

**City of Fayetteville Staff Review Form**

**2014-0528**

**Legistar File ID**

**12/2/2014**

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

Jeremy Pate

11/14/2014

Development Services /  
Development Services Department

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Approval of a resolution entering into an agreement with the Northwest Arkansas Land Trust to begin the process of establishing a conservation easement for Mt. Kessler

**Budget Impact:**

Account Number	Fund
Project Number	Project Title
<b>Budgeted Item?</b> <u>NA</u>	Current Budget            \$            -
	Funds Obligated            \$            -
	Current Balance            \$            -
<b>Does item have a cost?</b> <u>No</u>	Item Cost
<b>Budget Adjustment Attached?</b> <u>NA</u>	Budget Adjustment
	Remaining Budget            \$            -

V20140710

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_


Approval Date: \_\_\_\_\_

Comments:

**MEETING OF DECEMBER 02, 2014**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff

**FROM:** Jeremy Pate, Development Services Director 

**DATE:** November 13, 2014

**SUBJECT: Mt. Kessler Conservation Easement**

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**RECOMMENDATION:**

Staff recommends that the City Council enter into an agreement with the Northwest Arkansas Land Trust (NWALT) to begin the process of establishing a conservation easement on Mt. Kessler. Final approval of the conservation easement language and legal documents is required to be approved by both the NWALT and City Council before it goes into effect.

**BACKGROUND:**

The purchase of Mt. Kessler by the City of Fayetteville was made possible by a grant from the Walton Family Foundation in the amount of \$1.5 million. This was a 1:1 matching grant, wherein the City contributed the same amount for the purchase and agreed to certain terms for the grant. These terms included, in summary:

- execute the real estate contract and take ownership of the property by April 30
- outline a plan and process for placing the property in the public domain and permanent preservation as greenspace
- commit to maintain and operate all current and future trails to certain standards, referencing International Mountain Bicycling Association handbooks
- establish a baseline of trail usage with the existing access point
- commit to and construct a trailhead that will create access to the trail system through city-owned property by July 01
- Increase and monitor general trail usage on the trails for a 6-month period following initial baseline measurements
- Document progress via financial and narrative reports on a regular basis

**DISCUSSION:**

Attached is a Grant Schedule document that our department utilizes to track the progress of our grants. As noted, we have met all deadlines and expectations of the grant terms thus far. This agenda item follows up on the outline of the plan and process for placing the 376 acres acquired from Chambers Bank into permanent preservation as greenspace. Once the City took ownership, the property was automatically placed in the public domain. This property has been designated as "park" property, and falls under the operation and maintenance responsibility of the Parks and Recreation Department within the City. The most common method to ensure a

property's permanent status as protected greenspace is through the development of a conservation easement on the property.

A conservation easement is a legal agreement between a land owner and a land trust that permanently protects the conservation values of the property by limiting certain land uses. As the landowner, the City continues to own and utilize Mt. Kessler for its intended purposes – primarily as a forested preserve, with access for many user types via nature, mountain biking, hiking and running trails. Low impact educational and recreational uses, informational signage, outdoor structures, etc. are the only intended development improvements. A Request for Proposals for a Trails Master Plan for the property will be advertised before the end of the year, in order to solicit public input and create a master plan for future soft-surface trail construction on Mt. Kessler. The conservation easement is tailored to the values that the City is trying to protect in this land, along with the uses that are desirable that still accomplish the goals of protecting the greenspace assets.

Staff has researched the various possible ways to create a conservation easement on Mt. Kessler. We are recommending the utilization of the only local land trust, the Northwest Arkansas Land Trust, as the entity that would assist us in this effort. NWALT has conducted a thorough site visit with members of their board and city staff, and is very familiar with the property. They agree that this property is worthy of permanent protection and the Board of Directors has approved preliminary acceptance of the Conservation Easement. This agenda item would result in the approval of a preliminary agreement to proceed, so that the NWALT can begin drafting the necessary legal documents for review by staff and the City Attorney. A title search, surveys, and any other information that is helpful in this effort is collected as part of this process. Based on the size and nature of this property, the initial step requires a Start-Up Fee of \$10,309. A portion of this fee goes to the legal defense fund, and the remainder is utilized to gather all necessary information, draft the legal documents, and create a Baseline Documentation Report, including a detailed environmental assessment. This Report establishes the location, boundaries and condition of the property at the time of the agreement, and is the baseline for each annual review of the property thereafter.

Once the City and land trust reach final agreement on the conservation easement language, this document would come before the City Council for final approval. If approved, a Stewardship Fee is to be paid to the NWALT, for long-term easement monitoring and management. This fee is calculated at \$40,000.

The Fayetteville Natural Heritage Association has agreed to pay for both the Start-up Fee and Stewardship Fee as part of their fundraising efforts for Mt. Kessler. Details of their commitment to fundraising for a variety of purposes are found in a separate agenda item. As noted before, the City and the NWALT ultimately both have to agree on the terms and conditions of the conservation easement before it can be finalized. Please see the attached letter of agreement for more details.

**BUDGET/STAFF IMPACT:**

\$10,309 is due to begin the process of establishing a conservation easement on Mt. Kessler. If the City approves of this agreement, the Fayetteville Natural Heritage Association has agreed to incur this cost at its sole expense, therefore there is no direct cost to the City other than staff time to gather and submit materials and information that we have related to the property, and to provide guidance and review of the resulting documents.

