeting date. Please make check payable to the **City of Conway** and mail to **1201 Oak Street Conway Arkansas 72032** with the **attention to Missy Lovelady**. If you have any questions, please feel free to call me at 501-450-6191.

Sincerely,

Missy Lovelady

**Conway Code Enforcement
Incident Report**

Date of Violation: 10/06/16

Violator Name: Elizabeth Jackson

Address of Violation: 26 Briarwood Circle

Violation Type: Grass; Rubbish & trash in yard

Warning #: CE9247

Description of Violation and Actions Taken: On 10/06/16 Code Enforcement Officer Kim Beard wrote a warning violation to correct grass and rubbish and trash in yard. Property was rechecked on 10/13/16 with no progress made. Final cleanup was completed on 10/19/16.

Code Enforcement Officer: Kim Beard

Officer Signature: _____

Date:

Time:



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

AN ORDINANCE ACCEPTING AND APPROPRIATING DONATION FUNDS FOR THE CONWAY TREE BOARD FOR ARBOR DAY, TREES IN CELEBRATION, AND FOR OTHER PURPOSES;

Whereas, donations in the amount of \$5,799 have been received in support of the Arbor Day Celebration, Trees in Celebration, and for other expenses.

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

Section 1: The City of Conway, Arkansas, shall accept donation funds in the amount of \$5,799 and appropriate said funds from Donation Account (260-000-4705) to the Tree Board Expense Account (260-000-5430).

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

PASSED this 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

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

Memo:

To: Mayor Tab Townsell
From: Scott Grummer, Planning & Development
Date: 11/18/2016
Re: Siebenmorgen Half Road Improvement

A change order request has been made after further review on site, and discussions with the Engineering firm concerning this Siebenmorgen Half Road Improvement. The culvert which is in the State Hwy. right of way, going under the entrance to Agape Community Church was originally not to be disturbed, but after further review, it was determined that the existing culvert is undersized for the potential storm water volume from upstream improvements. Since the original bid came in under the estimated \$400,000 budget, we are requesting approval to include replacement of this culvert with a new 44" x 27" RCP with F.E.S. (56' Long), see attached.

This change order has been quoted by the contractor in the amount of \$9,810. This will bring the total contract price from \$361,272 to \$371,082.

Craig Custom Construction, LLC

Ryan Saddler , VP
1-501-328-7779

Project : Siebenmorgen Rd
1/2 St Improvement

Attn: Scott Grummer

Change Order : # 1

*****Sheet C-103 R-1

Description of Work :

****Saw Cut , Remove , Replace
Ex. Asphalt , Remove Ex. Culvert
and Install New 44"x27" w/FES
w/ Backfill Class 7

Items Included:	Unit	Price	Total
1. Saw Cut	80 LF	LS	\$100
2. Remove Ex. Asphalt	70 SYD	\$5/syd	\$250
3. Replace Asphalt	40 syd	\$12/syd	\$480
4. Remove Ex. Pipe.	LS	\$200	\$200
5. Replace w/ New Pipe	56/LF	\$105/LF	\$5,880
6. Class 7 backfill , grade, compact...	20/tn	\$20/tn	\$400
7. Qty = 2 FES ,,sections	2 FES	\$1250/ech	\$2,500

Total Cost of Change Order... \$9,810

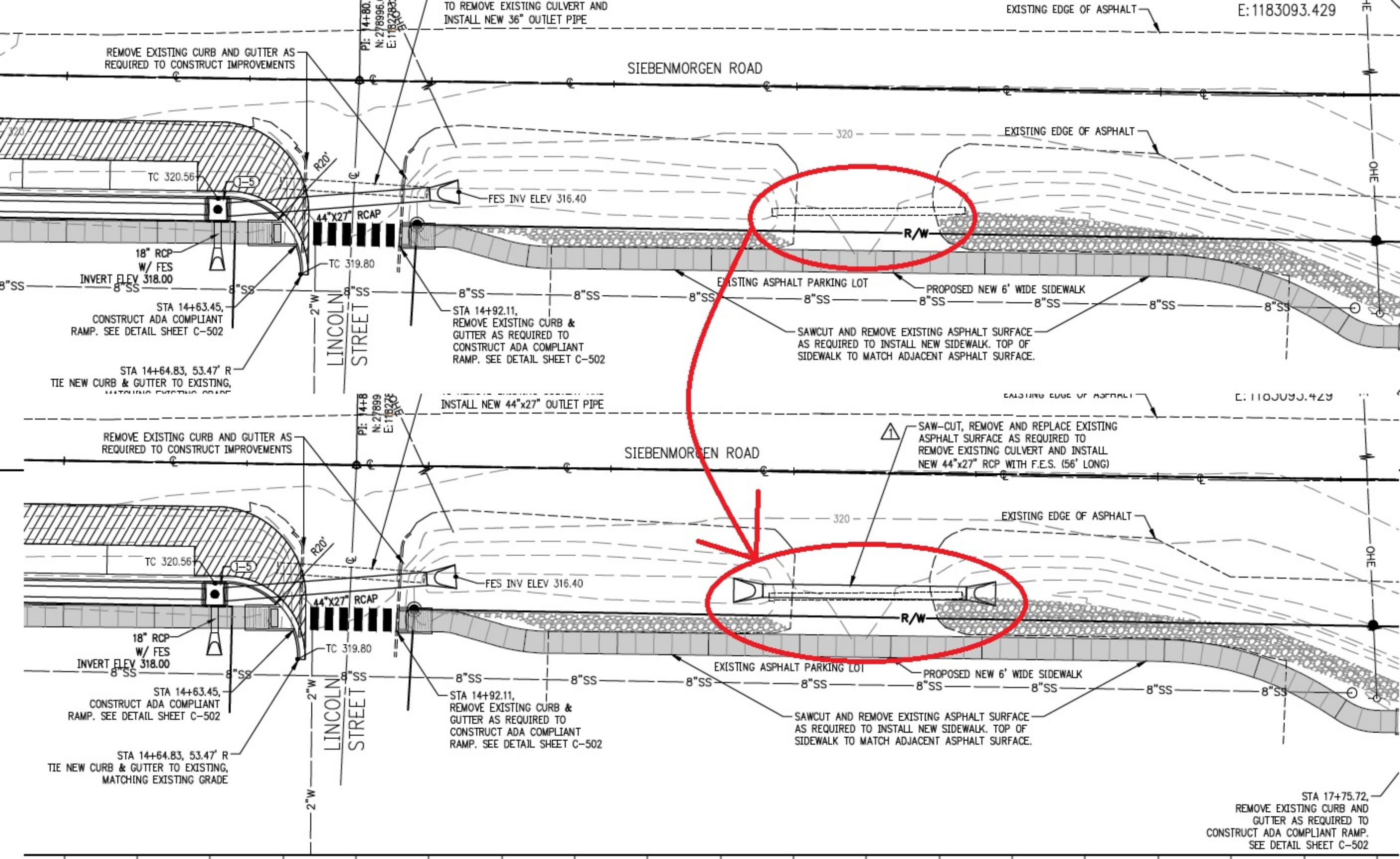
Ryan Saddler , Vp

X _____

Tab Townsell (City of Conway, AR)

X _____

Date : _____



STA 17+75.72,
 REMOVE EXISTING CURB AND
 GUTTER AS REQUIRED TO
 CONSTRUCT ADA COMPLIANT RAMP.
 SEE DETAIL SHEET C-502



**SHORT FORM OF AGREEMENT
BETWEEN OWNER AND ENGINEER
FOR
PROFESSIONAL SERVICES**

THIS IS AN AGREEMENT effective as of October 19, 2016 (“Effective Date”) between

City of Conway Arkansas (“Owner”)

and Crafton, Tull & Associates, Inc. (“Engineer”)

Engineer agrees to provide the services described below to Owner for On Call Landscape and Irrigation Design for a period of two years. (“Project”).

Description of Engineer’s Services: See Exhibit “A” Scope of Basic Services

Street Address of Property *: Various Landscape Services for Roundabouts, Streets, and Public Property for the City of Conway as Requested and directed by the Mayor and / or City Engineer.

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

A. *Preparation of Invoices.* Engineer will prepare invoices in accordance with Engineer’s standard invoicing practices and submit the invoices to Owner.

B. *Payment of Invoices.* Invoices are due and payable upon receipt*. If Owner fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer’s invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for

services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. *Lien Rights**. The Owner understands that the Engineer is entitled to a lien against the property if not paid in full for services provided to improve the property. The Owner understands that this lien can be enforced by the sale of the property if necessary.

* This is a change from the standard EJCDC E-520 form.

3.01 Additional Services

A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.

B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer’s employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer’s employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer’s consultants’ charges, if any.

4.01 Termination

A. The obligation to provide further services under this Agreement may be terminated:

1. For cause,

a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.

b. By Engineer:

upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or

upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.

Engineer shall have no liability to Owner on account of such termination.

c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience, by Owner effective upon the receipt of notice by Engineer.

B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise

provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

6.01 Successors, Assigns, and Beneficiaries

A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.

B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

7.01 General Considerations

A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.

B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work

progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.

C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.

D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.

E. The general conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).

F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.

G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.

H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other

party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

I. Files in electronic media format of text, data, graphics, or other types that are furnished by the Engineer to the Owner or to the Contractor upon the Owner's direction are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.*

J. In the event of a negligent error or omission in the Engineer's designs, plans, Specifications, or other services ("the defect"), the Engineer's sole responsibility and liability for the defect shall not exceed the Engineer's services to re-perform or redesign the plans, specifications, services or other deliverables related to the defect, plus the reasonable direct damages caused by the defect. The Engineer shall not be liable for and damages shall not include the cost of any addition, betterment, or improvement to the Work, nor for any item that otherwise would have been required to complete the Work, nor the cost and expense that would have been incurred by the Owner had such defect not occurred.*

* This is a change from the standard EJCDC E-520 document.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 4 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

9.01 Payment (On Call Hourly Rates Plus Reimbursable Expenses)

A. Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:

1. An amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class for all services performed on the Project, plus reimbursable expenses times a 1.15 multiplier.*

2. Engineer's Standard Hourly Rates are attached as Exhibit "B".

3. The Engineer may subcontract with other consultants to complete the services on the Project. The cost for such subconsultants shall be invoiced over and above the Engineer's hourly fee at cost times a 1.05 multiplier. The Owner shall have the opportunity to approve the use of such subconsultants prior the Engineer engaging their services.*

4. The total compensation for services, not including reimbursable expenses, is estimated to be \$5,750.00 for each of the new roundabouts or project requested by the City of Conway. If compensation for a project is will fees greater than this a separate fee estimate will be provided. Compensation for reimbursable expenses is estimated to be \$500.00.

