

City Council Members

Ward 1 Position 1 – Andy Hawkins  
Ward 1 Position 2 – David Grimes  
Ward 2 Position 1 – Mark Vaught  
Ward 2 Position 2 – Shelley Mehl  
Ward 3 Position 1 – Jim Rhodes  
Ward 3 Position 2 – Mary Smith  
Ward 4 Position 1 – Theodore Jones, Jr.  
Ward 4 Position 2 – Shelia Whitmore



Mayor Tab Townsell

City Attorney Michael Murphy

City Clerk/Treasurer Michael O. Garrett

5:30pm -- Committee Meeting:  
***Discussion of Bicycle Friendly Community***  
6:30pm -- City Council Meeting  
Courtroom in District Court Building  
810 Parkway, Conway, AR 72032  
April 14<sup>th</sup>, 2009

1. **Call to Order**
2. **Roll Call**
3. **Minutes:** *March 24<sup>th</sup>, 2009 & April 8<sup>th</sup>, 2009*
4. **Recognition of Guests:**
5. **Public Hearings:**
6. **Report of Standing Committees:**
  - A. **Community Development Committee (Planning, Zoning, Permits, Community Development, Historic District, Streets, & Conway Housing Authority)**
    1. Consideration to enter into agreement with Elliott Properties for temporary space for the Conway Planning Department.
    2. Consideration to accept bids for the Planning & Development department office renovations and furniture.
    3. Resolution accepting donated land from Myers Properties LLC located on Morningside Drive.
    4. Ordinance authorizing a franchise agreement with Arkansas Research an Education Optical Network (ARE-ON),
    5. Ordinance to allow restricted office in residential zones by conditional use permit.
    6. Ordinance authorizing a street-railroad crossing project for the elimination and installation of certain crossings within the City of Conway.
    7. Consideration of the bids for Meadows Corporate Center offsite improvements – Meadows North entrance – Nina Russ Lane.
  - B. **Public Safety Committee (Police, CEOC, IT Technology, Fire, Dist. Court & City Att., & Animal Control)**
    1. Ordinance accepting asset obtained through court order for the Conway Police Department.
    2. Ordinance appropriating grant funds received for the Conway Police Department.
    3. Consideration to destroy certain employee records of the Conway Police Department.

## **C. Finance**

1. Resolution requiring an audit of the accounting records of the City of Conway.
2. Consideration to enter into an agreement with JPMS/Cox to perform the City's annual financial audit.
3. Ordinance waiving bids and appropriating funds in conjunction with hardware and software maintenance for the AS/400.

## **7. Old Business**

## **8. New Business**

**Adjournment**



**City of Conway, Arkansas  
Ordinance No. O-09-\_\_\_\_\_**

**AN ORDINANCE AMENDING THE MASTER STREET PLAN; ADOPTING A COMPLETE STREETS POLICY FOR THE CITY OF CONWAY, ARKANSAS: AND FOR OTHER PURPOSES**

**AN ORDINANCE** relating to Conway's Complete Streets policy, stating guiding principles and practices so that transportation improvements are planned, designed and constructed to encourage walking, bicycling and transit use while promoting safe operations for all users.

**WHEREAS**, increasing walking and bicycling offers the potential for cleaner air, greater health of the population, reduced traffic congestion, a more livable community, less reliance on fossil fuels and their foreign supply sources and more efficient use of road space and resources; and

**WHEREAS**, the City Council of the City of Conway, with the Mayor concurring, adopted Ordinance No. \_\_\_\_\_ that defines the City's Master Street Plan; and

**WHEREAS**, City policy as stated in the Master Street Plan is to encourage walking, bicycling and transit use as safe, convenient and widely available modes of transportation for all people; and

**WHEREAS**, Conway's Complete Streets guiding principle is to design, operate and maintain the City's streets to promote safe and convenient access and travel for all users: pedestrians, bicyclists, transit riders, and people of all abilities, as well as freight and motor vehicle drivers; and

**WHEREAS**, the City of Conway shall implement a Complete Streets policy by designing, operating and maintaining the transportation network to improve travel conditions for bicyclists, pedestrians, public transit and motor vehicles in a manner consistent with, and supportive of, the surrounding community; and

**WHEREAS**, transportation improvements will include an array of facilities and amenities that are recognized as contributing to Complete Streets, including: street and sidewalk lighting; pedestrian and bicycle safety improvements; access improvements for freight; access improvements, including compliance with the Americans with Disabilities Act; public transit facilities accommodation including, but not limited, to pedestrian access improvement to transit stops and stations; street trees and landscaping; drainage; and street amenities; and

**WHEREAS**, the City of Conway will implement policies and procedures with the construction, reconstruction or other changes of transportation facilities on arterial streets to support the creation of Complete Streets including capital improvements, re-channelization projects and major maintenance, recognizing that all streets are different and in each case user needs must be balanced;

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

**Section 1.** The City shall will plan for, design and construct all new City transportation improvement projects to provide appropriate accommodation for pedestrians, bicyclists, transit riders, motor vehicle operators, and persons of all abilities, while promoting safe operation for all users, as provided for below.

**Section 2.** The City will incorporate Complete Streets principles into the Master Street Plan, Pedestrian and Bicycle Master Plans; and other plans, manuals, rules, regulations and programs as appropriate.

(a) Bicycle and pedestrian ways shall be established in new construction and reconstruction projects in all urbanized areas unless one or more of four conditions are met:

(1) Bicyclists and pedestrians are prohibited by law from using the roadway. In this instance, a greater effort may be necessary to accommodate bicyclists and pedestrians elsewhere within the right of way or within the same transportation corridor.

(2) The cost of establishing bikeways or walkways would be excessively disproportionate to the need or probable use. "Excessively disproportionate" is defined as exceeding twenty percent of the total cost of the transportation project.

(3) Where the street has severe topographic or natural resource constraints.

(4) Where scarcity of population or other factors indicate an absence of need, to include future needs.

(b) In rural areas, paved shoulders should be included in all new construction and reconstruction projects on roadways used by more than 1,000 vehicles per day. Paved shoulders have safety and operational advantages for all road users in addition to providing a place for bicyclists and pedestrians to operate.

(c) Sidewalks, shared use paths, street crossings (including over- and undercrossings), pedestrian signals, signs, street furniture, transit stops and facilities, and all connecting pathways shall be designed, constructed, operated and maintained so that all pedestrians, including people with disabilities, can travel safely and independently.