**Attachments:**

- Grant Schedule
- NWALT Letter of Agreement
- Information about Northwest Arkansas Land Trust
- Terms of Walton Family Foundation Grant



November 11, 2014

Mayor Lioneld Jordan  
113 W Mountain Street  
Fayetteville, AR 72701

**RE: Letter Agreement for Kessler Mountain Conservation Easement**

Dear Mayor,

This Letter Agreement outlines our understanding with respect to the grant of a conservation easement from the City of Fayetteville, as Grantor ("Grantor, to the Northwest Arkansas Land Trust, an Arkansas nonprofit corporation, as Grantee, the "NWA Land Trust") with respect to 376 acres (more or less) of open space located in Washington County, Arkansas, known as the "Kessler Mountain Reserve." The conservation easement for the Kessler Mountain Reserve is referred to in this Letter Agreement as the "Conservation Easement."

The NWA Land Trust takes its perpetual land stewardship role very seriously. In accordance with Land Trust Alliance Standards and Practices, NWA Land Trust must ensure that each project is backed with sufficient funding to cover the upfront and long-term costs it incurs in accepting a conservation easement. Stewardship funding is calculated according to the formula specified in NWA Land Trust's Stewardship Funding Cost Analysis, which is performed for each potential project. Calculations are based on experience and informed assumptions. The calculation is adjusted upward based on size, complexity and risk factors that will require greater time and expenditures by NWA Land Trust in the future.

Based on these calculations, and as previously communicated, costs for the Kessler Mountain Conservation Easement are **\$10,309** for initial set-up fees (the "Start-Up Fee"), and a **\$40,000** contribution for ongoing monitoring and stewardship (the "Stewardship Fee").

The Board of Directors of the NWA Land Trust has approved preliminary acceptance of the Conservation Easement, subject to payment of the Start-Up Fee and the Stewardship Fee and satisfaction of the additional terms and conditions hereinafter set forth.

Agreements of the Parties; Terms and Conditions to Final Conservation Easement.

- Grantor shall pay to the NWA Land Trust the Start-Up Fee upon execution of this Letter Agreement. This Letter Agreement shall not be effective until Grantor shall have executed the Letter Agreement and the NWA Land Trust shall have received the Start-Up Fee.
- NWA Land Trust agrees to allocate \$2,500 of the Start-Up Fee to its conservation easement defense fund, in accordance with its current policies, and such funds shall continue to be maintained and administered in accordance with NWA Land Trust's policies and procedures, as in effect from time to time. The conservation easement defense fund is Board-designated, and



the NWA Land Trust's Board of Directors directs the use of these funds for their stated purposes.

- Upon execution of this Letter Agreement and receipt of the Start-Up Fee, NWA Land Trust will begin its due diligence work to draft and complete the Conservation Easement.
- Grantor shall provide the following items to the NWA Land Trust at Grantor's cost, all of which must be received, reviewed and approved by the NWA Land Trust, its Board of Directors and its legal counsel prior to final approval of the Conservation Easement:
  - Current survey of the property subject to the Conservation Easement, platting the Conservation Easement and including a separate legal description for the conservation property subject to the Conservation Easement;
  - Current title commitments for an owner's policy for the property subject to the Conservation Easement; and
  - Master plans including trail design, access points and any other improvement plans for the property subject to the Conservation Easement.
- NWA Land Trust will prepare and complete a Baseline Documentation Report, which will be forwarded to the Grantor for review and signature. To prepare the Baseline Documentation Report, a NWA Land Trust staff member will be making a several more site visits to the conservation property.

#### Final Approval and Payment of Stewardship Fee.

Final approval of the Conservation Easement will be subject to approval and by both parties. While preliminary due diligence has yielded no reason to suspect such an issue may arise, the NWA Land Trust shall have the right to disapprove the final Conservation Easement and terminate this Letter Agreement upon notice to Grantor if the title commitment, survey, or further due diligence performed by NWA Land Trust in accordance with this Letter Agreement reveal unanticipated conditions that would severely impact the conservation values of the property.

Once final approval of the Conservation Easement is obtained, Grantor shall pay to the NWA Land Trust the Stewardship Fee, which shall be due and payable upon execution and delivery of the final Conservation Easement. The Stewardship Fee will be deposited into the NWA Land Trust's stewardship fund for long-term easement monitoring and management, in accordance with the NWA Land Trust's current policies, and such funds shall continue to be maintained and administered in accordance with NWA Land Trust's policies and procedures, as in effect from time to time. The stewardship fund is Board-designated, and the NWA Land Trust's Board of Directors directs the use of these funds for their stated purposes.

#### Failure to Complete.

Should the NWA Land Trust disapprove the final Conservation Easement and terminate this Letter Agreement due to an unforeseen defect in title, assurances or other unanticipated circumstances, as more particularly set forth in "Final Approval and Payment of Stewardship Fee" above, then the Start-Up Fee shall be retained by the NWA Land Trust to cover costs of its due diligence, but any portion of the Stewardship Fee paid by Grantor shall be refunded in its entirety to Grantor, and this Letter Agreement shall terminate.

In the event Grantor has performed all obligations under this Letter Agreement and the NWA Land Trust has failed to perform any of its obligations and such default is not cured as agreed and specified in writing, then Grantor may terminate this Letter Agreement by written notice to the NWA Land Trust on or prior to an agreed upon deadline and receive a refund of any portion of the Stewardship Fee and the Start-Up Fee paid by Grantor to the NWA Land Trust as liquidated damages in lieu of any other remedy Grantor may have.

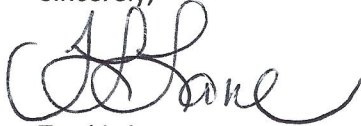
Execution of Letter Agreement.