5. A retainer in the amount of \$ 0.00 for the Engineer to begin work on this project. The amount of the retainer is included in the estimated total amount and will be applied to the final invoice.*

~~B. The Engineer's compensation is conditioned on the time to complete construction not exceeding ___ months. Should the time to complete construction be extended beyond this period, total compensation to Engineer shall be appropriately adjusted.~~

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

OWNER: City of Conway, Arkansas

ENGINEER: CRAFTON, TULL & ASSOCIATES, INC.

By: _____

By:  _____
Gregg Long, ASCE, LEED

Title: _____

Title: Vice President

Date Signed: _____

Date Signed: 10/19/2016

License or Certificate No. and State Arkansas Certificate

of Authorization No. 109

Address for giving notices:

Address for giving notices:

City of Conway Office of the Mayor

1000 LedgeLawn

1201 Oak Street, Conway, AR 72032

Conway, AR 72024

(501) 450-6110

(501) 328-3316

* This is an addition to the standard EJCDC E-520 document.

**Exhibit “A”
Scope of Basic Services For:**

Project:	Landscape and Irrigation Design – On Call Services
Client:	City of Conway, Arkansas
Location of Project:	Varies – Multiple sites around town as determined by City Council.
Discipline:	Landscape Architecture
Discipline Manager:	Frank Riggins
Project Manager:	Barry R. Williams
Proposal Date:	10/19/2016
Billing Type:	Hourly (on-call services for a period of 2 years)
Fee/Estimate:	\$5,750.00
Description of the Construction Project:	Prepare landscape and irrigation plans for various landscape projects in the City of Conway as directed by the City Engineer and Mayor’s office. Plans will be included in original bid sets for the construction of each new roundabout, and additional plans can be generated for the existing roundabouts throughout City.

The Services to be Provided by the Landscape Architect are as Outlined Below:

- Provide a planting plan showing the location and species of each proposed planting. The planting plan will comply with local ordinance where applicable.
- Provide a landscape irrigation plan showing the location and size of the meter, RPZ, valve locations, piping diagram and pipe sizes.
- Provide a cost estimate of the landscape improvements shown on the drawings.
- Provide written technical specifications for the work shown on the landscape and irrigation drawings.
- Provide landscape and irrigation details.
- Drawings will be in *AutoCad* format and will be presented in hardcopy format.
- Construction phase services, including construction administration, construction observation, and final inspection.
- Hardscape design or detailing including seat walls and planting borders. This will not include and paving or hardscape related to the vehicular traffic. However, it may include plaza spaces, parks, and pedestrian corridors

Scope of Basic Services does Not Include the Following:

- As-built documents.
- construction staking.
- Fees or permits.
- Grading and/or drainage design.
- Tree survey and species identification and inventory.

Note: Services listed can be provided for additional fee.

This is the scope of services for the Project. Should there be additions to this scope of services, those services shall be compensated for additional fee.



Exhibit "B"

Standard Hourly Rate Schedule
Effective June 4, 2016

Category	Hourly Rate
CIVIL ENGINEERING	
ENGINEERING PRINCIPAL	\$ 170
SR. ENGINEERING MANAGER	\$ 150
ENGINEERING MANAGER	\$ 135
SR. PROJECT ENGINEER	\$ 115
PROJECT ENGINEER	\$ 105
ENGINEER INTERN II	\$ 90
ENGINEER INTERN I	\$ 80
SR. ENGINEERING DESIGNER	\$ 115
ENGINEERING DESIGNER III	\$ 95
ENGINEERING DESIGNER II	\$ 85
ENGINEERING DESIGNER I	\$ 75
ENGINEERING CAD TECHNICIAN III	\$ 70
ENGINEERING CAD TECHNICIAN II	\$ 55
ENGINEERING CAD TECHNICIAN I	\$ 45
ADMINISTRATIVE	
ADMINISTRATIVE PRINCIPAL	\$ 170
ADMINISTRATIVE MANAGER	\$ 120
ADMINISTRATIVE IV	\$ 80
ADMINISTRATIVE III	\$ 65
ADMINISTRATIVE II	\$ 45
ADMINISTRATIVE I	\$ 35
LANDSCAPE ARCHITECTURE	
SR. LANDSCAPE ARCHITECT	\$ 120
PROJECT LANDSCAPE ARCHITECT	\$ 90
LANDSCAPE ARCHITECTURE DESIGNER	\$ 80
LANDSCAPE ARCHITECT INTERN	\$ 55
PLANNING	
PLANNING MANAGER	\$ 140
SR. PLANNER	\$ 120
PLANNER	\$ 90
PLANNER INTERN	\$ 55

Category	Hourly Rate
INSPECTION	
SR. INSPECTOR	\$ 95
INSPECTOR II	\$ 85
INSPECTOR I	\$ 55
SURVEYING	
PROFESSIONAL SURVEYOR PRINCIPAL	\$ 170
SR. PROFESSIONAL SURVEYOR	\$ 125
PROFESSIONAL SURVEYOR	\$ 95
SURVEY COORDINATOR	\$ 75
SURVEYOR INTERN	\$ 75
SURVEY PARTY CHIEF	\$ 70
SURVEY TECHNICIAN III	\$ 55
SURVEY TECHNICIAN II	\$ 40
SURVEY TECHNICIAN I	\$ 30
GEOGRAPHIC INFORMATION SYSTEMS	
GIS MANAGER	\$ 95
GIS ANALYST	\$ 85
GIS TECHNICIAN II	\$ 55
GIS TECHNICIAN I	\$ 40
REIMBURSABLE EXPENSES	
GPS Equipment.....	\$35/Hour
Robotic Survey Equipment.....	\$20/Hour
LiDAR Scanning Equipment	\$35/Hour
Job Related Mileage.....	\$.54/Mile
Per Diem for Out of Town Crews.....	Per GSA Allowable
Airfare and other travel related expenses.....	At Cost
Black and white 8.5"x11" Copies	\$0.15/sheet
Color 8.5"x11" Copies	\$1.50/sheet
Photo Paper Color Plan Sheet Copies	\$0.75/sq. ft.
Reproducible Plan Copies (Vellum)	\$1.50/sq. ft
Reproducible Plan Copies (Bond)	\$0.35/sq. ft.
All rates are subject to change without notice.	



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

AN ORDINANCE APPROPRIATING THE FUNDS & ENTERING INTO AN AGREEMENT FOR THE BIKE SHARE PROGRAM WITH ZAGSTER; AND FOR OTHER PURPOSES

Whereas, the City of Conway would like to enter into an agreement with Zagster for a bike share program; and

Whereas, bike share offers ample economic and public health benefits to communities as biking has become an increasingly practical, everyday mode of transportation; and

Whereas, some providers only sell hardware or manage the programs, Zagster provides both the hardware and manage the program.

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

Section 1. The City of Conway shall waive the competitive bid process and enter into a three year agreement with Zagster (subject to City Attorney's approval) for a bike share program.

Section 2. The City of Conway shall appropriate \$36,000 from Parks and Recreation A&P Fund Balance Appropriation (252-000-4900) to the Conway Parks Department Parks General CIP Account (252-140-5990). Future funding will be included in the budget.

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

PASSED this 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer



Zagster Master Services Agreement

This Master Services Agreement, including all schedules, exhibits and attachments hereto (this “Agreement”), is made effective as of the date of last signature below (the “Effective Date”), by and between Company situated at the address listed in the Order Form (“Company”), and Zagster, Inc. with a principal place of business located at 25 First Street, Suite 104, Cambridge, MA 02141 (“Zagster”). Defined terms used herein shall have the meanings accorded to such terms herein.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the parties hereto hereby agree as follows:

Company and its Affiliates may place orders for the Zagster Service (as defined in Schedule A) by entering into Zagster’s standard form of order form (each, an “Order Form”) which Order Forms will among other things specify the number of Zagster Bicycles, the Locations and the estimated Launch Dates and will reference this Agreement. Further, the Company and its Affiliates may enter into expansion order forms (each, an “Expansion Order Form”) to add additional Locations and Zagster Bicycles from time to time as mutually agreed to by the parties. This Agreement will be deemed incorporated by reference into each Order Form and Expansion Order Form.

For purposes hereof an “Affiliate” means, any entity directly or indirectly controlled by, controlling or under common control with Company.

Each Affiliate that enters into an Order Form and/or Expansion Order Form with Zagster shall be bound by all terms and conditions of this Agreement and its schedules as if such Affiliate were Company hereunder and all references to Company shall be deemed to refer to the Affiliate for purposes of such Order Form and/or Expansion Order Form. Company will be liable for any breach of this Agreement by its Affiliates and agrees to assist Zagster in enforcing this Agreement with such Affiliates.

The parties agree that the following schedules and attachments are herein incorporated by reference:

- Schedule A – Zagster Service and Fees
- Schedule B – Company Obligations
- Schedule C – General Terms and Conditions

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date set forth below.

Zagster, Inc.

Company: _____

By: _____
Printed Name:
Title:
Date: _____, 201__

By: _____
Printed Name: _____
Title:
Date: _____, 201__

Schedule A
Zagster Service and Fees

1. **Description of Zagster Service.** Pursuant to each Order Form and Expansion Order Form, Zagster will provide the following (collectively, the “Zagster Service”):

- a. The right for Users (as defined below) to access and use bicycles provided by Zagster (collectively, the “Zagster Bicycles”). The number of Zagster Bicycles provided by Zagster under this Agreement shall be as set forth in the Order Form and any Expansion Order Form (as such terms are defined below).
- b. A Site Survey (as defined below) to determine the Locations (as defined below) and the Initial Launch Date (as defined below).
- c. A license to use Zagster’s proprietary bicycle rental management software and mobile application (collectively, the “Zagster Software”) and accompanying User information (the “Documentation”) pursuant to Section 5 below.
- d. Maintenance Services as described in more detail in Section 6 below.
- e. Automated locks and bicycle stations to be used with the Zagster Bicycles, subject to payment of the fees set forth in the Order Form.
- f. Zagster marketing materials (the “Zagster Marketing Materials”).
- g. Zagster customer services for Users. Zagster customer representatives shall have sufficient knowledge to answer questions and provide information concerning, among other things, subscription process, subscription prices, billing, incidents, comments, complaints, malfunction problems and the Locations.
- h. A Zagster Customer Success Manager.