**Section 3.** Except in unusual or extraordinary circumstances, Complete Streets principles will not apply:

(a) to ordinary maintenance activities designed to keep assets in serviceable condition (e.g., mowing, cleaning, sweeping, spot repair and surface treatments such as chip seal, or interim measures on detour or haul routes); or

(b) where other available means or factors indicate an absence of need, including future need.

**Section 4.** Complete Streets may be achieved through single projects or incrementally through a series of smaller improvements or maintenance activities over time. It is the Mayor's and Council's intent that all sources of transportation funding be drawn upon to implement Complete Streets. The City believes that maximum financial flexibility is important to implement Complete Streets principles.

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

**Section 6.** 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 14th day of April, 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

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

DRAFT



**City of Conway, Arkansas  
Resolution No. R-09-\_\_\_\_\_**

**A RESOLUTION AUTHORIZING THE FORMATION OF THE CONWAY BICYCLE ADVISORY BOARD**

**Whereas**, the City of Conway, Arkansas is desirous to create a Bicycle Friendly Community through the League of American Bicyclists, and

**Whereas**, the City has established a Bicycle Task Force to help meet the requirements to become a Bicycle Friendly Community, and

**Whereas**, the Bicycle Task Force has accomplished many of the requirements of the League of American Bicyclists, and

**Whereas**, the formation of a Bicycle Advisory Board is a requirement for Conway to become a Bicycle Friendly Community.

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

**Section One:**

That the City Council of the City of Conway hereby creates a Bicycle Advisory Board, consisting of seven members, who will be citizens of the City of Conway, and will be appointed by the Mayor of the City of Conway and confirmed by the City Council,

**Section Two:**

The members will serve staggered three year terms. In the initial year, the members will draw for one, two and three year terms (with three members drawing three year terms). Each subsequent year, two members will be appointed for full three year terms.

**Section Three:**

The Conway Bicycle Advisory Board will include at least two members who represents a recognized bicycle advocacy organization, and will be nominated through a slate of nominees presented by said organization, and

**PASSED** this 14<sup>th</sup> day of **April, 2009**.

**APPROVED:**

**ATTEST:**

\_\_\_\_\_  
**Mayor Tab Townsell**

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

## COMMERCIAL RENTAL AGREEMENT

- \_\_\_ 1. **PARTIES.** This Commercial Rental Agreement (hereinafter, "the Lease") is entered into on this \_\_\_ day of \_\_\_\_\_, 200\_\_ by and between \_\_\_\_\_ Elliott Properties, LLC \_\_\_\_\_ (hereinafter, referred to as "Lessor") and \_\_\_ City of Conway, Arkansas\_\_\_ (hereinafter, jointly and severally referred to as "Lessee") on the following real property located at 1100 Prairie\_\_\_ \_\_\_ Conway \_\_\_\_\_ Arkansas (hereinafter, referred to as the "Premises"), for use as a business only.

The term "Lessee" in this Lease shall include, but not be limited to, any and all persons and/or entities designated above, unless otherwise stated. The term "Lessor" shall include all persons and/or entities designated above as Lessor and Lessor's authorized representatives.

**NO ASSIGNMENT OR SUBLETTING.** The parties agree as a freely negotiated and material part of the consideration for this Lease that Lessee shall not assign any interest in this Lease nor sublet any part of the Premises, without the prior written consent of Lessor. If Lessor consents in writing, Lessee remains fully liable hereunder and shall receive credit for all rentals paid by succeeding lessees. Consent by Lessor to one assignment or subletting shall not be deemed to be consent to any subsequent assignment or subletting.

- \_\_\_ 2. **TERM OF LEASE.** Lessor, for and in consideration of the rents to be paid as stated herein and the performance of all the agreements provided within this Lease, does hereby lease to Lessee the Premises for a term commencing on the \_\_1\_ day of \_\_\_\_\_May\_\_\_\_\_ 2009\_ and ending on the \_\_30\_ day of \_\_\_June\_\_\_\_\_ 2009\_\_.

**OPTION TO EXTEND.** If Lessee shall have fully performed every agreement and covenant on Lessee's part to have been kept and performed under the term of this Lease at the time of exercise and at the time of renewal, Lessee is hereby granted the right and option to extend this Lease, upon the same terms except the amount of rental, for an additional period of \_\_1\_\_\_ year(s), with such option to be exercised in writing by Lessee not later than thirty (30) days prior to the expiration of the basic or original term of this Lease. Should the Lessee exercise the option herein granted to extend this Lease, the minimum or basic rental for the extended term of this Lease shall be recalculated for the extended term according to the sole discretion of Lessor.

- \_\_\_ 3. **MOVE-OUT NOTICE AND EARLY MOVE-OUT.** At least thirty (30) days' written notice of intent to move out must be given to Lessor. Verbal move-out notice is not sufficient under any circumstances. Lessee shall be responsible for obtaining written acknowledgment from Lessor that the move-out notice has been received. Lessee's written move-out notice must terminate the Lease on the last day of the month following the month after the next rental due date after the notice. If no 30-day written move-out notice is given to Lessor, Lessee will forfeit the security deposit and if Lessee moves out without rent being paid in full for the entire lease term or renewal or extension period, Lessee will be liable under the provisions of this Lease for liquidated damages, and for unpaid rent or late charges which accrue during any month in which Lessee occupies the Premises, for property damage caused by Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests, and for cleaning charges and painting charges.

In no event may Lessee's written move-out notice terminate the Lease sooner than the end of the Lease term or renewal or extension period.

- \_\_\_ 4. **HOLD-OVER AND AUTOMATIC RENEWAL.** As stated above, Lessee agrees to give Lessor thirty (30) days' written notice prior to the termination of the initial lease term, stating that Lessee does not desire to renew this Lease. In the event that a timely notice is not given by Lessee within the period prescribed or, after having given notice, Lessee shall remain or continue to be in possession of the Premises or any part thereof after the end of the lease term or any extension thereof, Lessor may, at its option: (a) treat such holding over as a renewal of the Lease for a term equivalent to the immediately preceding lease term at a rental equal to the prevailing rental charges of Lessor for substantially the same type of leased premises, subject to the covenants and conditions of this Lease which shall continue in full force and effect; or (b)

Lessor or Lessor's Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

refuse to renew the Lease, in which event Lessor shall give Lessee three (3) days' notice to vacate the Premises. Lessor may proceed to let the Premises to another tenant and charge Lessee for any damages resulting from Lessee's failure to deliver possession on the date of termination, in addition to any other rights accruing to Lessor hereunder. Lessee shall be liable to pay rents for the holdover period and to indemnify Lessor and prospective tenants for any damages (including, but not limited to, lost rentals, lost profits, compensatory damages, lodging expenses, and attorney's fees). Holdover rents shall be immediately due on a daily basis and delinquent without notice or demand.