This Letter Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument. A counterpart hereof signed and transmitted by any party hereto by facsimile or attachment to electronic mail is to be treated as an original. The signature of such party thereon, for purposes hereof, is to be considered as an original signature, and the counterpart so transmitted is to be considered to have the same binding effect as an original signature on an original document. In making proof of this Letter Agreement, it shall not be necessary to produce or account for any counterpart other than one signed by the party against which enforcement is sought.

Thank you for your interest in the Northwest Arkansas Land Trust. We look forward to working with you to ensure the permanent protection of this important property for future generations.

Please call us at 479-966-4666 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Terri L. Lane", written in a cursive style.

Terri L. Lane  
Executive Director

By signing below, the Parties acknowledge that they have read, understand and agree to the terms of the Letter Agreement.

GRANTOR:

**CITY OF FAYETTEVILLE,  
ARKANSAS**

By: \_\_\_\_\_  
Lioneld Jordan, Mayor

Attest: \_\_\_\_\_  
Sondra E. Smith, City Clerk

Date: \_\_\_\_\_

GRANTEE:

**NORTHWEST ARKANSAS LAND TRUST**

By:  \_\_\_\_\_  
Terri L. Lane, Executive Director

Date: 11-17-14



# Mt. Kessler Grant Schedule

Grant #2013-1037 Reference on all reports submitted.

Items to be Completed	Document/Action	Complete By	Status	Date Completed
Consummation of proposed Terms of Purchase of 376 acres by Chambers Bank	Documentation of City Council's approval to execute contract	March 31, 2014	Complete	March 26, 2014
Execute Real Estate Purchase	Evidence by submission of executed contract	April 15, 2014	Complete	Mailed to Ryan April 02
Fully Acquire & Take Ownership	Evidenced by Deed	April 30, 2014	Complete	Mailed to Ryan April 02
Plan & Process for placing 376 acres in public domain & permanent preservation as greenspace	Outlined Report of Plan & Process	April 30, 2014	Complete	Mailed to Ryan April 25
Agreement to commit to maintain & operate all current and future trails to the same standards as outlined in the Razorback Regional Greenway operations and management plan, guidelines listed in IMBA "Guide to Sweet Single-track" and "Managing Mountain Biking" handbooks	Evidenced by a letter signed by Mayor Jordan	April 30, 2014	Complete	Mailed to Ryan April 25
Agreement to commit to establish trailhead that will create access to the trail system through city owned or controlled property	Evidenced by a letter signed by Mayor Jordan	April 30, 2014	Complete	Mailed to Ryan April 25
Establish baseline of trail usage for the single track trails using the methodology developed by ALTA Planning + Design Consultants.		April 30, 2014 to October 30, 2014	Complete	Methodology approved by Ryan/Karen 04/22, using prior trail logs to establish baseline. Future trail usage to be counted using same trail logs along with an electronic counter, during the same reporting period.
Establish publically accessible trailhead	Evidenced by program records to WFF	July 1, 2014	Complete	Completed construction June 15; grand opening attending by WFF on July 14.
Interim Financial Report	Account expenditures of funds	October 31, 2014	Complete	Submitted to WFF October 31
Narrative Report	Description of progress made & confirmation of compliance with terms	October 31, 2014	Complete	Submitted in report form to WFF October 31
Increase and monitor general trail usage on the single track trails w/ six (6) months following initial baseline measurements	Set the target for the increase in trail usage. Subject to WFF input.	April 30, 2015	In progress	
Final Financial Report	Final account expenditures of funds	May 31, 2015		

Items to be Completed	Document/Action	Complete By	Status	Date Completed
Final Narrative Report	Progress made in fulfilling grant & confirmation of compliance with terms	May 31, 2015		

# The Oak and the Acorn

FALL 2013

A newsletter from the Northwest Arkansas Land Trust



A non-profit conservation organization dedicated to providing donors and landowners a vehicle to preserve land with ecological, agricultural, scenic, historic and recreational significance in Northwest Arkansas.

## Worth Protecting: Wilson Springs Conservation Area



A young American Toad at the Wilson Springs Conservation Area in Fayetteville, Arkansas

Terri Lane

Terri Lane

THE BIG SIT 3

LAND LEGACY 4

WILDSCAPE YOUR YARD 5

Sarah Moore Chyrchel

Terri Lane

The 121-acre Wilson Springs Conservation Area, located west of I-540, next to Sam's Club in Fayetteville, feels a world away from the urban development that surrounds it.

The property, owned by the Northwest Arkansas Land Trust since 2011, is the largest remaining wetland in Fayetteville, and one of the last tallgrass prairies in Northwest Arkansas.

With its variety of microhabitats, Wilson Springs is a haven for Ozark-native plants and animals, including two species listed as *Species of Greatest Conservation Need* by the

Arkansas Game & Fish Commission.

The Henslow's Sparrow, and the Arkansas darter, a small fish which is a candidate for endangered species listing, are associated with this wet prairie ecosystem. Each species is declining nationwide due to habitat loss.

The land trust works with the Arkansas Game & Fish Commission, and other partners and agencies, to conduct biological monitoring and habitat restoration to permanently protect this unique property.