2. **Term of Agreement; Exclusivity.** The initial term of this Agreement will commence on the Effective Date and, unless terminated earlier in accordance herewith, will continue until all Order Forms have terminated or expired (the “Initial Term”). This Agreement will automatically renew for successive terms unless either party gives the other written notice of termination at least thirty (30) days prior to the end of the then-current term (each a “Renewal Term” and together with the Initial Term, the “Term”). During the Term, Company agrees that Zagster shall be the only bicycle sharing and/or bicycle rental service promoted and used by Company at Company Locations.

3. **Launch Date; Site Survey; Locations.**

a. **Initial Launch.** The parties will mutually agree to the estimated initial launch date in the Order Form. The actual initial launch date will be the date that Zagster is able to make the Zagster Service available to the Company at the Location(s) designated in the Order Form. Zagster will notify the Company of the actual initial launch date by email (the “Initial Launch Date”).

b. **Initial Locations.** Company acknowledges and agrees that Zagster may perform a survey of the site(s) where Company desires that the Zagster Bicycles be installed (the “Site Survey”). The parties will mutually agree on the initial location(s) where the Zagster Bicycles will be installed promptly after completion of the Site Survey (the “Initial Location(s)”). The launch of the Zagster Service on the Initial Launch Date is subject to both Zagster and the Company fulfilling all of their obligations under this Agreement which are required to be fulfilled to enable Zagster to launch the Zagster Service at the Initial Location(s), including without limitation payment of the Product and Service Fees set forth in the Order Form(s).

c. **Additional Locations.** Additional Locations (each an “Additional Location” and together with the Initial Locations, the “Locations”) and/or Zagster Bicycles may be added from time to time pursuant to an Expansion Order Form. The parties will mutually agree to the estimated launch date of an Additional Location in the applicable Expansion Order Form. The actual launch date of an Additional Location will be the date that Zagster is able to make the Zagster Service available to the Company at the Additional Location. Zagster will notify the Company of the actual launch date of an Additional Location by email. The launch of an Additional Location is subject to both Zagster and the Company fulfilling all of their obligations under this Agreement which are required to be fulfilled to enable Zagster to launch the

Zagster Service at the Additional Location(s), including without limitation payment of the Product and Service Fees set forth in the applicable Expansion Order Form.

4. Fees; Payment Terms.

a. **Fees.** Company will pay to Zagster the nonrefundable product and one time fees in the amounts, if any, described in the Order Form and any Expansion Order Form (the "Product and One Time Fees"). Company will pay to Zagster the nonrefundable recurring fees (the "Service Lines Fees") set forth on an Order Form and any Expansion Order Form. Zagster will invoice, and the Company will pay, such fees in accordance with the payment terms set forth in the Order Form and any Expansion Order Form, as applicable. The fees do not include applicable taxes, duties and similar charges, all of which will be invoiced separately to Company on the applicable invoice. Zagster reserves the right to charge interest at a rate of 1.5% per month, or the maximum rate permitted by applicable law, whichever is less, on late payments.

b. **Suspension.** If Company's account is more than thirty (30) days past due, Zagster may, upon thirty (30) days prior written notice (which may be by email to Company's billing contact) suspend the provision of the Zagster Service until such time as Company's account is brought current. This right to suspend the Zagster Service is in addition to any and all other rights and remedies under this Agreement and under applicable law, including without limitation Zagster's right to terminate the Agreement for breach. If Zagster elects to suspend the Zagster Service, Zagster will have the right to enter Company's property during business hours and remove the Zagster Bicycles and Zagster bicycle stations, signage and any other Zagster materials, and Company will be liable for all fees, costs, and expenses actually incurred by Zagster in connection with such removal.

c. **Sponsored Bicycles.** Recurring Fees and Number of Zagster Bicycles. During the Term, Zagster will provide the number of bicycles ("Zagster Bicycles") at the Locations set forth in the Launch Notification Form as set forth in the Order Form. The number of Zagster Bicycles may be increased, with a corresponding increase in the Recurring Fees to be paid by Company, by mutual written agreement of the parties. Recurring Fee payment terms are described in the Order Form. Provided, Zagster understands and agrees that future locations may be on the property of third parties not controlled by Company. Company will attempt to collect the fees required hereunder for such future locations and remit such fees to Zagster. However, Zagster agrees that Company shall not be responsible or liable for the payment of any fees associated with future locations on the property of third parties. In the event any third party fails to pay the fees required hereunder, Company will notify Zagster of such failure to pay and Zagster's sole remedy shall be to decline to install the Zagster Bicycles or to provide any other Zagster Service with respect to such third party (or to remove the Zagster Bicycles and terminate the Zagster Services with respect to such third party if the Zagster Bicycles and Zagster Services have previously been provided). Accordingly, Company acknowledges and agrees that Zagster will not launch such future locations unless and until Zagster has been paid in full for the applicable fees for such future locations.

5. License Grant.

a. **License Grant.** Subject to the terms and conditions of this Agreement and payment of the fees described herein, Zagster hereby grants Company a non-exclusive, non-transferable, royalty-free, fully paid up, limited license during the Term to access and use the Zagster Software, as hosted by Zagster or its third party hosting provider, from locations in the United States and to use the Documentation provided by Zagster solely for Company's management of the Zagster Bicycles at the Locations.

b. **Restrictions.** Company will not, and will not permit third parties to, (i) permit any third party to access the Zagster Software except as permitted herein or use the Zagster Software as a service bureau, application service provider, or similar business, (ii) create derivative works based on the Zagster Software, (iii) copy, frame or mirror any part or content of the Zagster Software, (iv) decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Zagster Software, in whole or in part, nor will Company use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Zagster Software or encourage or permit others to do so (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions), (v) access the Zagster Software in order to (a) build a competitive product or service, or (b) copy any features, functions or graphics of the Zagster Software, (vi) sell, resell, rent or lease the Zagster Software, (vii) use the Zagster Software to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party

privacy rights (or otherwise use the Zagster Software in violation of the Documentation), (viii) store or transmit virus or other malicious code through the Zagster Software, (ix) interfere with or disrupt the integrity or performance of the Zagster Software, or (x) attempt to gain unauthorized access to the Zagster Software or their related systems or networks.. Company shall provide to Zagster a list of authorized users of the Zagster Software. Company agrees to maintain the security and confidentiality of the user names and passwords provided by Zagster to the Company in connection with Company's use of the Zagster Software.

c. **Ownership.** Except for the rights granted to Company in this Section, all right, title and interest in and to the Zagster Software and the Documentation, including without limitation all intellectual property embodied therein, shall remain exclusively with Zagster and Zagster reserves all rights therein and thereto. The license granted hereunder includes no rights in or to the source code versions of the Zagster Software or to the object code version of the Zagster Software, other than to the object code version as hosted by Zagster or its third party hosting provider.

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6. **Maintenance Services.** Zagster will provide the following maintenance services with respect to the Zagster Bicycles (the "Maintenance Services"):

- (i) Zagster maintenance personnel will visit each of the Locations on a regular basis, but no less than 26 times per calendar year (pro-rated for any partial calendar year during the Term) at reasonable intervals to perform general maintenance and cleaning of the Zagster Bicycles.
- (ii) Zagster will, at Zagster's sole option and expense, either replace or fully refurbish the Zagster Bicycles no less frequently than every three years from the Launch Date.

7. **Zagster Membership.**

a. **Generally.** Each person that has been authenticated by Zagster and is a Zagster member in good standing (a "User") shall be eligible to use the Zagster Bicycles subject to Zagster's then current policies and procedures, including without limitation the terms and conditions of Zagster's member agreement. To become a Zagster member, a person shall complete Zagster's membership application and, if approved for membership by Zagster, shall enter into Zagster's member agreement and waiver in the form set forth at www.zagster.com. Zagster may revise the membership application and member agreement from time to time in its sole discretion. In addition, the parties may, as may be mutually agreed, require Users to sign an additional, secondary waiver in the form provided by Company. Zagster owns all right, title and interest in and to any and all information and data submitted to Zagster by Users and prospective Users and Zagster agrees that it will not sell User data.

[Remainder of page intentionally left blank]

Schedule B

Company Obligations

1. **Generally.** Company represents and warrants to Zagster that Company has all rights, licenses, consents, authorizations and permits necessary to permit Zagster to install the Bicycles at the Locations and to provide the Zagster Service at the Locations. Further, Company will:

(a) Permit Zagster personnel to access each Location, at mutually agreed dates and times, to perform a Site Survey, take pictures of the Location, and otherwise review and inspect the Location with Company personnel to determine a mutually agreed to area at each Location to install Zagster Bicycles and Zagster stations.

(b) Provide the required square footage in a mutually agreed to area at each Location to enable Zagster to install the Zagster stations and Zagster Bicycles and provide the necessary additional space for any mutually agreed to increase in the number of Zagster Bicycles. In addition, if mutually agreed by the parties, (i) Company will accept shipments of the Zagster Bicycles and related materials and will store the Zagster Bicycles and related materials in a secure location until Zagster personnel arrive to install and (ii) Company shall permit Zagster to dispose of shipping materials at the Locations and provide access to Company's trash and recycling facilities in connection with same.

(c) Permit Zagster personnel to access each Location, at a mutually agreed to date and time, to set-up and install the Zagster Bicycles and Zagster Signage at the Locations, including installation of appropriate bicycle stations to be provided by Zagster, and to take pictures of the Zagster Bicycles as installed at each Location. Zagster shall have the right to use the pictures for advertising and marketing purposes, with Company's prior written consent, which will not be unreasonably withheld.