\_\_\_ 5. **SECURITY DEPOSIT.** Lessee agrees to deposit with Lessor the sum of \$\_\_\_\_0\_\_\_\_\_, payable on or before signing this Lease as security for the performance by Lessee of all conditions and agreements of this Lease. Refunds shall be made in accordance with this Lease. Lessee shall not consider this Security Deposit as the final rent installment due; the full monthly rent shall be paid on or before the due date, including the last month of occupancy.

\_\_\_ 6. **RENT.** For rent of the Premises over the initial term set forth in paragraph 2, Lessee shall pay Lessor a total of \$ 4,900.02 for the lease term, payable in the following manner: (a) prorated rent from the commencement date to the first of next month in the amount of \$\_\_\_\_0\_\_\_\_\_; and (b) 2 installments of \$ 2,450.01 in advance and without demand at Lessor's address with the first monthly installment due on the 1 day of May 2009 and 1 additional installments of the same amount due on the first (1<sup>st</sup>) day of each month thereafter until paid in full. Rent unpaid after the due date is delinquent and will authorize all remedies in this Lease, particularly the paragraph herein entitled "Default by Lessee." If all rent is not paid on or before the fifth (5<sup>th</sup>) day of the month (the late charge date), Lessee agrees to pay an initial late charge of One Hundred and 00/100 Dollars (\$100.00) and a late charge of Ten and 00/100 Dollars (\$10.00) per day until paid in full. Daily late charges shall not exceed sixty (60) days for any single month's rent. Lessee agrees to pay a Thirty and 00/100 (\$30.00) charge for each returned check, plus daily late charges from the late charge date until Lessor receives acceptable payment. Pet charges for violating the pet restrictions contained in the Lease herein shall be Fifty and 00/100 Dollars (\$50.00) for the first day and Ten and 00/100 Dollars (\$10.00) for each additional day. Lessee's right to possession and all of Lessor's obligations are expressly contingent on prompt payment of rent, and the use of the Premises by Lessee is obtained only on the condition that rent is paid on time. PAYMENT OF RENT SHALL BE AN INDEPENDENT COVENANT, and all monies received by Lessor shall be applied first to non-rent obligations of Lessee, then to rent, regardless of notations on checks. At Lessor's option, Lessor may at any time require that all rent and other sums be paid in either certified check, cashier's check, money order, or one monthly check rather than multiple checks. Under no circumstances shall Lessor's acceptance of a partial or late payment constitute accord and satisfaction. Nor will Lessor's acceptance of a partial payment forfeit Lessor's right to collect the balance due on the account, despite any endorsement, stipulation, or other statement on any check.

\_\_\_ 7. **SPECIAL PROVISIONS.** The following special provisions and any addendum shall control over any conflicting of this printed lease form:  
none  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_ 8. **UTILITIES AND SERVICES.** Lessee will be responsible for scheduling the hookup and paying of deposits and future charges, as and when due, of all of the utilities, including, but not limited to, electric, water, gas, telephone, internet, and TV cable. Lessee will at all times keep electric, water, trash (and gas, if applicable) service to the Premises. If such service is discontinued for any reason, Lessor may reinstate such service and charge the cost of such reinstatement and utility service to Lessee.

\_\_\_ 9. **TAXES.** Lessor shall pay all ad valorem taxes and assessments due to improvement districts or governmental bodies which may be levied, assessed or charged against the Premises by reason of the real property and premises leased hereunder. Lessee shall be responsible for all taxes attributable to the property

Lessor or Lessor's Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_



property of Lessee on the Premises and for all license, privilege, and occupation taxes levied, assessed, or charged against Lessee on account of the operation of the business from the Premises.

\_\_\_ 10. **RULES AND REGULATIONS.** Lessee agrees that the conduct of Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests shall not be disorderly, or unlawful, and shall not disturb the rights, comforts, or conveniences of other persons, lessees, neighbors, or occupants in adjoining or nearby premises. Lessee shall be liable to Lessor for damages caused by Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests. Sidewalks, steps, entrances, walkways, and stairs shall not be obstructed or used for any purpose other than ingress or egress. Lessee shall keep the Premises clean and sanitary and shall dispose of garbage at least weekly, only in appropriate receptacles. Lessor may regulate the manner, time, and place of all parking. Lessor may regulate, limit, or prohibit from the Premises the following: motorcycles, bicycles, tricycles, skateboards, recreational vehicles, boats, trailers, grills, patio furniture, furniture movers, deliverymen, solicitors, guests, or any other person who in Lessor’s reasonable judgment has been disturbing the peace, disturbing other tenants, violating this Lease, or for any other reason whatsoever. All vehicles parked on the Premises must be operable and have valid current license plates. “Operable” means, but is not limited to, the vehicle having inflated tires, having all major components intact, including windows and windshields, and being reasonably clean. Any violation of the foregoing will subject the vehicle to being towed at the expense of the vehicle owner or operator. Flashlights (and not candles or kerosene lamps) shall be used if electricity is interrupted or terminated. Upon payment of a reasonable charge and at the sole discretion of Lessor, Lessor may agree to change (or re-key) a door lock. Keys are the property of Lessor, and Lessee agrees to return all keys upon demand. Keys may not be duplicated without Lessor’s written consent. This Lease may be enforced through Lessor’s representatives or agents, and Lessee shall hold same harmless from reasonable enforcement.