*(continued page 3)*



# Capacity for Conservation



Christi Cox Photography

Terri Lane, Executive Director

*A capacity-building grant from the Walton Family Foundation enabled the land trust to successfully initiate a comprehensive work plan.*

FALL 2013

**NORTHWEST ARKANSAS  
LAND TRUST**  
P.O. Box 2211  
Bentonville, AR 72712  
479-966-4666  
www.nwalandtrust.org

Member of



## BOARD OF DIRECTORS

**Ed Clifford** - President,  
*Jones Family Trust*

**Gene Groseclos** - Vice President,  
*Cooper Communities*

**Michelle Harrington** - Secretary,  
*Harrington-Miller Law Firm*

**Brenda Anderson** - Treasurer,  
*Community Development Corporation*

**Dr. Al Einert**,  
*Consulting Arborist*

**Dr. Nicole Hardiman**,  
*U of A Sustainability Consortium*

**Bob Norwood**,  
*Real Estate Development, retired*

**Tom Oppenheim**,  
*Cooper Communities*

**Tim Snell**,  
*The Nature Conservancy*

## STAFF

**Terri Lane** - Executive Director  
**Joe Kieklak** - Conservation Intern

Our History began in 2003 when a group of Northwest Arkansas community leaders founded the land trust in response to intense development in our region.

Our vision is to protect and preserve the quality of life in Northwest Arkansas through the protection of land and water resources.

Our Core Values include working hard to address our mission by collaborating with partners and landowners for the benefit of our community.

We Care About the land that people care about. We are focused on helping landowners who want to preserve their land for themselves and their families.

Accreditation is a major component of our current work plan. The Northwest Arkansas Land Trust was recently selected by the Land Trust Accreditation Commission to formally enter this two-year process.

The Northwest Arkansas Land Trust was also invited into two programs offered by the Land Trust Alliance; the Excellence Enhancement Program and the Executive Director Leadership Training Program. Each provide extensive training and organizational support for our board and staff.

*Thank You to the Walton Family Foundation, the Land Trust Alliance and all of our supporters and partner organizations.*

Land Trust Alliance



The 2013 Executive Director Leadership Retreat in South

*"The Land Trust Alliance is making intensive investments in land trusts that have demonstrated a high potential for excellence. The Northwest Arkansas Land Trust is the first in Arkansas to be selected into these programs."*

- Chuck Roe, Director  
Southeast Regional Land Trust Alliance



# JOIN US THE BIG SIT

## *Calling All Birdwatchers and Land-Lovers!*

Bring your binoculars, bird book and camp chair for an evening on the land!

**WHEN:** 4:30-7 p.m., Saturday, November 16

**WHERE:** Wilson Springs Conservation Area, next to Sam's Club in Fayetteville.

**WHAT:** The "Big Sit" is an event where participants sit in designated areas, watching for and recording the birds they see while sharing an evening on the land.

**WINE & CHEESE:** The evening will begin at 4:30pm in the Hospitality Tent with a brief welcome and orientation. Wine, cheese and other refreshments will be provided, along with a checklist of Wilson Springs birds.



Terri Lane

### **Directions:**

From I-540, exit west on Hwy 112 and turn south onto Shiloh Road at Sam's Club. Watch for parking signs at Vold Vision on your right.

## **Wilson Springs—Continued from Cover**

Development over the past decade reduced the original ecosystem to its current size. Wetlands provide habitat for local wildlife, protect water quality and reduce stream erosion and sedimentation by slowing and filtering stormwater run-off.

With ongoing collaboration, restoration and preservation, Wilson Springs will continue to provide these valuable ecosystem services to our community.

The absence of large herbivores, such as bison and elk, along with decades of fire suppression, have altered the land. Current restoration efforts include the thinning of overgrowth and removal of invasive plant species to allow the native seed bank to regenerate.

The land trust is working on preliminary plans for public access in the future, including light-use nature paths, educational signage and observation areas.



Terri Lane

Volunteers, in cooperation with the Illinois River Watershed Partnership and Spring International, plant trees and collect trash at Wilson Springs.



Terri Lane



Terri Lane

Damselflies and daisies. Beauty abounds at Wilson



# LAND LEGACY: John Rule

Take a walk with John Rule around his remote 146-acre property on the north line of Crawford county and you get a lesson in history, biology and humanity all in one.

It's the type of place, and he is the type of person, who leaves you feeling a little more connected to and aware of the land than you were before.

As you follow Mr. Rule through the woods, stepping over downed branches and stopping for the occasional glance around, you notice how he pats the trees like old friends as he passes them by.



Terri Lane

*John Rule donated 146 acres to the Northwest Arkansas Land Trust for permanent preservation on June 17, 2012.*

When you hear him share a poem, while seated on a rock in the afternoon sun, you begin to contemplate your own existence in the authentic and humble presence of this man and these surroundings.

Mr. Rule does not treat his lifetime as an isolated event, or his land as an isolated place, but rather as pieces of a much larger and connected whole, taking only what he needs and leaving so much more - a legacy of peace, poetry and preservation.

Thank you John Rule.



Terri Lane

And when you stand in the one-room, sod-roofed house with him, a home that he built and has lived in with no electricity or running water for more than 40 years, you notice how this man never fell prey to the need for "more".

His stories of years spent homesteading this land with his late wife, Margaret, such as how the two of them bathed in the river and dried by the sun, make you realize why protecting this land was so important to him.

*"I wanted something for them to come back to and see the stars."*

*- John Rule,  
on his land and family*

**WANT TO SAVE  
YOUR LAND?**

Contact Terri Lane  
at 479-966-4666, or  
tlane@nwlandtrust.org,  
to discuss which  
conservation option  
is best for you.



# Your Land. Our Focus.

The Northwest Arkansas Land Trust is committed to helping landowners who wish to conserve their land for themselves and for their families. Why?

- To preserve working farms and rural landscapes.
- To protect wildlife habitat and migration corridors.
- To protect the scenic “viewsheds” of our region.
- To provide places for outdoor recreation.
- To keep landscapes in tact for future generations.
- To protect water quality in our lakes, rivers and streams.