(d) Permit Zagster personnel to access the Locations during normal business hours Monday through Friday, or as may be otherwise mutually agreed, to provide Maintenance Services. Company will provide Zagster with an appropriate number of parking passes or parking validations to be provided to Zagster personnel to enable Zagster personnel to access the Locations without charge.

(e) Keep all Locations where Zagster Bicycles are stored clean and debris-free, in substantially similar condition to the condition of the Locations as of the Launch Date for such Locations.

2. Marketing.

(a) **Information.** Following the Effective Date and at least 30 days before the Launch Date, Company will provide to Zagster the information and materials reasonably required by Zagster to implement the Zagster Service at the Company's Locations.

(b) **Marketing Contact.** Company will assign and maintain an appropriate Company contact who will (i) have responsibility for all interactions with Zagster regarding matters covered by this Agreement, (ii) be reasonably accessible to Zagster during normal business hours, and (iii) use the Zagster Marketing Materials to promote the availability of Zagster Bicycles and/or work with Zagster to create relevant materials. Company acknowledges and agrees that the success of the program will depend on the level of marketing support provided by the Company. The marketing contact will be responsible for training Company's employees with respect to the Zagster Service and the Zagster Software.

(c) **Marketing Obligations.** Company's marketing contact will coordinate marketing opportunities with Zagster and will assist Zagster in marketing the Zagster Service to Users and prospective users. The Company may use the Marketing Materials for the sole purpose of marketing the Zagster Service to Users and prospective users. Further, if Company desires to create custom email communications or other marketing materials, Company may do so subject to Zagster's prior review and approval, which will not be unreasonably withheld or delayed.

3. Zagster Bicycles.

(a) Company will use reasonable efforts to report any maintenance or other issues relating to the Zagster Bicycles or the Zagster stations or facility on Company premises. Company shall report any issues to Zagster at support@zagster.com and Zagster shall initiate a resolution within 48 business hours. Such reasonable efforts by the Company will be construed to mean only a general visual inspection to look for flat tires, obvious and material cosmetic defects to the bicycles and/or stations, and graffiti. Zagster will respond to all maintenance issues reported by Company as soon as commercially practicable.

(b) Company acknowledges that the Maintenance Services do not cover abuse, theft, vandalism, accident and/or similar issues while the bicycles are not in use by Users unless Company has elected to include such coverage (“Damage and Theft Coverage”) and has paid the applicable fees set forth in an Order Form or Expansion Order Form for such Damage and Theft Coverage. At Zagster’s request, unless Company has elected Damage Coverage, Company shall reimburse Zagster for the costs, including costs of labor, to replace and/or repair Zagster Bicycles (only if it is apparent that such Zagster Bicycles are vandalized, stolen or damaged while not in use by a User but not for normal or expected wear and tear due to routine usage nor for damage, vandalism, or Zagster Bicycles stolen while in use by a user), Zagster automated locks, and/or Zagster stations that have been vandalized, stolen, and/or damaged by accident or misuse or abuse. Zagster shall invoice Company for such costs on a regular basis and shall accompany the invoice with supporting documentation. Company shall pay such invoices within thirty (30) days of receipt.

[Remainder of page intentionally left blank]

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Schedule C

General Terms and Conditions

1. **Services; Relationship of the Parties.** Subject to the terms and conditions of this Agreement, Zagster will provide the Zagster Service set forth in Schedule A and Company will perform the obligations set forth on Schedule B. The relationship of the parties to this Agreement is solely that of independent contractors. Neither party will have any authority to contract with third parties on behalf of the other party or to expressly or impliedly represent that it has any such authority, to any person.

2. **Insurance.** During the Term, Zagster will maintain the following insurance:

- a. General Liability Insurance with coverage limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate;
- b. Worker's Compensation Insurance in accordance with statutory requirements; and
- c. Umbrella coverage in the amount of at least \$2,000,000.

Coverage will be placed with insurance carriers with an A.M. Best Rating of not less than A- and financial rating of not less than VII.

3. **Publicity.** Zagster may release a press release announcing the parties' relationship hereunder with the prior consent of Company, which may be provided by email and shall not be unreasonably withheld. Unless otherwise expressly permitted in this Agreement, neither party will use the other party's name, logos, trademarks or service marks in any manner without the other party's prior written approval. For the avoidance of doubt, Company hereby consents to Zagster's use of the Company's name, logos, trademarks and service marks (i) to, create marketing and advertising materials for Company to use to promote the Zagster Service; provided, that Company shall have the right to review and approve such materials, such consent not to be unreasonably withheld or delayed and (ii) on Zagster's customer list which will be displayed on Zagster's website and in other publications. Each party consenting to use of its name, logos, trademarks and service marks hereunder shall remain the sole and exclusive owner of all right, title and interest in and to its Marks and the goodwill associated therewith. Upon termination of this Agreement, each party shall cease all use of the other party's name, logos, trademarks and service marks.

4. LIMITED WARRANTY; DISCLAIMER OF WARRANTIES.

a. **General.** Each party represents and warrants that: (i) this Agreement has been duly approved by all necessary action of such party; (ii) it has full power and authority to enter into and execute this Agreement; (iii) this Agreement is valid, binding and enforceable in accordance with its terms; and (iv) the execution, delivery and performance of this Agreement does not result in a violation or breach of and does not contravene, violate or conflict with any provision of applicable law, regulations or obligations to which it is a party.

b. **Zagster Service.** Zagster represents and warrants that the Zagster Service will be provided in accordance with the terms of this Agreement. As Company's sole and exclusive remedy, and Zagster's sole liability, for any breach of the foregoing warranty, Zagster will reperform the Zagster Service so that it conforms to the requirements of this Agreement.

c. **Disclaimer.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 4, TO THE MAXIMUM EXTENT PERMITTED BY LAW, ZAGSTER MAKES NO WARRANTIES WITH RESPECT TO THE ZAGSTER SERVICE OR THE SUBJECT MATTER OF THIS AGREEMENT AND HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. NO WARRANTY IS MADE THAT THE ZAGSTER SERVICE WILL MEET COMPANY'S REQUIREMENTS.

5. **Indemnification.** Zagster agrees to defend, at Zagster's sole expense, Company and Company's affiliates, and their respective officers, directors, and employees, from any and all claims asserted against Company by a third party ("Third Party Claims") alleging (i) the gross negligence or willful misconduct of Zagster or its employees in the performance of the Zagster Service hereunder; or (ii) infringement by the Zagster Software or Zagster trademarks of the third party's intellectual property rights; and Zagster shall indemnify and hold Company harmless from and against all damages finally awarded by a court of competent jurisdiction or agreed to by Zagster in settlement with respect to such Third Party Claims; provided, that (a) Company shall provide Zagster with written notice promptly upon learning of any Third Party Claims or complaints that may reasonably result in the indemnification of Company, provided, however, that failure by Company to provide notice to Zagster shall not relieve Zagster of its obligations under this Section unless such failure prejudices Zagster's defense or settlement of the Third Party Claim; (b) Company will permit Zagster to control the defense and settlement of the Third Party Claim, provided, however, that Zagster may not settle the Third Party Claim in a manner adverse to Company or which would impose liability on Company without Company's prior written consent; and (c) Company will provide Zagster with assistance in the defense and settlement of the Third Party Claim at Zagster's expense. Company may (at its own cost) engage its own counsel to participate in the defense and settlement of the Third Party Claim. Company will not settle any Third Party Claim without Zagster's prior written consent.

6. **LIMITATION OF LIABILITY.** TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOST PROFITS, LOSS OR CORRUPTION OF DATA, LOSS OF GOODWILL, COSTS TO PROCURE SUBSTITUTE GOODS OR SERVICES, OR INTERRUPTION OF BUSINESS, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SAME. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY'S LIABILITY HEREUNDER WILL EXCEED THE FEES PAID BY COMPANY TO ZAGSTER FOR THE ZAGSTER SERVICE THAT IS THE SUBJECT OF THE CLAIM IN THE TWELVE MONTHS IMMEDIATELY PRECEDING THE DATE THE CAUSE OF ACTION AROSE. THE FOREGOING LIMITATIONS SHALL NOT APPLY TO ZAGSTER'S INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 6, COMPANY'S PAYMENT OBLIGATIONS, OR BREACH OF OBLIGATIONS OF CONFIDENTIALITY UNDER SECTION 7. COMPANY ACKNOWLEDGES THAT THE PROVISIONS OF THIS SECTION REPRESENT A REASONABLE ALLOCATION OF RISK THAT IS REFLECTED IN THE FEES PAID BY COMPANY.

7. **Confidentiality; Suggestions.**

a. **Confidentiality.** Each party acknowledges that during the term of this Agreement the other party may disclose information, whether orally, visually, or in tangible form, that is proprietary and confidential to the disclosing party and is disclosed or marked as proprietary or confidential ("Confidential Information") and that the unauthorized disclosure of Confidential Information may cause irreparable harm to the disclosing party. Each party shall only use the Confidential Information to perform its obligations hereunder and will take all reasonable measures to safeguard and prevent the unauthorized disclosure of Confidential Information, but no less than the measures it takes to safeguard its own confidential information, including without limitation disclosing Confidential Information only to those of its employees with a need to know such information to perform their obligations hereunder and which have been advised of the confidential nature of the information and have agreed to protect the Confidential Information to the same extent as Company hereunder. The parties acknowledge that it will be impossible to measure the damages that would be suffered by one party if the other party fails to comply with the provisions of this Section 7 and that in the event of any such failure, such party will not have an adequate remedy at law and shall, therefore, be entitled, in addition to any other rights and remedies, to seek specific performance of the receiving party's obligations and to seek immediate injunctive relief with respect thereto.

b. **Suggestions.** Company may, from time to time, provide suggestions, techniques, know-how, comments, feedback or other input to Zagster with respect to the Zagster Service (collectively, "Suggestions"). Both parties agree that each Suggestion is and shall be given entirely voluntarily. Each Suggestion, even if designated as confidential by Company shall not, absent a signed, written agreement with Zagster, create an obligation of confidentiality for Zagster. Company agrees that it shall not give any Suggestion that is subject to license terms or restrictions that seek to require any Zagster

technology, service, product or documentation incorporating or derived from such Suggestion, or any Zagster intellectual property, to be licensed or otherwise shared with Company or any third party. Furthermore, Company hereby assigns all right, title and interest in and to Suggestions to Zagster including without limitation all intellectual property rights therein, and will take any and all actions reasonably requested by Zagster to effect such assignment.