\_\_\_ 11. **CONDITION OF THE PREMISES.** Lessee accepts the Premises, fixtures, and any furnishings “as is.” Lessor makes no implied warranties. Within 48 hours after move-in, Lessee shall notify Lessor in writing of any defects or damages to the aforesaid; otherwise, everything will be deemed to be in clean and good condition. Lessee accepts the Premises subject to and subordinate to any existing or future recorded mortgage or other lien applicable to the Premises or its contents. Lessee shall use reasonable diligence in care of the Premises. Lessee shall, at its own expense, and at all times, maintain the Premises in a clean and sanitary condition and maintain and repair the interior space(s) of the Premises including, but not limited to, heating and air conditioning equipment, lighting, plumbing, wiring, walls, windows, floors, and ceilings of the Premises. Lessee may not make any alterations or improvements to Lessor’s property without Lessor’s prior written consent. No holes or stickers shall be put anywhere inside or outside the Premises, except a reasonable number of small nail holes for picture hanging will be permitted in sheetrock walls and in grooves of wood-paneled walls. Alternative picture hanging methods (in lieu of small nails) may be required by Lessor. No antenna or satellite receiver installation, additional phone or cable TV outlets, or lock changes (including re-keying or additions of locks) will be permitted except by Lessor’s written consent. Lessee will not remove Lessor’s fixtures or furniture from the Premises for any purpose. Any trade fixtures installed by Lessee or acquired by Lessee independent of this Lease shall remain Lessee’s property and may be removed at the expiration of this Lease; provided, however, Lessee shall restore the Premises and repair any damage thereto caused by such removal. Lessee shall furnish, at Lessee’s expense, any light bulbs of prescribed wattage for fixtures and any lamps furnished by Lessor. When moving out, Lessee agrees to surrender the Premises in good, clean condition, as determined by Lessor.

\_\_\_ 12. **CONDUCT OF BUSINESS AND USES.** The Premises are leased to Lessee for the purpose of carrying on the business of \_\_\_\_\_ and related uses, and Lessee covenants and agrees with and unto Lessor that the Premises will be used for those purposes and those related to them and no other, except with the prior written consent of Lessor. Lessee covenants and agrees that Lessee will not do or permit to be done anything in, upon, or about the Premises that increases the hazard of fire beyond that which exists by reason of the uses and occupancy of the Premises for the purposes mentioned. Lessee agrees to pay to Lessor, on demand, any increases in fire insurance premiums on the improvements and building which Lessor may be required to pay thereon by reason of any use by Lessee of the Premises, and Lessee will not do or permit to be done which would make the Premises, or the

Lessor or Lessor’s Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

improvements thereon, uninsurable in whole or in part. Lessee agrees that Lessee will not commit waste nor permit waste to be committed or done upon the Premises.

- \_\_\_ 13. **SIGNS AND ADVERTISING.** No sign, picture, advertisement, or notice shall be displayed on any part of the outside of such building or on or about the Premises hereby demised without the previous written consent of Lessor, and Lessor may remove the same without notice to Lessee and at Lessee's expense. Sign company names are to be concealed. All fasteners are to be rust-proof. Upon termination of this Lease, Lessee will remove any sign, advertisement or notice painted on or affixed to the Premises, and restore the place it occupied to the condition which existed as of the date this Lease takes effect.

Lessor may place a "for rent" sign on the leased premises during the last sixty (60) days this Lease is in force.

The Lessee agrees that it will not erect or promulgate signs or advertisement indicating "Going Out of Business," "Terminating Lease," "Lost our Lease," "Bankruptcy Sale," or any similar advertising. Neither will the Lessee, in its name or advertising, represent or refer to its business on the Premises as "manufacturer's sample outlet" or as a retail discount business or the like.

- \_\_\_ 14. **LIABILITY.** Lessor will not be liable to Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests for any damages or losses to persons or property caused by other persons, including, but not limited to, negligence, theft, burglary, vandalism, or other crimes. Lessor will not be liable to Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests for personal injury or for damage to or loss of personal property from fire, flood, water leak, rain, hail, ice, snow, smoke, lightning, wind, explosion, interruption of utilities, or other occurrences. Lessor strongly recommends that Lessee secure insurance to protect against any and/or all of the above occurrences. Lessee agrees that the existing locks and latches are safe and acceptable. Lessor shall have no duty to furnish smoke detectors, security guards, or additional locks or latches, except as required by statute. When smoke detectors are furnished, Lessor shall test same and initially provide working batteries at the commencement of this Lease as required by statute; thereafter, Lessee shall pay for and replace smoke detector batteries, if any, as needed. Lessee agrees to test the smoke alarm monthly and report any malfunctioning alarm to Lessor. If Lessor or its employees or agents are requested to render services not contemplated in this Lease, Lessee agrees to hold Lessor harmless from all liability regarding same.

- \_\_\_ 15. **MOLD AND MILDEW.** Lessee shall regularly inspect the premises for water leaks, moisture, mold and mildew. Potential sources of water or moisture include roof leaks, humidifiers, plumbing leaks, steam from cooking, watering houseplants, baths and showers. Leaks may occur around water heaters, toilets, sinks, tubs, showers, windows and doors. Discolored areas on walls and ceilings and moisture in carpets may indicate roof leaks or clogged air conditioner drains. Lessee agrees to immediately notify Lessor in writing if Lessee detects leaks, mold, or mildew within the Premises. Lessee agrees to clean and remove mold and mildew in accordance with cleaning instruction given by Lessor. If Lessee discovers mold and mildew in areas not accessible to Lessee for cleaning, Lessee agrees to inform Lessor so that Lessor can remove mold and mildew from those areas.

- \_\_\_ 16. **REQUESTS, REPAIRS, AND MALFUNCTIONS.** If Lessee or any occupant needs to send a notice or request – for example, for repairs, installations, services, or security-related matters – it must be signed and in writing to Lessor or Lessor's designated representative (except in case of fire, smoke, gas, explosion, overflowing sewage, uncontrollable running water, electrical shorts, crime in progress, or other equally dire emergency). Lessee will notify Lessor of emergencies immediately, by the fastest available means. Lessor shall have the right to temporarily turn off equipment and interrupt utilities to avoid damage to property or to perform repairs or maintenance, which require such interruption. In case of malfunction in air conditioning or other equipment, Lessee shall notify Lessor or Lessor's representative as soon as possible on a business day. The Lease shall continue and the rent shall not abate during such periods where any equipment is malfunctioning. If damage to the Premises from fire or other catastrophe is substantial in the reasonable judgment of Lessor, Lessor may terminate this Lease by giving written notice to Lessee in accordance with

Lessor or Lessor's Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

accordance with the terms of this Lease. If this Lease is so terminated, rent shall be prorated and the balance refunded along with all deposit(s), less lawful deductions. If this Lease is not terminated, then rent shall not abate.

\_\_\_ 17. **REIMBURSEMENT.** Lessor will not be liable for and Lessee shall promptly reimburse Lessor for any loss, property damage, or cost of repairs or service caused to the Premises by negligence or improper use by Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests, which occurred during or after the lease term or renewal or extension period. This obligation shall be in addition to and exclusive of any other provisions of this Lease requiring Lessee to maintain, at its own expense, certain areas of the Premises. Lessor’s failure or delay in demanding damage reimbursement, late-payment charges, returned check charges, pet charges, or other sums due by Lessee shall not be deemed a waiver, and Lessor may require payment of same at any time, including deduction from security deposit. Lessor may require advance payment of repairs for which Lessee is liable.