Terri Lane

The West Fork of the White River



Terri Lane

## WILDSCAPE YOUR YARD: 10 Ideas to Share With Your Kids

1. Plant a “Pollinator Bed” with Ozark-native plants.
2. Use a handful of sand to clean your birdbaths.
3. Use a plant saucer and rocks to create a ground-level water source.
4. Include stacked-rock borders to create shelter spaces for small creatures.
5. Make a “toad-abode” out of an upturned, broken clay pot.
6. Install nest boxes and monitor the activities of the occupants.
7. Plant milkweed for Monarchs and their “hungry little caterpillars”.
8. Create brush piles to provide denning sites for mammals.
9. Hang a bird feeder near a window and enjoy birding from indoors.
10. Create a “Nature Journal” to record pictures and notes about your backyard habitat.

## JOIN US!

**Return the enclosed Support Form today!**

Help us achieve our goal to raise \$5,000 in donor support.

*Together*, we can increase the positive impact of land conservation in

**Northwest Arkansas!** (Or mail contributions to NWALT, PO Box 2211, Bentonville, AR 72712)





## Northwest Arkansas

### Land Trust

P.O. Box 2211  
Bentonville, AR 72712  
479-966-4666  
www.nwalandtrust.org

FALL 2013



*Conserving  
Land and Water  
in Northwest  
Arkansas.*



# JOIN US!!

- Return the enclosed SUPPORTER FORM!
- Go to [www.nwalandtrust.org](http://www.nwalandtrust.org)
- Follow us on FACEBOOK
- Sign up for our E-NEWS updates
- EMAIL [tlane@nwalandtrust.org](mailto:tlane@nwalandtrust.org)

## WE WANT YOUR PHOTOS!

Do you like to take photos? Send us your photos of Ozark places, people and wildlife to share in our publications. Email to [tlane@nwalandtrust.org](mailto:tlane@nwalandtrust.org)!





# The Northwest Arkansas Land Trust CONSERVATION OPTIONS

## Conservation Easements

A conservation easement is a legal agreement between a landowner and the land trust that permanently protects the conservation values of the property by limiting certain land uses. As the landowner, you continue to own and use your land; you may sell it or pass it on to your heirs. The conservation easement stays with the deed.

Each agreement is tailored to the individual landowner and to the conservation values that you are trying to protect. An easement can cover all or just a portion of your property and does not have to allow for public access.

Examples of allowable uses might include farming, hunting, and fishing activities, while restricted uses would include such things as subdividing, mining, logging and construction. It is the ongoing responsibility of the land trust to monitor the property to ensure the terms of the easement are met, and defend those terms into the future.

## Land Donations

Also known as “fee simple”, the landowner donates (or on occasion a land trust will purchase) all rights, title and interest in the property.

Through “life estate agreements”, a landowner may continue to live on or use the donated property until their passing. A “residential envelope” can establish that the home and it’s surrounding property are left out of the donation, if desired.

The land trust develops an adaptive land management plan for each property to help guide the ongoing preservation of the donated acreage.

## Other Conservation Options

In addition to easements and fee-simple land donations, the land trust can accept bequests of land (land left to the land trust in a will), bargain sales (purchases of land priced significantly lower than market value), or negotiate long-term lease or management agreements. Each property is considered on a case-by-case basis.

## 5 STEPS TO SAVE YOUR LAND

### STEP 1: CONTACT THE LAND TRUST

If you are interested in conserving your land, contact the land trust at **479-966-4666**, or **tlane@nwalandtrust.org**, to discuss your property and your conservation goals.

### STEP 2: SITE VISIT

The land trust will schedule a site visit to your land. We will take a basic inventory of the conservation values of your property and discuss which conservation option is best for you.

### STEP 3: PREPARATION OF DOCUMENTS

Once both parties have reached a preliminary agreement to proceed, the land trust will begin drafting the necessary legal documents for review by you and/or your attorney. As part of this process, the land trust will order a title search and discuss with you any need for surveys, appraisals or other additional documentation.

### STEP 4: BASELINE DOCUMENTATION REPORT

The land trust will prepare a baseline documentation report (BDR), including a map of the property and a detailed environmental assessment. The BDR establishes the location, boundaries and condition of the property at the time of the agreement. It is submitted to you for review and signature.

### STEP 5: SIGNING DAY

Once the necessary documents have been completed, a signing day and location will be determined. All interested parties should be present for the notarized signing of the conservation documents. This is a time for celebration! With the permission of the landowner, a press release will be sent to the local media.

Once your property is in conservation, the land trust will assist you with any land management issues that may arise. We will schedule an annual monitoring visit and submit a detailed monitoring report to you for your review and signature each year.

## FAQ frequently asked questions

### What types of land does the land trust protect?

We protect a variety of lands, including working farms and rural landscapes, wildlife habitat, streams and rivers, wetlands, prairies, historical sites, scenic “viewsheds” and recreational areas.

### Is there a minimum size of property that the land trust will consider?

No, there is no minimum size requirement; we consider the conservation value of the property being protected, not the total acreage.

### Why do families save their land?

Some wish to ensure the land they love remains whole and undeveloped beyond their lifetime or to ensure their land is not fragmented as it’s passed on to their heirs. Others wish to preserve working farms, to contribute to the community, or to protect wildlife habitat and migration corridors.

### How is the land trust funded?

We are a local non-profit reliant on community support. Contributions from donors, landowners, community foundations and partner organizations enable us to carry out our conservation mission.

### Will I receive tax benefits for conserving my land?

The donation of land or easements can sometimes yield significant tax benefits. The land trust refers landowners to their accountant or tax attorney for professional advice.