8. Termination.

a. This Agreement may be terminated (1) by Zagster if Company fails to timely make any payment due hereunder (other than with respect to charges then subject to a good faith dispute) and fails to cure such default within ten (10) days of receiving notice in writing from Zagster of such failure (whether or not Zagster avails itself of its right to suspend the Zagster Service); or (2) by either party in the event (i) the other party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to cure such breach or provide the other party with an acceptable plan for curing such breach within thirty (30) days after receipt by the breaching party of written notice specifying the breach; (ii) a receiver, trustee, administrator, or administrative receiver is appointed for the other party or its property; (iii) the other party makes an assignment for the benefit of creditors; (iv) any proceedings should be commenced against the other party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within sixty (60) days from the date of commencement thereof; or (v) the other party is liquidated or dissolved. Termination shall not relieve Company of the obligation to pay any fees accrued or payable to Zagster prior to the effective date of termination.

b. Upon the termination of this Agreement, each party will promptly destroy or, on the other party's request, return all of the other party's Confidential Information, including all copies thereof. The payment and fee provisions of Schedule A and each Order Form and any Expansion Order Forms shall survive any termination or expiration of this Agreement with respect to any fees due and owing hereunder. Sections 4(c), 5, 6, 7, 8, 9 and 10 of this Schedule C shall survive any termination or expiration of this Agreement.

9. **Notices.** Except as otherwise provided in this Agreement, all notices, requests and demands, and other communications required or permitted under this Agreement shall be in writing and sent to the addresses noted in the Order Form or to such changes of address of which one party notifies the other in accordance with this provision. A notice shall be deemed effective: (i) upon delivery, if delivered personally by hand to a party; (ii) one (1) business day after deposit, if delivered to a nationally recognized courier service offering guaranteed overnight delivery; or (iii) five (5) business days after having been deposited in the United States mail, certified mail, postage prepaid, return receipt requested.

10. **Miscellaneous.** Each party represents and warrants to the other that it has the authority to enter into this Agreement and is not under any obligation to any third party that would conflict with this Agreement. This Agreement, including all of the Schedules hereto, is the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporaneous agreements and understandings, oral and written, between the parties with respect to the subject matter hereof. Additional or different terms in any purchase order or similar document will not modify or add to the terms of this Agreement unless mutually agreed in writing by the parties. This Agreement may be amended only by a written agreement between the parties. If one party fails to enforce any provision of this Agreement, such party will not be precluded from enforcing the same provision at another time. This Agreement and the rights granted under it may not be assigned or transferred by either party without the written consent of the other party; provided, however, either party will have the right to assign this Agreement to its successor in the event of a merger, acquisition or other consolidation, including without limitation the sale of all or substantially all of its assets or stock or business to which this Agreement relates. In the event that any provision of this Agreement is held by a court or other tribunal of competent jurisdiction to be unenforceable, such provision will be deemed modified to the minimum extent necessary to render the provision enforceable in a manner that most closely represents the original intent of the parties and the remaining terms and conditions of this Agreement will remain in full force and effect. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without regard to conflicts of laws provisions thereof. The parties agree that the sole and exclusive jurisdiction and venue for actions arising out of this Agreement shall be the state and federal courts located in Boston, Suffolk County, Massachusetts,

and consent to the exclusive jurisdiction of such courts. In the event of any adjudication of any dispute under this Agreement, the prevailing party in such action will be entitled to reimbursement of its attorneys' fees and related costs by the other party. The paragraph headings contained in this Agreement are for convenience only and are not intended to be used nor may they be used in the interpretation of this Agreement. Neither party will be liable for a delay in performing its obligations under this Agreement to the extent that delay is caused by insurrection, war, riot, explosion, nuclear incident, fire, flood, earthquake, failures of suppliers, utility or telecommunications outages, or other significant event beyond the reasonable control of the affected party, provided the non-performing party immediately notifies the other party and takes commercially reasonable and expedient action to resume performance. This Agreement may be executed in one or more counterparts, each counterpart of which will be deemed to be an original and which together will constitute one and the same instrument. The signature of any of the parties may be evidenced by an electronic or facsimile copy of this Agreement bearing such signature, and such signature will be valid and binding as if an original executed copy of the Agreement has been delivered.

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Zagster, Inc
25 First Street Suite 104
Cambridge, Massachusetts 02141
United States
844-ZAGSTER

ORDER for City of Conway, Arkansas
Order: SO-0001190
Date: 9/23/2016
Prepared by: Michael Sheppard

Order

Company Information

Bill To:
Conway, Arkansas
1201 Oak Street
Conway, Arkansas 72032
United States

Billing Contact: Tab Townsell
Billing Email: mayor@cityofconway.org
Billing Phone: 5014506110

Payment Terms

Payment Terms: Net 30 Days

Product & One Time Fee Lines

Product & One Time Fee	Quantity	Unit Price	Total
Zagster Standard Adult Bike	20.00	\$0.00	\$0.00
Location Implementation/Setup Fee	4.00	\$0.00	\$0.00
Bike Parking Space (included with Bike)	20.00	\$0.00	\$0.00
Extra Bike Parking Space	20.00	\$150.00	\$3,000.00

Service Lines

Service	Description	Date Start - Date End	Quantity	Term	Unit Price	Total
Service Fee per Bike - Annual		4/1/2017 - 9/22/2019	20.00	3 Yr	\$1,800.00/Yr	\$108,000.00
Theft Fee per Bike - Annual	Theft and Damage Coverage	4/1/2017 - 9/22/2019	20.00	3 Yr	\$0.00/Yr	\$0.00

Products and Services Total: \$111,000.00
Net Amount: \$111,000.00
Total Applied Payments: \$0.00
Balance Due Amount: \$111,000.00

Terms & Conditions

During the Term, Company shall receive the following:

1. The Zagster Bicycles set forth above and the right for Users to access and use the Zagster Bicycles.
2. A Site Survey to determine the Locations and Launch Date.
A license to use Zagster's proprietary bicycle rental management software (the "Zagster Software") and accompanying user information (the "Documentation").
3. Routine maintenance on the Zagster Bicycles to address usual and customary wear and tear maintenance on the Zagster bicycles as described in more detail in the Master Services Agreement. Company acknowledges that routine maintenance does not cover abuse, theft, vandalism, accident and/or similar issues while the bicycles are not in use by Users unless Company has elected to include such coverage and has paid the applicable fees as set forth in the Order Form above, if applicable.
4. Automated locks and bicycle racks to be used with the Zagster Bicycles, subject to payment of the one time fee described in the Order Form above.
5. The Zagster marketing materials described in the Master Services Agreement (the "Zagster Marketing Materials").
6. Zagster customer services for Users as they are generally commercially available from time to time.

Sponsorships:

Recurring Fees and Number of Zagster Bicycles. During the Term, Zagster will provide the number of bicycles ("Zagster Bicycles") at the Locations set forth in the Launch Notification Form as set forth in the Order Form. The number of Zagster Bicycles may be increased, with a corresponding increase in the Recurring Fees to be paid by Company, by mutual written agreement of the parties. Recurring Fee payment terms are described in the Order Form. Provided, Zagster understands and agrees that future locations may be on the property of third parties not controlled by Company. Company will attempt to collect the fees required hereunder for such future locations and remit such fees to Zagster. However, Zagster agrees that Company shall not be responsible or liable for the payment of any fees associated with future locations on the property of third parties. In the event any third party fails to pay the fees required hereunder, Company will notify Zagster of such failure to pay and Zagster's sole remedy shall be to decline to install the Zagster Bicycles or to provide any other Zagster Service with respect to such third party (or to remove the Zagster Bicycles and terminate the Zagster Services with respect to such third party if the Zagster Bicycles and Zagster Services have previously been provided). Accordingly, Company acknowledges and agrees that Zagster will not launch such future locations unless and until Zagster has been paid in full for the applicable fees for such future locations.

This Order Form and the Master Services Agreement set forth at <http://bit.ly/ZagMSA> together constitute the legally binding agreement (the "Agreement") between the parties and supersede and replace any prior or contemporaneous agreements, understandings or arrangements between the parties, unless otherwise mutually agreed by the parties in a separate written agreement.

Additional Terms

Location Implementation/Setup Fee

Company will pay to Zagster the nonrefundable product and one time fees in the amounts, if any, described above, within 30 days of the Order Date.

Service Fee per Bike - Annual

Company will pay to Zagster the nonrefundable recurring fees (the "Service Lines Fees") set forth above 30 days prior to estimated start date ("Date Start") set forth above. Service Lines Fees are due annually, up front and in advance. Zagster will not launch the bike share program until the Service Lines Fees are paid.

Company Name: City of Conway, Arkansas

Zagster, Inc

Signature

Signature

Name (Please Print)

Name (Please Print)

Title

Title

Date

Date

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

**A RESOLUTION OF INTENT REGARDING THE USE OF SANITATION FUNDS FOR LOAN
PAYMENT AND REIMBURSEMENT OF THOSE FUNDS UPON SALE OF THE OLD AIRPORT
PROPERTY**

Whereas, the City of Conway, Arkansas (the "City") has an outstanding loan balance of \$5,750,000 plus accrued interest for the purpose of building the terminal and hangars at the new Cantrell Field Airport; and

Whereas, the maturity date of the loan is July 17, 2018; and

Whereas, the City intends to repay the loan with the proceeds of the sale of the old airport property along 6th Street; and

Whereas, until such time that the sale of the old airport property can be finalized, the City wishes to utilize Sanitation funds to pay down the balance of the loan, thus realizing a savings on interest expense.

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

Section 1. The City Council authorizes the use of \$3,000,000 of Sanitation funds to be used to pay down the balance of the City's outstanding loan with First Security Bank (Loan #221005069).

Section 2. The City Council also authorizes that upon the closing of the sale of the old airport property, \$3,000,000 of the sale proceeds will be paid back to the Sanitation Fund to reimburse it for this use.