\_\_\_ 18. **NO PETS (ANIMALS).** No pets (animals including, but not limited to, mammals, rodents, reptiles, birds, fish, and insects) are allowed, even temporarily, anywhere in or on the Premises unless Lessor has so authorized in writing. No unauthorized pets, stray animals, or wild animals may be fed from the Premises. These prohibitions apply to non-pet animals used in a trade or profession. Lessor will authorize a support animal for a disabled person, but may require a written statement from a qualified professional verifying the need for the support animal. Violation of the foregoing by Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests, with or without Lessee’s knowledge or permission, will subject Lessee to the charges, damages, and eviction provisions of this Lease.

\_\_\_ 19. **CONSENT TO REASONABLE ENTRY.** Lessee consents, whether Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests are present or not, to entry of the Premises at reasonable times for reasonable purposes, by Lessor, Lessor’s representatives, repair persons, or service persons.

\_\_\_ 20. **DEFAULT BY LESSOR.** Lessor agrees to provide exterior repairs of the Premises; including exterior walls, and roofs, and excluding any plate glass portions of any building(s). Lessor will be responsible for such repairs that are not related to the neglect of general maintenance or direct destruction or negligence on the part of Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests. If Lessor violates the foregoing, Lessee may terminate this Lease only when the following procedures are followed: (1) Lessee shall make written request for repair or remedy of the condition, and all rents must be current at such time, (2) after receipt of such request, Lessor shall have reasonable time to repair, considering the nature of the problem and the reasonable availability of materials, labor, and utilities, (3) if such reasonable time has lapsed and if Lessor has not made a diligent effort to repair, Lessee shall then give Lessor written notice of intent to terminate the Lease unless the repair is made within fourteen (14) days, and (4) if repair has not been made within such 14-day period, Lessee may terminate this Lease. Then the security deposit(s) and prorata rent will be refunded as required by law. It is expressly understood and agreed that Lessor shall not be liable to Lessee for any damages Lessee may sustain to Lessee’s merchandise, business or personal records, inventory, equipment, or other property on, about, or in the Premises by reason of any defect or condition whatsoever on or about the Premises or any building(s) thereon.

\_\_\_ 21. **DEFAULT BY LESSEE.** If Lessee fails to pay rent or other amounts owed by Lessee under this Lease; or if Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests violate any provision of this Lease or applicable federal, state, and local laws, including any violation of criminal laws regardless of whether such violation occurs on or off the Premises; if Lessee removes property in contemplation of moving out, or gives verbal or written notice (in person or by co-lessee) of intent to move out prior to the end of the lease term or renewal or extension period; if Lessee gives any false or incorrect answers in a rental application or otherwise; if Lessee, in bad faith, makes an invalid habitability complaint to an official or employee of a utility company of the government; if Lessee becomes insolvent or bankrupt, either voluntary or involuntary, or makes any assignment for the benefit of creditors, or if a receiver is appointed for Lessee to take charge of and manage Lessee’s affairs, or if any levy of execution against

Lessor or Lessor’s Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

against Lessee remains unsatisfied for a period of ten (10) days from and after the levy of the same; or if Lessee abandons the Premises, then Lessor may (with or without demand for performance) terminate Lessee's right of occupancy by giving Lessee three (3) days' written notice to vacate, and Lessor shall be entitled to possession by eviction suit or any other lawful means. Notice may be mailed, personally delivered to Lessee, or left in a conspicuous place. Termination of possession rights or subsequent reletting by Lessor shall not release Lessee from liability for future rentals under this Lease. After Lessor gives notice to vacate or after Lessor files eviction suit, Lessor may still accept rent or other sums due; and such notice, filing, or acceptance shall not waive or diminish Lessor's right of eviction or any other contractual or statutory right. Acceptance of monies at any time will not waive Lessor's right of property damages, past or future rent, or other sums due. If Lessee's rent is delinquent and if three (3) days' prior written notice is personally delivered to Lessee, Lessee may terminate utilities furnished and paid for (if any) by Lessor. Lessor may report unpaid rental or unpaid damages to credit agencies for recordation in Lessee's credit record.

**FALSE INFORMATION.** Lessee understands that the information provided to Lessor in connection with qualification guidelines for Leases of the Premises are relied upon by Lessor in entering this Lease. Should the information provided prove to be false, Lessee understands that same shall be considered as a material breach of this Lease entitling Lessor to evict Lessee upon three (3) days' written notice.

**ACCELERATION.** All monthly rentals for the remainder of the lease term or renewal or extension period shall be accelerated automatically without notice or demand (either before or after acceleration) and shall be immediately due and delinquent if: (a) Lessee fails to fulfill any of its obligations contained in this Lease and (b) rentals for the entire lease term and renewal or extension period have not been paid in full. Remaining rents shall likewise be accelerated if Lessee is evicted. Such right of acceleration is in lieu of having rental for the entire lease term payable at the beginning of the Lease.

**LIQUIDATED DAMAGES.** Lessor and Lessee have contemplated and agree that Lessor will suffer damages in the event Lessee vacates the Premises without having paid rent for the entire lease term, and any extensions thereof, and that the amount of damages will be difficult to ascertain. Lessor and Lessee agree that, in such event, Lessor shall be entitled to recover as liquidated damages an amount equal to one-half of the rent calculated from the first day of the month following the date on which Lessee vacates the Premises through the end of the lease term; but in no event shall the amount of liquidated damages exceed an amount equal to three (3) months' period rent as provided in this Lease. Lessor and Lessee agree that the amount of liquidated damages is in reasonable proportion to the damages the parties contemplate will be incurred by Lessor should Lessee fail to perform this Lease. The agreed liquidated damages are specifically intended to be reasonable compensation for unpaid rent for the remainder of the lease term, and any extensions thereof, and do not include damages for unpaid rent or late charges which accrue during any month in which Lessee occupies the Premises, property damage caused by Lessee, cleaning charges, painting charges, and any other charges pursuant to this Lease.

\_\_\_ 22. **PURSUANT TO SECTION 18-16-108 of ARKANSAS CODE.** Upon the voluntary or involuntary termination of any lease agreement, all property left in and about the Premises by Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests shall be considered abandoned, and may be disposed of by Lessor as Lessor shall see fit without recourse by Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests. All property placed on the Premises by Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests is subjected to a lien in favor of Lessor for the payment of all sums agreed to be paid by the Lessee.