### How does the land trust ensure the permanent protection of my land?

Perpetuity means forever. The land trust estimates the funding necessary to protect each property, working with the landowner, donors and partners to secure that funding. The land trust monitors property regularly and is prepared to legally defend the conservation agreement should it be violated or challenged in a court of law.

### Will I be required to contribute to the stewardship fund for my land?

The stewardship funding calculation takes into account the costs the land trust will incur in accepting, stewarding, monitoring and potentially defending the conservation agreement. Landowners are asked to contribute to this fund to the extent that they are able.

February 4, 2014

Mayor Lioneld Jordan  
City of Fayetteville  
113 W. Mountain  
Fayetteville, AR 72701

Re: Grant #2013-1037

Dear Mayor Jordan,

It is my pleasure to inform you that The Walton Family Foundation, Inc. (the "Foundation") has approved a grant of up to \$1,500,000.00 to the City of Fayetteville (the "Grantee"). This grant is subject to the following terms and conditions:

- Purpose:** The purpose of the grant is support the City of Fayetteville as they acquire approximately 376 acres located in southeast Fayetteville known as Mt. Kessler which lies adjacent to the City's 200 acre regional park currently under development. The purchase of this property from private ownership will permanently place this asset and its existing ~5-6 miles of single track mountain bike and hiking trails in the public domain. This grant is more fully described in Grantee's letter of interest dated August 28, 2013. Grantee agrees to use all grant funds exclusively for the grant's purposes. Any changes in these purposes must be authorized in advance by the Foundation in writing.
- Amount: Up to One Million Five Hundred Thousand Dollars (\$1,500,000.00).**
- Payable:** One payment in the amount of up to \$1,500,000.00 shall be payable upon receipt of a copy of this letter from Grantee acknowledging the terms and conditions set forth herein and satisfactory evidence of \$1,500,000 in matching commitments as well as an executed real estate purchase contract for the 376 acres. Matching commitments must be documented for the foundation by April 30, 2014. In the event the matching commitments are not documented by this deadline, all outstanding obligations of the Foundation will terminate.
- Accounting:** (a) The Foundation encourages, whenever feasible, the deposit of grant funds in an interest-bearing account. For purposes of this letter, the term "grant funds" includes the grant and any income earned thereon.  
  
(b) Grantee will maintain records of receipts and expenditures made in connection with the grant funds and will keep these records during the period covered by the Grantee's reporting obligations specified in paragraph 5 and for at least four years thereafter ("Maintenance Period"). Grantee will make its books and records in connection with the grant funds available for inspection by the Foundation during normal business hours as the Foundation may request at any time during the Maintenance Period.
- Reporting and Evaluation:** Grantee will provide the Foundation with an interim financial and narrative report by October 31, 2014 and a final financial and narrative report by May 31, 2015. These reports shall include an account of expenditures of grant funds, and a brief narrative of what was accomplished

(including a description of progress made in fulfilling the purposes of the grant and a confirmation of Grantee's compliance with the terms of the grant).

Success will be measured against the outputs and outcomes described below.

All reports will be sent electronically to [HomeRegion@wffmail.com](mailto:HomeRegion@wffmail.com). If you have questions relative to reporting, please contact Janet Post, Home Region Focus Coordinator, 479-464-1576, email [jpost@wffmail.com](mailto:jpost@wffmail.com). Please reference Grant #2013-1037 on all reports submitted.

6. **Representations:** Grantee represents and warrants to the Foundation that:

(a) Grantee is an organization in good standing, is either an organization described in section 501(c)(3) of the Internal Revenue Code ("Code") or a governmental unit, and is not a "private foundation" described in section 509(a) of the Code. Grantee will promptly notify the Foundation of any change in Grantee's tax status under the Code.

(b) In no event will Grantee use any grant funds:

(i) to carry on propaganda, or otherwise to attempt, to influence legislation;

(ii) to influence the outcome of any specific public election or to carry on, directly or indirectly, any voter registration drive; or

(iii) to undertake any activity other than for a charitable, educational or other exempt purpose specified in section 170(c)(2)(B) of the Code.

(c) Grantee will comply with all applicable laws and regulations.

7. **Repayment:** The Foundation may discontinue any further payments to Grantee, and may direct Grantee to repay any unexpended grant funds to the Foundation, if any of the following events occurs:

(i) Grantee ceases to maintain its tax-exempt status as described in paragraph 6(a) above;

(ii) Grantee fails to comply with the terms of this letter; or

(iii) There is a material change in Grantee's key personnel that in the sole opinion of the Foundation adversely affects Grantee's management of the grant.

8. **Release and Indemnity:** Unless prohibited by law, Grantee shall release, indemnify, defend and hold harmless the Foundation and its directors, officers, employees and agents from and against any and all claims, actions, suits, demands, damages, losses, expenses and liabilities, arising out of or related in any way to the actions or omissions of Grantee (or its directors, officers, employees, agents or contractors) in connection with the Grant and the project funded by the Grant, except to the extent caused by the Foundation's (or its directors, officers, employees or agents') negligent actions or omissions. Grantee further agrees to carry insurance in such forms and amounts as are commercially reasonable and appropriate to cover Grantee's operations and to enable Grantee to indemnify and defend the Foundation as provided hereunder.

9. **Grant Publicity:** Grant publicity related to this grant consistent with Grantee's normal practice is permitted, subject to the following provisions. The Foundation expects any announcements and other publicity



to focus on Grantee's work and the project or issue funded by the grant. Recognition of the Foundation's role in funding the project is permitted, provided that the timing, content and strategic focus of such publicity should be approved by the Foundation contact listed in paragraph 11. Publicizing the grant and the Foundation in Grantee's publications and communications in a manner consistent with similar grants obtained by Grantee is permitted.