PASSED AND APPROVED this 22nd day of November, 2016.

APPROVED:

By: _____
Mayor Tab Townsell

ATTEST:

By: _____
Michael O. Garrett
City Clerk/Treasurer



MASTER COLLOCATION LICENSE AGREEMENT

This Master Collocation License Agreement ("Agreement") is made and entered into as of this ___ day of _____ 2016, between Conway Corporation, Arkansas non-profit Corporation ("Conway Corp") and the City Of Conway ("Licensee").

RECITALS

- A. The parties desire to enter into one or more license agreements with each other so that Licensee can use space in 1308 Deer, Conway, AR 72034 ("Facility") controlled by Conway Corp for the purpose of installing equipment and accessing transmission capacity and operating its network.
- B. For purposes of this Agreement, "Conway Corp" shall mean the party that is providing access to space and power in the Facility that it controls.
- C. For purposes of this Agreement, "Licensee" shall mean the party that is receiving access to space and power in the Facility that is controlled by Conway Corp.

NOW THEREFORE, in consideration of the following mutual exchange of promises and covenants, the parties agree as follows:

1. SCOPE OF AGREEMENT:

- (a) Subject to the terms and conditions contained herein, Conway Corp hereby grants to Licensee, as of the Commencement Date, a "License" to install, operate, and maintain certain communications equipment of Licensee in certain areas of the Facility (the "Equipment Space"), as described in the license agreement(s) attached as Exhibit A ("License Agreement" or "License Agreements" as context requires), which Exhibit is incorporated by reference as if set forth in full herein. One or more additional License Agreements may be prepared by the parties from time to time and, subject to execution by Licensee and acceptance by Conway Corp, shall be added as Exhibit A – License Agreement No. ____, shall be binding upon the parties and shall be deemed a part of this Agreement.
- (b) Conway Corp hereby reserves all rights not specifically granted to Licensee, including, without limitation, the right to: 1) access to and use of a Facility for its own use and for the use of its agents and licensees; 2) grant additional licenses to other users.
- (c) The License does not include the provision of local access. Licensee must enter into a separate agreement with Conway Corp for local access.
- (d) The Licensee agrees that it will use only Conway Corp for local access out of the Facility.
- (e) The Licensee agrees that Conway Corp will not provide cross connects to other licensee's located in the Facility.
- (f) Licensee will not sub-lease its space.

2. TERM:

- (a) *Agreement.* This Agreement shall be effective for a term of five (5) years, commencing on the date first written above and shall automatically be renewed from month to month under the same terms and conditions as stated herein and as may be modified by mutual agreement of the parties from time to time, unless either party gives the other party written notice of termination not less than sixty (60) days prior to the end of the term or renewal term. Notwithstanding such termination, this Agreement shall remain in full force and effect, and shall continue to govern, with respect to any then-existing License Agreement for so long as such License Agreement is in effect.

- (b) *License Agreement.* Each License Agreement shall have its own initial term, unless terminated earlier as provided for in this Agreement or the License Agreement. Upon the expiration of the initial term applicable to that License Agreement, the term of such License Agreement shall automatically renew from month to month under the same terms and conditions as stated therein and herein, unless either party gives the other party written notice of termination at least sixty (60) days prior the end of the term or renewal term. The foregoing notwithstanding, in no event shall the License be construed to extend beyond the term of the underlying lease or other superior interest in the Facility.
- (c) If for any reason, Conway Corp does not deliver possession of the Equipment Space to Licensee on the Commencement Date (as such term is defined and set forth in the License Agreement), Conway Corp shall not be liable to Licensee for any resultant loss or damage, and the Commencement Date will be extended automatically one day for each day of delay before delivery of possession.

3. **LICENSE FEES AND OTHER CHARGES**

- (a) Licensee shall pay to Conway Corp as a license fee for use of the Equipment Space and/or the Facility, a one-time non-recurring charge and monthly recurring charge(s) as set forth in the License Agreement.
 - (1) The non-recurring charge shall be payable on the day this Agreement is executed. The monthly recurring charge shall be payable in advance on the first day of each calendar month during the term of the License.
 - (2) If the term Commencement Date commences or ends on a day other than the first day of a calendar month, then the license fee for the month in which the term commences or ends shall be prorated (and paid at the beginning of the month) in the proportion that the number of days the License is in effect during such month bears to the total number of days in the month. If the monthly license fee is not paid when due, the amount due and payable shall bear interest at the highest rate allowed by Arkansas law per annum from the date due until paid.
 - (3) In addition, Licensee shall pay to Conway Corp all costs incurred by Conway Corp in making modifications or improvements to the Facility for Licensee, or for fire suppression, energy sources or other utilities, and the costs of any work or service performed for, or facilities furnished to, Licensee to a greater extent or in a manner more favorable to Licensee than that performed for or furnished to others within the Facility.
- (b) Charges shall be as set forth in the respective License Agreement(s).

4. **USE OF THE FACILITY:**

- (a) Licensee shall use the Facility solely for the purpose of installing, maintaining and utilizing the communications equipment installed in the Facility pursuant to the terms of the License and this Agreement and for no other purpose. Licensee shall not use the Facility, or allow access thereto or use thereof, except in accordance with the terms of the License and this Agreement. Licensee shall not use the Facility for storage of equipment or for any administrative function.
- (b) In its use of the Facility Licensee shall not interfere, or allow the operation of its equipment to interfere, with Conway Corp or any other occupant of the Facility.
- (c) Except as otherwise provided herein, Licensee's equipment shall remain the sole property of Licensee. Licensee expressly disclaims any right, title, or interest in or to any of Conway Corp's equipment or property, or in that of any of Conway Corp's affiliates, customers, agents or licensees, whether located in the Facility or the Equipment Space, or elsewhere.

5. **ACCESS TO FACILITY; INSTALLATION AND MAINTENANCE OF EQUIPMENT:** Licensee shall schedule access by the email address and telephone number shown in Paragraph 22(c)(1) below. Licensee shall be provided access to the Facility only when accompanied by a representative of Conway Corp. Such access shall be available on a 24 X 7 X 365 days basis in one (1) hour advance notice in the case of emergencies and on forty-eight (48) hours advance notice in all other cases and at no cost to Licensee. All individuals entering

a Facility at the direction of Conway Corp shall at all times have appropriate photo identification, and shall display it to Conway Corp's representative on request.

6. **TAXES:** Licensee shall be liable for and shall pay all taxes levied against the property owned by it and located on or about a Facility.
7. **ACCEPTANCE OF FACILITY:** The installation of equipment by Licensee shall be conclusive evidence that Licensee accepts the Facility "as is," and that the Facility is suitable for the use intended by Licensee and is in satisfactory condition at the time the equipment was installed.
8. **MAINTENANCE OF PREMISES:** Licensee at its own cost and expense, shall protect, maintain and keep in good order the Equipment Space and any equipment in the Equipment Space, and shall ensure that neither Licensee nor its agents, contractors or invitees damage any part of the Facility, the Equipment Space or any equipment located in or about the Facility, and shall not allow any debris or supplies to be left in or about the Facility. Licensee shall not maintain or permit any nuisances or violations of governmental laws, rules, regulations or ordinances with respect to the Facility. Licensee shall ensure that neither its employees, agents nor invitees shall permit any explosive, flammable or combustible material or any hazardous or toxic materials, as defined under state, federal or local laws or regulations, to be located in or about the Facility, except in compliance with all applicable laws and regulations.
9. **INSTALLATION AND ALTERATIONS:**
 - (a) Without the prior approval of Conway Corp, Licensee shall not:
 - (1) undertake any installation, inter-connection, addition or alteration within the Facility; or
 - (2) undertake any activity that would in any way result in an increased cost to Conway Corp, or that might affect the use of the Facility or other equipment by Conway Corp or any other user of the Facility.
 - (b) Whenever Conway Corp's approval of work is required, Licensee shall deliver a written request to Conway Corp, specifying:
 - (1) the names and addresses of each proposed contractor and sub-contractor;
 - (2) a summary of the qualifications and experience of each contractor and sub-contractor;
 - (3) a description of the services to be performed; and
 - (4) the planned dates and times of such activities.
 - (c) Conway Corp shall have the right to disapprove or require the removal of any contractor or subcontractor selected for work in the Facility. All such approvals shall be valid only if given by Conway Corp's CEO or their designee.
 - (d) All maintenance, installation, interconnection, addition, upgrade, modification or other alteration within the Facility, shall comply with all manufacturers' specifications, and shall meet all industry quality assurance standards.
 - (e) Licensee has the option to review Conway Corp's statement of work and shall pay or cause to be paid all costs and charges:
 - (1) for work done by Licensee or caused to be done by Licensee on or about the Facility;
 - (2) for all materials furnished for or in connection with such work;
 - (3) for alterations or additions to the Facility or equipment for the Licensee that requires Conway Corp to incur costs; and
 - (4) all other costs or expenses incurred by Conway Corp arising out of or related to work done by or for the benefit of Licensee.
 - (f) Licensee shall indemnify Conway Corp against and hold Conway Corp and the Facility free and clear of and from all mechanics' liens and claims of liens, and all other liabilities, liens, claims and demands on account of such work done by or on behalf of Licensee. If any such lien is filed at any time against the Facility, or any part thereof, Licensee shall cause such lien to be discharged of record within ten (10) days after the filing thereof, except that if Licensee desires to contest such lien, it will furnish Conway Corp, within such ten-day period, security reasonably satisfactory to Conway Corp of at least one hundred fifty (150%) percent of the amount of the claim, plus

estimated costs and interest. If a final judgment establishing the validity or existence of a lien for any amount is entered, Licensee shall pay and satisfy the same without delay. If Licensee fails to pay any charge for which a mechanics' lien has been filed, and has not given Conway Corp security as described above, Conway Corp may, at its option, pay such charge and related costs and interest, and the amount so paid, together with reasonable attorneys' fees incurred in connection with such lien, will be immediately due from Licensee to Conway Corp. Nothing contained in this License shall be deemed to constitute a consent or agreement of Conway Corp to subject the Facility to liability under any mechanics' or other lien law. If Licensee receives notice that a lien has been or is about to be filed against the Facility, or any action affecting title to the Facility has been commenced on account of work done by or on behalf of, or materials furnished to or for Licensee, it will immediately give Conway Corp notice of such occurrence. At least fifteen (15) days before commencement of any work (including but not limited to any maintenance, repairs, alterations, additions, improvements or installations) in or to the Facility or the Equipment Space by or for Licensee, Licensee will give Conway Corp notice of the proposed work and the names and addresses of the persons supplying labor and materials for the proposed work. Conway Corp shall have the right to post notices of non-responsibility or similar notices on the Facility in order to protect the Facility against any such liens.