\_\_\_ 23. **FORWARDING ADDRESS.** A written copy of each Lessee's forwarding address shall be left with Lessor and with the U.S. Postal Service.

\_\_\_ 24. **CLEANING.** The Premises, including, but not limited to, furniture, floors, bathrooms, ceilings, fixtures, and kitchen appliances, must be cleaned thoroughly upon move-out.

Lessor or Lessor's Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

\_\_\_ 25. **FIXED CLEANING CHARGE.** The following minimum charge will be deducted in any event for cleaning which Lessor, in its sole discretion, requires to be done commercially or by Lessor’s employees: \$150.00. This charge does not relieve Lessee from the cleaning provisions of the paragraph above.

\_\_\_ 26. **OTHER DEDUCTIONS.** Lessee shall be liable for and appropriate charges will be deducted for any unpaid sums due under this Lease; unpaid rent; unpaid utilities; unreimbursed service charges; damages or repairs to the premises or its contents (beyond reasonable wear); utilities for repairs; trips to let in company representatives to remove Lessee’s telephone or TV cable or internet services or rental items (if Lessee requests same or has moved out); trips to open a locked door when Lessee has lost or forgotten key; key duplicates; unreturned keys; insufficient light bulbs; stickers, scratches, burns, stains, or unapproved holes; removing or re-keying unauthorized locks or latches; costs-of-reletting; packing, removing or storing property removed or stored pursuant to this Lease and state law; removing illegally parked vehicles; late payment and returned check charges; attorney’s fees, costs, and Lessor’s time and inconvenience in any valid eviction proceeding against Lessee; and all other lawful deductions. Security Deposits will be first applied to non-rent items, then to unpaid rent.

If for any reason, Lessee is evicted, fails to comply with any provision of this Lease, or fails to give notice as required by this Lease, there will be no refund of Lessee’s Security Deposit.

\_\_\_ 27. **INSPECTION UPON MOVE-OUT.** Lessee is urged to make an appointment with Lessor or Lessor’s representative for move-out inspection of the Premises. Estimates or commitments by Lessor’s representative regarding amount of deductibility of repairs, damages, or charges are subject to subsequent correction, modification, or disapproval by Lessor before final refunding or accounting.

\_\_\_ 28. **RETURN OF DEPOSIT.** After lawful deductions have been made, the balance, if any, of all security deposits and an itemized accounting of any deductions will be mailed to Lessee no later than thirty (30) days after surrender except where otherwise provided by statute. For purposes of determining relinquishment of possession, damages, clean-up charges and other deductions, “surrender” shall occur on the latest of the following dates: (a) when all keys have been turned in, (b) when move-out date has expired and all occupants have moved elsewhere, or (c) when it reasonably appears that all occupants have permanently moved out.

\_\_\_ 29. **MULTIPLE OCCUPANTS.** Each Lessee and each Lessee’s share of the total security deposit is jointly and severally liable for all obligations and sums due under the Lease. Violation of the Lease by Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests shall be considered a violation by Lessee. Notice by Lessor to one Lessee constitutes notice to all Lessees. Entry permission or service request from any Lessee or Lessee’s customers, agents, servants, occupants, invitees, licensees, or guests shall be deemed to be from all Lessees. The balance of all security deposits may be refunded in one check jointly payable to all Lessees; and such joint refund check and/or itemization of deductions may be mailed to one Lessee only.

\_\_\_ 30. **DELAY OF OCCUPANCY.** If occupancy is or will be delayed because of construction or prior tenant’s holding over, Lessor shall not be liable to Lessee for such delay, and the Lease shall remain in force subject to (a) abatement of rentals on a daily basis during delay, and (b) Lessee’s right to terminate as set forth below. Notice of such termination must be in writing. After such termination, Lessee shall be entitled only to refund of deposit(s) and any rentals paid. Lessee’s above right of rent abatement or lease termination shall not apply if delay is due to cleaning or repairs which do not prevent occupancy by Lessee.

**NOTICE OF ANTICIPATED DELAY.** If Lessor gives written notice to any one of the Lessees listed in paragraph 1 before this Lease’s commencement date and if such notice states that construction delay is anticipated and the Premises will be ready for occupancy on a specific date, Lessee may terminate the Lease in writing within seven (7) days after any one of such Lessees receives such written notice, but not thereafter.

Lessor or Lessor’s Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

**NOTICE OF ACTUAL DELAY.** If Lessor gives written notice to any one of the Lessees listed in paragraph 1 on or after this Lease's commencement date and if such notice states that occupancy has been delayed because of construction or a prior tenant's holding over and the Premises will be ready for occupancy on a specific date, Lessee may terminate the Lease in writing within three (3) days after any one of such Lessees receives such written notice, but not thereafter.

**NEW COMMENCEMENT DATE.** A readiness date given by Lessor to Lessee in writing shall be considered the Lease's new commencement date for all purposes, including the right of Lessee to terminate under this paragraph if the Premises is not ready on such new commencement date. Such new commencement date may never be moved to an earlier date except by mutual agreement of Lessor and Lessee.

**NO NOTICE OF DELAY.** If holdover or construction delay actually occurs and if Lessor has not given notice of delay under one of the above paragraphs, Lessee may terminate up to the date the Premises is ready for occupancy, but not thereafter.

- \_\_\_ 31. **RENT INCREASES.** Lessor reserves the right to institute periodic rent increases. Lessee will receive a written thirty (30) day notice of rent increase. No rent increases shall be allowed during this initial Lease term.
  
- \_\_\_ 32. **INDEMNITY AGAINST DAMAGE OR INJURY.** Lessee agrees to defend, indemnify, and hold harmless Lessor against any claim, expense, loss or liability as a result of any condition of the Premises or any breach by Lessee, Lessee's agents, servants, employees, customers, visitors, or licensees, of any covenant or condition of this Lease, or as a result of Lessee's use or occupancy of the Premises, or as a result of the carelessness, negligence, or improper conduct of Lessee, Lessee's agents, servants, employees, customers, visitors, or licensees. Lessee agrees to keep and maintain at all times during the term hereof, in full force and effect, with a company or companies acceptable to Lessor, insurance against third party liability by reason of Lessee's occupancy of the leased premises with limits of liability thereunder of not less than \$1,000,000 per person, \$2,000,000 per accident, and \$500,000.00 coverage for property damage, and Lessor shall be a named insured in such policies.
  