The Foundation may ask Grantee to provide illustrations, photographs, videos, recordings, information or other materials related to the grant (collectively "Grant Work Product") for use in Foundation communications including the Foundation's website, annual report, newsletters, board materials, presentations, communications and other publications. Grantee agrees to provide the Foundation with such items upon the Foundation's reasonable request and hereby grants to the Foundation and anyone acting under the authority of the Foundation a fully paid-up, world-wide, right and license to use, reproduce, display and distribute the Grant Work Product in connection with the Foundation's charitable operations and activities. In connection therewith, Grantee shall be responsible for obtaining all necessary rights and permissions from third parties for the Foundation to use the Grant Work Product for these purposes. By signing this Agreement, Grantee also acknowledges and agrees to use by the Foundation of historical, programmatic and other information relating to Grantee and the grant hereunder.


10. **Gratuities:** The Foundation desires that all of Grantee's resources be dedicated to accomplishing its philanthropic purposes. Therefore, Grantee agrees that it will not furnish the Foundation or its Board of Directors, officers, staff or affiliates with any membership, commemorative items, recognition plaques or gratuities or benefits of any kind.

11. **Contact:** For all communications regarding the grant, your point of contact at the Foundation will be Program Officer, Ryan Hale. He can be contacted via phone or email as follows: Telephone number (479) 464-1579, Fax number (479) 464-1580 and Email rhale@wffmail.com.

We have enclosed two original grant letters. Please sign one copy as Grantee's acknowledgment of the terms and conditions herein stated and return it to me in the enclosed self-addressed envelope. If the signed acknowledgment of this letter is not received in the Foundation's office by February 28, 2014, the Foundation will consider the Grantee to have declined the grant.

On behalf of the Foundation, I extend every good wish for the success of your organization's endeavors.

Sincerely,



Buddy D. Philpot  
Executive Director

ACKNOWLEDGED AND AGREED

By:  2/25/14  
Lioneld Jordan (Date)  
City of Fayetteville



Appendix A: City of Fayetteville  
Purchase & Preserve Mt. Kessler in Fayetteville

Output Performance Measures:

- The City will execute a real estate contract for the purchase of 376 acres known as Mt. Kessler by April 15, 2014 as evidenced by submission of executed contract.
- The City will fully acquire and take ownership of the property by April 30, 2014 as evidenced by deed.
- The City will provide an outline of its plan and process for permanently placing the 376 acres in the public domain and permanent preservation as greenspace in perpetuity by April 30, 2014.
- The City will sign an agreement to commit to maintain and operate all current and future trails on Mt. Kessler to the same standards as outlined in the Razorback Regional Greenway operations and management plan as well as the guidelines listed in the IMBA “Guide to Sweet Single-track” and “Managing Mountain Biking” handbooks by April 30, 2014, as evidenced by a letter signed by Mayor Lioneld Jordan.
- The City will sign an agreement to commit to establish a trailhead that will create access to the trail system at Mt. Kessler through city owned or controlled property by April 30, 2014, as evidenced by a letter signed by Mayor Lioneld Jordan.
- The City will establish a baseline of trail usage for the single track trails located on Mt. Kessler using the methodology developed by ALTA Planning + Design Consultants. Measurement will commence within 30 days of acquisition and will be collected for no less than six months.

Outcome Performance Measures:

- The City will provide evidence of match funding in the amount of up to \$1.5 million by April 30, 2014 as evidenced by program records.
- The City will establish a publicly accessible trailhead allowing access to trails on the 376 acres within 90 days of officially acquiring the property as evidenced by program records.
- General trail usage on the single track trails located on Mt. Kessler will increase in the six months following initial measurement. The baseline established during the first 6 months after completion will be used to set the target for the increase in trail usage. All targets will be subject to WFF input.

## **RESOLUTION NO. 40-14**

A RESOLUTION TO AUTHORIZE MAYOR JORDAN TO APPLY FOR AND ACCEPT A 50/50 MATCHING GRANT FROM THE WALTON FAMILY FOUNDATION IN THE AMOUNT OF \$1,500,000.00, TO USE THIS GRANT AND \$1,600,000.00 OUT OF RESERVES TO PURCHASE ABOUT 328 ACRES OF MT. KESSLER FROM CHAMBERS BANK AND TO BUILD A TRAILHEAD, TO APPROVE A LAND SWAP WITH CHAMBERS BANK, TO SUPPORT A PARKLAND DEDICATION OF ABOUT 48 ACRES FOR FUTURE PARKLAND CREDIT AND TO APPROVE THE ATTACHED BUDGET ADJUSTMENT

**WHEREAS**, the City of Fayetteville has a unique opportunity to work with the Walton Family Foundation, Fayetteville Natural Heritage Association and Chambers Bank to acquire and preserve 376 acres of Mt. Kessler for \$3,000,000.00 and parkland dedication so that the Regional Park will grow to almost 600 contiguous acres of amenities running the gamut from developed sports fields to mountain biking and nature trails; and

**WHEREAS**, the City will also need to spend about \$100,000.00 from reserves to develop a public trailhead for the many nature, hiking, biking and recreational trails already established and to be established and enhanced as part of the Regional Park.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the City of Fayetteville application for the 50/50 matching grant with the Walton Family Foundation, extends its deepest appreciation and gratitude to the Walton Family Foundation for this grant, agrees to accept and match this \$1.5 million donation with City funds from reserves, agrees to use this Three Million Dollars to purchase about 328 acres from Chambers Bank, agrees to build the public trailhead for about \$100,000.00 from reserves and authorizes Mayor Jordan to sign all necessary documents and agreements necessary to accomplish this grant, purchase and project.