10. **RULES AND REGULATIONS:**

- (a) Licensee shall at Licensee's own cost and expense, comply with all federal, state, and local laws, rules, regulations, ordinances and requirements, whether now in force or hereinafter enacted, relating to Licensee's use of a Facility. Licensee will obtain all required permits and licenses pertaining to the installation, operation, maintenance and repair of its equipment in a Facility. In addition, Licensee agrees to comply with all rules and regulations of Conway Corp.
- (b) Licensee and all subcontractors and their employees shall be subject to and shall conform to Conway Corp's safety, security and environmental rules and regulations governing conduct of persons while in Conway Corp's Facilities.

11. **WAIVER OF LIABILITY; INDEMNIFICATION:** Conway Corp and Licensee hereby agree that:

- (a) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY OR PUNITIVE, LOSS OF PROFITS OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH, SUCH PARTY'S FAILURE TO PERFORM ITS OBLIGATIONS, OR A BREACH OF ITS REPRESENTATIONS HEREUNDER, INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF PROPERTY OR EQUIPMENT, LOSS OF PROFITS OR REVENUE, COST OF CAPITAL, COST OF REPLACEMENT SERVICES (WHETHER ARISING OUT OF TRANSMISSION INTERRUPTIONS OR PROBLEMS, ANY INTERRUPTION OR DEGRADATION OF SERVICE OR OTHERWISE), OR CLAIMS OF CUSTOMERS. ALL CLAIMS WITH RESPECT TO WHICH SUCH SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARE HEREBY SPECIFICALLY WAIVED.
- (b) LICENSEE EXPRESSLY ACKNOWLEDGES THAT CONWAY CORP INTENDS TO ALLOW OTHER LICENSEES TO INSTALL EQUIPMENT IN A FACILITY. LICENSEE EXPRESSLY AGREES THAT CONWAY CORP SHALL HAVE NO LIABILITY FOR ANY DAMAGES, COSTS, OR LOSSES INCURRED BY LICENSEE CAUSED BY SUCH OTHER LICENSEES' ACTS, EQUIPMENT, OR FAILURE TO ACT.
- (c) Subject to Arkansas law the parties hereby agree to indemnify, defend, protect and hold harmless the other, its employees, officers, directors, agents, shareholders and affiliates, from and against, and assume liability for:
 - (1) Any injury, loss, damage to, or claim by any third party for damage to tangible property or facilities of any third party (including reasonable attorneys' fees and costs) to the extent arising out of or resulting from the negligence or willful misconduct of the indemnifying party, its officers, employees, servants, affiliates, agents, contractors, licensees, invitees or vendors in connection with the indemnifying party's performance under this Agreement or use of the Facilities; and

- (2) Any third party claims, liabilities or damages arising out of any violation by the indemnifying party of regulations, rules, statutes or court orders of any local, state or federal governmental agency, court or body in connection with this Agreement;

Nothing contained herein shall operate as a limitation on the right of either party to bring an action for damages against a third party, excluding a party's employees, officers, directors, shareholders, and affiliates, including indirect, special or consequential damages, based on any acts or omissions of such third party as such acts or omissions may affect the construction, operation or use of the Facilities; provided, however, that each party shall reasonably cooperate (at no cost to the cooperating party) to enable the other party to pursue any such action against such third party.

- (d) If any action or proceeding is brought against a party entitled to indemnification pursuant to this Agreement, or its employees, contractors or agents by reason of any such claim, the indemnifying party shall, on notice from the party being indemnified, defend the claim at the indemnifying party's expense with counsel reasonably satisfactory to the party being indemnified. The obligations of this section shall survive the expiration or other termination of this License.

12. **INSURANCE:**

- (a) During the term of this Agreement and associated License Agreement(s), Licensee shall, at Licensee's sole cost and expense, keep in full force and effect the following insurance:
 - (1) standard form property insurance insuring against the perils of fire, vandalism, malicious mischief, extended coverage ("all-risk") and sprinkler leakage. This insurance policy shall be on all property owned by Licensee, or for which Licensee is legally liable, or that was installed at Licensee's request, and which is located in a Facility, in an amount not less than its full replacement cost. If there is a dispute about the amount that comprises full replacement cost, the decision of Conway Corp shall be conclusive. Licensee has the right to self-insure.
 - (2) commercial general liability insurance insuring Licensee against any liability arising out of the license, use occupancy or maintenance of a Facility and all areas appurtenant thereto. Such insurance shall be in the amount of two million (\$2,000,000) dollars [five million (\$5,000,000) dollars on railroad right of way] combined single limit for injury to or death of one or more persons in an occurrence and for damage to tangible property (including loss of use) in an occurrence. The policy shall insure the hazards of a Facility and Licensee's operations thereon, independent contractors, contractual liability (covering the indemnity of Licensee contained in this License), and shall: a) list Conway Corp as an additional insured; b) contain a cross liability provision; and c) contain a provision that the insurance provided to Conway Corp hereunder shall be primary and non-contributing with any other insurance available to Conway Corp.
 - (3) workers compensation as required by applicable state law, and employer's liability insurance with minimum limits of one million (\$1,000,000) dollars per occurrence. If a Facility is located in a "monopolistic" state, Licensee shall carry "stop gap" coverage with minimum limits of one million (\$1,000,000) dollars per occurrence.
 - (4) business automobile insurance in an amount not less than one million (\$1,000,000) dollars per occurrence covering all autos used at a Facility, including owned, non-owned and hired autos.
- (b) All the insurance required of Licensee under this Agreement shall: 1) be issued as a primary policy by an insurer with an AM Best rating of A VII or better. Each liability insurance policy shall list Conway Corp, its, officers, directors and employees as additional insureds and loss payees. Each policy, or a certificate of the policy acceptable in form and content to Conway Corp, shall be deposited with Conway Corp within thirty (30) days after execution of this Agreement and associated License Agreement(s) and on renewal of the policy not less than thirty (30) days after expiration of the initial term of the policy.

13. **ASSIGNMENT AND SUB-LICENSING:** Neither party may assign this Agreement without the written consent of the other party, which consent shall not be unreasonably withheld. The foregoing sentence notwithstanding, either party (referred to in this Section 13 as the "Assigning Party") may, without the prior consent of, but on notice to the other party, assign this Agreement to an affiliate of the Assigning Party, or the parent of the Assigning Party or to any company into which the Assigning Party may be merged or consolidated, or that acquires substantially all of the assets or stock of Assigning Party; provided the assignee shall be subject to all the provisions of this Agreement. An "affiliate" of the Assigning Party shall mean any corporation which, directly or indirectly, controls or is controlled by or is under common control with the Assigning Party, or a successor corporation to the Assigning Party by merger, consolidation, or non-bankruptcy reorganization. For purpose of the definition of "affiliate," the word "control" (including "controlled by" and "under common control with") means, with respect to any corporation, partnership, or association, possession, directly or indirectly, of the power to direct or cause the direction of the management and policy of a particular corporation, partnership or association, whether through the ownership of voting securities or by contract or otherwise. Neither party shall attempt to circumvent any of its obligations under this Agreement, or deprive the other party of any anticipated benefit under this Agreement, through the use of ownership changes, reorganizations, creation of new entities or other artificial devices.
14. **SERVICES PROVIDED BY CONWAY CORP:**
- (a) Conway Corp shall make available the following services for Licensee's use of the Equipment Space:
 - (1) Heat, Ventilation and Air Conditioning ("HVAC") sufficient to maintain an ambient temperature of fifty to eighty-six (50°F to 86°F) degrees Fahrenheit and relative non-condensing humidity.
 - (2) Alternating Current ("AC") power consisting of commercial, protected, conditioned, and uninterruptable two hundred (200) volt to two hundred forty (240) volt, dual circuits, for production use. Licensee must specify plug types.
 - (3) Battery reserves, as is available to Conway Corp.
 - (4) Grounding.
 - (b) Installation of Licensee's equipment shall be performed in accordance with Conway Corp's installation policies and specifications. Licensee shall supply the Licensee owned equipment that will be installed within the leased rack(s). Conway Corp will perform the inter-connection between Conway Corp's and Licensee's equipment. Conway Corp shall provide inter-connect patch cabling which may include, but not limited to, Cat6a and/or single or multimode fiber. Terminated connector types will depend on Licensee requirements. All services shall be provided at the Facilities and under the direction and instruction of Licensee's personnel, and Licensee accepts sole responsibility for services performed by Conway Corp.
 - (c) Licensee shall pay to Conway Corp for costs of labor at \$75.00 per hour. Licensee is also responsible for materials and other costs incurred by Conway Corp to make the services available to Licensee hereunder.
 - (d) CONWAY CORP SHALL HAVE NO DUTY TO MONITOR, MAINTAIN, OR CARE FOR THE EQUIPMENT INSTALLED BY OR FOR LICENSEE.
 - (e) Conway Corp shall use commercially reasonable efforts to keep the Facilities and the Equipment Space free from interruption of service and to restore service as soon as practicable following any interruption.
15. **TERMINATION IN THE EVENT OF CASUALTY OR CONDEMNATION:** In the event of any damage, destruction or condemnation of a Facility that renders the Facility unusable or inoperable, Conway Corp shall have the right to terminate the respective License Agreement and all of its duties and obligations thereunder and hereunder by giving notice to Licensee within thirty (30) days after such damage, destruction or condemnation.