- \_\_\_ 33. **COPIES.** Lessee acknowledges receipt of a copy of this Lease.
  
- \_\_\_ 34. **PEST CONTROL.** Lessee assumes the responsibility for keeping the premises free of infestation by roaches, water bugs, rodents, and other pests, and assumes the risk of all damages therefrom, and Lessor shall not be responsible for damages or injury to furnishings, wearing apparel, personal belongings, or any other property of Lessee or Lessee's customers, agents, servants, occupants, invitees, licensees, or guests of the Premises from such sources.
  
- \_\_\_ 35. **SUBORDINATION.** This Lease shall be subject and subordinate to any mortgage that is now on or affects the Premises or that Lessor may hereafter at any time elect to place on such Premises, and to all advances already made or that may be hereafter made on account of any such mortgage, to the full extent of the principal sums secured thereby, interest thereon and fees. Furthermore, Lessee shall on request hereafter execute any documents that Lessor's counsel may deem necessary to accomplish such subordination of Lessee's interest in this Lease, in default of which Lessor is hereby appointed as Lessee's attorney in fact to execute such documents in the name of Lessee, and this authority is hereby declared to be coupled with an interest and irrevocable.
  
- \_\_\_ 36. **WAIVER.** A waiver by Lessor of a breach of any covenant or duty of Lessee under this Lease is not a waiver of a breach of any other covenant or duty of lessee, or of any subsequent breach of the same covenant or duty.
  
- \_\_\_ 37. **SALE OF PREMISES BY LESSOR.** Should Lessor sell the Premises or transfer management of the Premises during the term of this Lease, Lessee's security deposit shall be transferred to the new owner and/or manager. Upon notification to Lessee of such transfer, Lessee shall discharge Lessor from any liability

Lessor or Lessor's Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

liability relating to the security deposit and shall hold only the new owner and/or manager liable for the security deposit and all related requirements and responsibilities.

\_\_\_ 38. **WAIVER OF SUBROGATION.** Lessor and Lessee and all parties claiming under them hereby mutually release and discharge each other from all claims and liabilities arising from or caused by any hazard covered by insurance on the Premises, or covered by insurance in connection with the property or activities conducted on the Premises, regardless of the cause of the damage or loss.

\_\_\_ 39. **CONDEMNATION.** In the event all or any part of the Premises should be subjected to eminent domain proceedings, and if pursuant thereto an amount of the Premises shall be condemned so as to render the residue inadequate for Lessee's purposes as herein set forth, Lessee shall have the option to terminate and cancel this Lease by giving written notice of such intention to Lessor. If any such taking shall not render the residue of the Premises wholly inadequate for Lessee's purposes as herein set forth, Lessee's rentals hereunder shall be reduced in the proportion which the value of the property taken bears to the whole value of the Premises with improvements. In any such condemnation proceedings, all damages allocable to full fee simple ownership of the Premises shall be payable to Lessor, and any damages for loss of leasehold interest, including the unamortized portion of the value involved in such condemnation of any non-removable fixture placed on the Premises by Lessee with Lessor's approval shall be payable to Lessee.

\_\_\_ 40. **NOTICES.** All required notices to Lessee shall be sent to the address of the premises leased hereby. All notices required to be given to Lessor by law or by this Lease, shall be in writing and addressed to:

\_\_\_\_\_ Elliott Properties, LLC \_\_\_\_\_

\_\_\_\_\_ PO Box 743 \_\_\_\_\_

\_\_\_\_\_ Conway, AR 72033 \_\_\_\_\_

\_\_\_ 41. **BINDING AGREEMENT.** This Lease shall be binding upon and inure to the benefit of the parties and their respective heirs, legal representatives, and successors-in-interest. The parties agree for themselves and their heirs, legal representatives, and successors-in-interest to execute any instruments and to perform any acts necessary or proper to carry out the purposes of this Lease.

\_\_\_ 42. **HEADINGS.** The headings appearing in this Lease are inserted only for convenience of reference and in no way shall be construed to define, limit or describe the scope or intent of any provision of this Lease.

\_\_\_ 43. **GOVERNING LAW AND VENUE.** This Lease is drawn to be effective in and shall be construed in accordance with the laws of the state of Arkansas. The parties hereby agree that the exclusive venue for any dispute arising under this Agreement shall be a court of competent jurisdiction located in Faulkner County, Arkansas or the corresponding federal district. Lessee hereby expressly consents to such exclusive jurisdiction, and irrevocably waives, to the fullest extent permitted by law, any objection Lessee may have on the basis of lack of personal jurisdiction, forum *non conveniens* or otherwise.

\_\_\_ 44. **AMENDMENT.** No amendment or variation of the terms of this Agreement shall be valid unless made in writing and signed by Lessee and Lessor or Lessor's duly authorized representative.

\_\_\_ 45. **MUTUAL UNDERSTANDING.** The parties have read the foregoing Lease, fully understand the contents thereof, have had the opportunity to obtain independent legal advice regarding the Lease's legal effect, and are under no duress regarding its execution.

\_\_\_ 46. **ENTIRE AGREEMENT.** This Lease contains the entire agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements concerning the subject matter hereof whether written or oral.

\_\_\_ 47. **AGREEMENT TO REFORMATION.** In the event that any provisions of this Lease are ever deemed by a

Lessor or Lessor's Agent: \_\_\_\_\_  
Lessee: \_\_\_\_\_

a court of law to exceed the limits permitted by any applicable law, Lessee agrees that the provisions shall be, and are, reformed to the maximum limitations permitted by any applicable law. Lessee expressly agrees that the restrictions set forth in this Lease are reasonable and enforceable by Lessor and do not impose a greater restraint than necessary to protect Lessor's goodwill and business interests.

\_\_\_ 48. **ATTORNEY'S FEES.** If Lessor is a prevailing party in any legal proceeding brought under or related to the transaction, rights, or obligations described in this Agreement, Lessor shall be entitled to recover prejudgment interest, reasonable attorney's fees, and all other costs or expenses of litigation from the non-prevailing party or parties.

\_\_\_ 49. **GENDER NEUTRAL.** It is hereby stipulated that the use of the singular or plural shall be construed as applying to the party referred to whether singular or plural and the use of masculine, feminine or neutral terms of gender shall be construed as applying to the party referred to regardless of gender.