Section 2: That the City Council of the City of Fayetteville, Arkansas hereby agrees to support and recommend that the Fayetteville Planning Commission accept a parkland dedication of about 48 acres by Chambers Bank to be used for future parkland credit.

Section 3: That the City Council of the City of Fayetteville, Arkansas hereby agrees to swap those parcels of City land with Chambers Bank for the Chambers Bank parcels and trail easements all as identified on the map attached to this Resolution as Exhibit A.

Section 4: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Budget Adjustment recognizing grant revenue of \$1.5 million from the Walton Family Foundation and expenditures of \$3.1 million for purchase of the Mt. Kessler property and construction on the trailhead.

**PASSED** and **APPROVED** this 18<sup>th</sup> day of February, 2014.

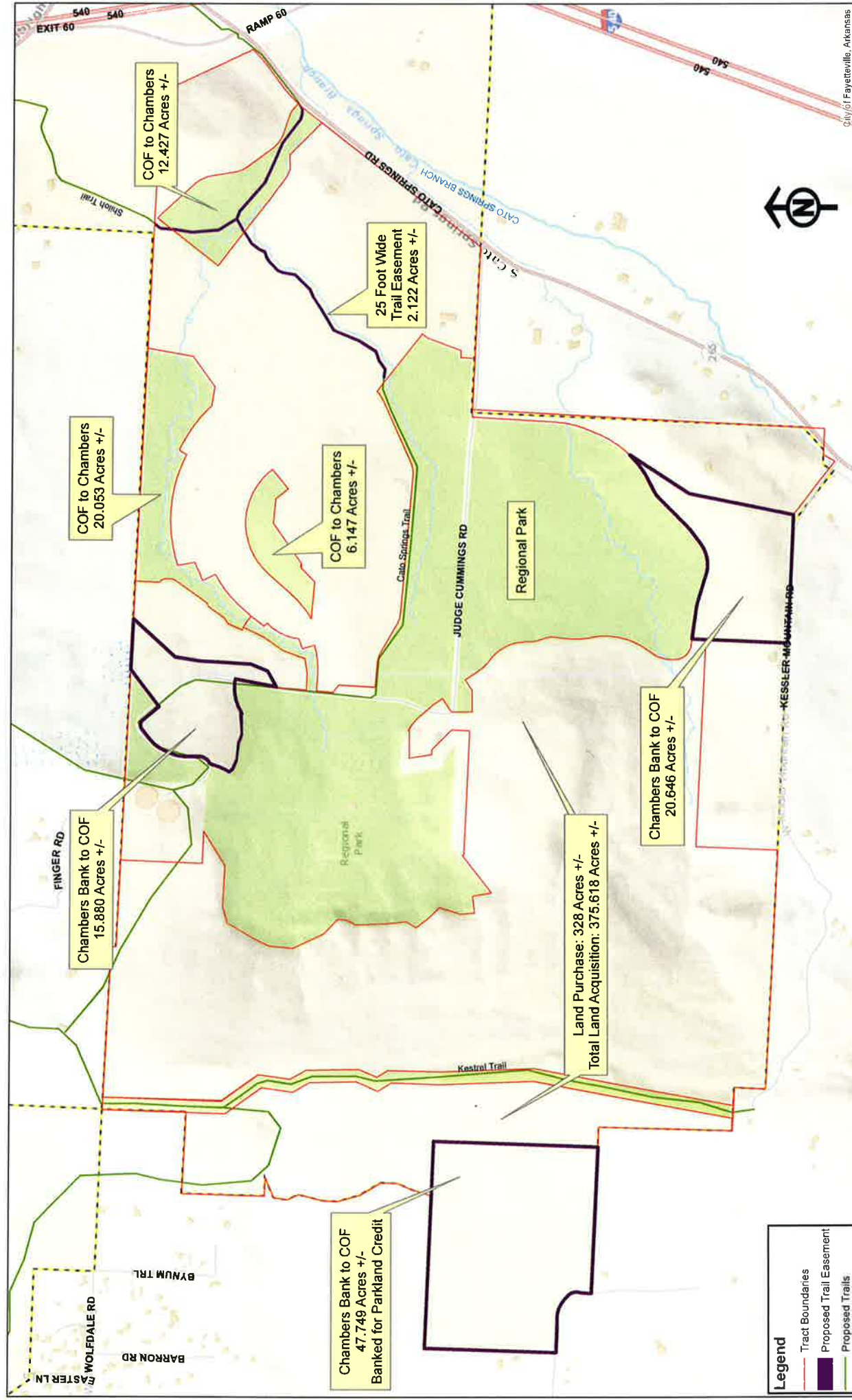
APPROVED:

By:   
LIONELD JORDAN, Mayor

ATTEST:

By:   
SONDRA E. SMITH, City Clerk/Treasurer





Chambers Bank to COF  
15,880 Acres +/-

COF to Chambers  
12,427 Acres +/-

COF to Chambers  
6,147 Acres +/-

25 Foot Wide  
Trail Easement  
2,122 Acres +/-

Chambers Bank to COF  
20,646 Acres +/-

Land Purchase: 328 Acres +/-  
Total Land Acquisition: 375,618 Acres +/-

Chambers Bank to COF  
47,749 Acres +/-  
Banked for Parkland Credit

**Legend**

- Tract Boundaries
- Proposed Trail Easement
- Proposed Trails



**Mt. Kessler / Regional Park**

February 3rd, 2014  
City of Fayetteville, Arkansas