16. **SURRENDER OF THE PREMISES:**
- (a) Within thirty (30) days of expiration or earlier termination of a License Agreement, Licensee shall remove its equipment from the Facility at Licensee's expense. Licensee shall surrender the Equipment Space in good condition, reasonable wear and tear excepted. If Licensee fails to remove its equipment and other personal property from the Facility within thirty (30) days after the date of expiration or other termination, Conway Corp may remove such items at Licensee's sole cost and expense. Conway Corp will use best efforts to avoid any damages to the equipment or property of Licensee so removed but will not be held liable if damages occur.
 - (b) In addition, upon expiration or other termination of this License for any reason, Licensee shall, at its sole cost and expense, remove all alterations, additions and improvements made or installed by Licensee and restore the Facility to the same or as good condition as existed as when Licensee first installed equipment, reasonable wear and tear excepted.
17. **EVENTS OF DEFAULT:**
- (a) The occurrence of any one or more of the following events shall constitute a default and breach of a License by Licensee ("Events of Default"):
 - (1) Licensee's failure to pay when due any recurring monthly license fees and charges, initial installation charges, or other amounts.
 - (2) The installation by Licensee of any equipment in a Facility without first obtaining Conway Corp's consent.
 - (3) Licensee's vacation or abandonment of a Facility.
 - (4) Interference by Licensee with Conway Corp or any other user of a Facility that continues for four (4) hours following notice from Conway Corp.
 - (5) A transfer or assignment by Licensee of its interest in a License, except as specifically permitted by the terms of this Agreement.
 - (6) Licensee's failure to relocate Licensee's equipment in accordance with section 1(e).
 - (7) Licensee's failure to perform or observe any other term, covenant or condition of this Agreement, if the failure continues for thirty (30) days after notice has been given to Licensee.
 - (b) Upon the occurrence of any Event of Default, Conway Corp may, without notice or demand and in addition to any other right or remedy available at law or equity, terminate the respective License Agreement and/or this Agreement and remove all of Licensee's equipment from the Facility and store the same at Licensee's expense. Licensee hereby waives any damages occasioned by such removal as long as Conway Corp uses best efforts to avoid damages to Licensee's equipment. Any equipment so removed will be returned to Licensee upon payment in full of all storage costs, past due license fees and charges. If within thirty (30) days following such equipment removal, Licensee has not requested the return of its equipment and paid any sums owed, then Conway Corp may exercise all rights of ownership over such equipment including the right to sell same and retain possession of any sale proceeds. Conway Corp's exercise of any remedies provided for in this section shall be without prejudice to any other remedies Conway Corp may have provided for herein or by law.
18. **FORCE MAJEURE:** Should the performance of any act required by this Agreement, other than the payment of money, be prevented or delayed by reason of an act of God, strike, lockout, labor troubles, inability of Conway Corp to secure materials necessary to provide the services, restrictive governmental laws or regulations, or any other cause beyond the control of the party required to perform the act, the time for performance will be extended for a period equivalent to the period of delay and performance of the act during the period of delay will be excused.
19. **GOVERNING LAW:** This License shall be governed by and construed in accordance with the laws of the State of Arkansas.

20. **INTERPRETATION:** Conway Corp and Licensee hereby expressly agree that this Agreement and associated License Agreement(s) constitutes a mere license and not an interest in a Facility.
21. **WAIVER:** No waiver by Conway Corp of any default or breach of Licensee's performance of any term, condition or covenant of this Agreement shall be deemed to be a waiver of any subsequent default or breach by Licensee of the same or any other term, condition or covenant contained in this Agreement.
22. **NOTICES:** Notices shall be delivered by hand, courier, overnight delivery service or registered or certified mail return receipt requested. Any notice or other communication under this Agreement shall be deemed given when received or refused and shall be directed to the following addresses:
- (a) If to CONWAY CORP:
- Conway Corporation
1307 Prairie
Conway, AR 72033
Attention: Jimmy Dolan
- (b) If to City of Conway (Customer Name):
- City of Conway
4605 Wescon Lane
Conway, AR 72034
Attention: Lloyd Hartzell, Director of Information Technology/CTO
- (c) Either party may change its address for purposes of this section by notice similarly given.
23. **TERMS AND HEADINGS:** The section titles of this Agreement shall have no effect upon the construction or interpretation of any part hereof.
24. **SUCCESSORS:** This Agreement shall inure to the benefit of and be binding on the parties, and their heirs, successors, assigns and legal representatives, but nothing contained in this section shall be construed to permit an assignment or other transfer except as specifically provided herein.
25. **SEVERABILITY:** Any provision of this Agreement which shall prove to be invalid, void or illegal shall in no way affect, impair or invalidate any other provision hereof and the remaining provisions hereof shall remain in full force and effect to the greatest extent permitted by law.
26. **RULES AND REGULATIONS:** Licensee and its employees, agents and invitees shall abide by and observe all reasonable rules and regulations as may be promulgated by Conway Corp. Notice of the rules and regulations will be posted or provided to Licensee. Conway Corp may periodically amend or supplement the rules and regulations at its sole discretion.
27. **AMENDMENT AND MODIFICATION:** This Agreement may be amended, changed or modified only by an instrument in writing signed by duly authorized representatives of the parties hereto. Licensee expressly agrees to execute any amendment to this Agreement which may be required, which does not materially and adversely affect Licensee's rights under the respective License therefor, within fifteen (15) days of a written request by Conway Corp or Conway Corp may terminate the License and/or this Agreement on notice to Licensee.
28. **ENTIRE AGREEMENT:** This Agreement contains all of the agreements of the parties concerning a Facility, and there are no spoken or other agreements that modify or affect this Agreement. This Agreement supersedes any and all prior agreements made or executed by or on behalf of the parties hereto regarding a Facility.

29. **CONFIDENTIALITY:** If either party is required by law INCLUDING THE ARKANSAS FREEDOM OF INFORMATION ACT or by interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process to disclose the provisions of this Agreement, it will provide the other party with prompt prior notice of such request or requirement so that such party may seek an appropriate protective order and/or waive compliance with this Section. The party whose consent to disclose information is requested shall respond to such request, in writing, in a time period prescribed by the initial request by either authorizing the disclosure or advising of its election to seek a protective order, or if such party fails to respond within the prescribed period the disclosure shall be deemed approved. In addition, Licensee shall submit to Conway Corp all news releases, advertising and other publicity material related to this Agreement wherein Conway Corp's name is mentioned or language is used from which a connection to Conway Corp's name therein may, in Conway Corp's judgment, be inferred or implied. Licensee shall neither publish nor use such material nor use Conway Corp's name, without the prior written consent of Conway Corp.
30. **DISPUTES:** The parties agree to use their best efforts to resolve any disputes that may arise out of the operation of this Agreement amicably to avoid the expense of litigation. In the event a situation arises where the parties are unable to resolve a disputed issue, then the parties shall pursue non-binding mediation. The parties agree, in good faith, to commit the resources necessary to mediate the matter in accordance with procedures to be established by the mediator. The mediator shall be chosen by agreement of the parties and the expense shared equally. The Parties further agree that all actions or proceedings arising directly or indirectly from this Agreement shall be commenced and litigated only in the Circuit Court of Faulkner County, Arkansas or the federal court with jurisdiction over Conway, Arkansas. The Parties hereby expressly consent to the jurisdiction over them of the above listed courts, in all actions or proceeding arising directly or indirectly from this Agreement. All disputes shall be based on Arkansas law.
31. **WAIVER OF JURY TRIAL:** EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THE ACTION OF EITHER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE AND ENFORCEMENT HEREOF.

IN WITNESS WHEREOF, the parties have executed this License on the date first written above.

Conway Corporation

By: _____

Name: Richie Arnold

Title: Chief Executive Officer

Date: _____

City of Conway

By: _____

Name: Tab Townsell

Title: Mayor

Date: _____



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

AN ORDINANCE APPROPRIATING REIMBURSEMENTS FUNDS FROM VARIOUS ENTITIES FOR THE CITY OF CONWAY POLICE DEPARTMENT; AND FOR OTHER PURPOSES

Whereas, the City of Conway has received reimbursements funds from the following entities:

AR State Police	\$	5,484.93	DUI/Seatbelt Taskforce
Various Companies	\$	32,086.99	Extra Duty
District Court of Faulkner Co	\$	22.50	Restitution
DOJ Treasury	\$	2,656.08	Reimbursements
Public Processing, LLC	\$	950.00	Auction Proceeds

Whereas, the Conway Police Department needs these funds to replenish their expenditure accounts.

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

Section 1. The City of Conway shall appropriate funds from the AR State police in the amount of \$5,484.93 from 304.000.4201 and from various companies in the amount of \$32,086.99 from 001.121.4185 to the CPD overtime expense account, 001.121.5114.

Section 2. The City of Conway shall appropriate funds from the District Court of Faulkner County in the amount of \$22.50 from 001.121.4184 to the CPD uniform expense account, 001.121.5670.

Section 3. The City of Conway shall appropriate funds from the DOJ Treasury in the amount of \$2,656.08 from 001.121.4186 to the CPD Accountable equipment expense account, 001.121.5650.

Section 4. The City of Conway shall appropriate funds from Public Processing, LLC in the amount of \$950 from 001.121.4799 to the CPD vehicle maintenance expense account, 001.121.5450.

Section 5. All ordinances in conflict herewith are repealed to the extent of the conflict

PASSED this 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
City Clerk/Treasurer



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

AN ORDINANCE APPROPRIATING FUNDS FOR EMPLOYEE APPRECIATION BONUSES; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES:

Whereas, The City Council of the City of Conway would like to recognize the efforts of full time and part time city employees through the award of an employee appreciation bonus, for which funding must be provided.

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

Section 1: The City of Conway shall appropriate \$185,900 from Fund Balance Appropriation Accounts to the salary accounts for each department in order to provide an expression of appreciation to all full time employees in the net amount of \$300 and all part time employees in the net amount of \$150. Each fund will bear the cost of bonuses for employees, as follows:

General Fund - \$142,000
 Street Fund - \$11,500
 Sanitation Enterprise Fund - \$31,000
 Airport Fund - \$1,400

All part time elected officials are excluded. To receive a bonus, employees must be hired prior to the last full pay period in November and must be actively employed on the date of distribution. Employees pending termination will not receive any appreciation bonus.

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; 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 22nd day of November, 2016.

Approved:

Mayor Tab Townsell

Attest:

Michael O. Garrett
 City Clerk/Treasurer