**NO SECURITY DEPOSIT WILL BE REFUNDED UNLESS A 60-DAY WRITTEN NOTICE IS GIVEN BY LESSEE AND LESSEE HAS FULFILLED THE TERMS OF THE LEASE.**

**THIS IS A BINDING LEGAL DOCUMENT – READ CAREFULLY BEFORE SIGNING.**

IN WITNESS WHEREOF, the undersigned have executed this instrument on this \_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Lessor or Lessor's Representative

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Social Security Number

\_\_\_\_\_  
Lessee

\_\_\_\_\_  
Social Security Number



# GUARANTY

FOR VALUE RECEIVED, and in consideration of the execution of the Lease herein of even date and concurrently herewith and covering the Premises described herein located at \_\_\_\_\_ Arkansas, the creation of the tenancy under said Lease and the extension of credit by \_\_\_\_\_ (hereinafter, referred to as "Lessor") and \_\_\_\_\_ (hereinafter, jointly and severally referred to as "Lessee"), and for the purpose of inducing Lessor to enter into such Lease, the undersigned, jointly and severally, do hereby absolutely and unconditionally guarantee to Lessor, its successors and assigns, the full and prompt payment when due, of all rents, charges and additional sums coming due under said Lease, together with the performance of all covenants and agreements of the Lessee therein contained and together with the full and prompt payment of all damages that may arise or be incurred by Lessor in consequence of Lessee's failure to perform such covenants and agreements (all such obligations hereinafter collectively referred to as "Liabilities"), and the undersigned further agree to pay all expenses, including attorneys' fees and legal expenses, paid or incurred by Lessor in endeavoring to collect or enforce the Liabilities or any part thereof and in enforcing this guaranty, such payment and performance to be made or performed by the undersigned forthwith upon a default by Lessee.

In the event of the death, incompetence, dissolution, bankruptcy or insolvency of Lessee, or the inability of Lessee to pay debts as they mature, or an assignment by Lessee for the benefit of creditors, or the institution of any bankruptcy or other proceedings by or against Lessee alleging that Lessee is insolvent or unable to pay debts as they mature, or Lessee's default under the Lease, and if such event shall occur at a time when any of the Liabilities may not then be due and payable, the undersigned agree to pay to Lessor upon demand, the full amount which would be payable hereunder by the undersigned if all Liabilities were then due and payable.

This Guaranty shall be an absolute and unconditional guaranty and shall remain in full force and effect as to the undersigned during the demised term of said Lease, and any renewal or extension thereof, and shall survive the expiration or sooner termination of the Lease thereafter so long as any Liabilities remain due and payable. An Assignment of said Lease or any subletting thereunder shall not release or relieve the undersigned from their liability hereunder.

Lessor may, from time to time, without notice to the undersigned: (a) retain or obtain a security interest in any property to secure any of the Liabilities or any obligations hereunder, (b) retain or obtain the primary or secondary liability of any party or parties, in addition to the undersigned, with respect to any of the liabilities, (c) extend or renew for any period (whether or not longer than the original period), alter or exchange said Lease or any of the Liabilities (d) release, waive or compromise any liability or any of the undersigned hereunder or any liability of any other party of parties primarily or secondarily liable on any of the Liabilities, (e) release or impair any security interest or lien, if any, in all or any property securing any of the Liabilities or any obligation hereunder and permit any substitution or exchange for any such property, and (f) resort to the undersigned for payment of any of Liabilities, whether or not Lessor shall have resorted to any property securing any of the Liabilities or any obligations hereunder or shall have proceeded against any other of the undersigned or against Lessee or any other party primarily or secondarily liable on any of the Liabilities. No such action or failure to act by Lessor shall affect the undersigned's liability hereunder in any manner whatsoever. Any amount received by Lessor from whatsoever source and applied by it toward the payment of the Liabilities shall be applied in such order of application as Lessor may from time to time elect.

The undersigned hereby expressly waive: (a) notice of the acceptance of this Guaranty, (b) notice of the existence, creation, amount, modification, amendment, alteration or extension of the Lease or all or any of the Liabilities, whether or not such notice is required to be given to Lessee under the terms of the Lease, (c) presentment, demand, notice or dishonor, protest, and all other notices whatsoever, (d) any benefit of valuation appraisement, homestead or other exemption law, now or hereafter in effect in any jurisdiction in which enforcement of this Guaranty is sought, and (e) all diligence in collection, perfection or protection of a realization upon the Liabilities or any thereof, any obligation hereunder, or any security for any of the foregoing.

No delay on the part of Lessor in the exercise of any right or remedy shall operate as a waiver thereof, and no

Lessor or Lessor's Agent: \_\_\_\_\_  
 Lessee: \_\_\_\_\_

no final or partial exercise by Lessor of any right or remedy shall preclude other or further exercises thereof or the exercises of any other right or remedy.

The validity of this Guaranty and the obligations of the undersigned hereunder shall not be terminated, affected or impaired by reason of any action which Lessor may take or fail to take against Lessee or by reason of any waiver of, or failure to enforce, any of the rights or remedies reserved to Lessor in said Lease, or otherwise, or by reason of the bankruptcy or insolvency of Lessee and whether or not the term of said Lease shall terminate by reason of said bankruptcy or insolvency.

This Guaranty shall be binding upon the undersigned, and upon the heirs, legal representatives, successors and assigns of the undersigned and shall be governed by the laws of the State of Arkansas.

IN WITNESS WHEREOF, the undersigned have executed this instrument on this \_\_\_\_ day of \_\_\_\_\_, 200\_\_.

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Name (Signature)

\_\_\_\_\_  
Name (Printed)

\_\_\_\_\_  
Name (Signature)



CITY OF CONWAY  
Planning and Development

1201 Oak Street  
Conway, AR 72032

T 501.450.6105  
F 501.450.6144

[www.conwayplanning.org](http://www.conwayplanning.org)

**MEMO:**

April 9, 2009

**To: Mayor Tab Townsell**

**CC: City Council Members**

**From: Bryan Patrick, Director of Planning and Development**

**Re: Bids Tabulation / Planning and Development Department Office Renovations and Furniture**

Tabulated below are the bids received for office renovations and panelized furniture system for the Planning and Development Department. Bids were opened on Friday, March 27th at 10:00 am.

**Office Renovation:**

Bidder's Name	Bid Amount	Bidder's Name	Bid Amount
1. Mallory Inc.	\$34,926	5. Salter Construction	\$45,750
2. Tru-Star	\$41,682	6. R & W Construction Inc.	\$50,641
3. Kordsmeier Remodeling	\$42,333	7. JMH	\$51,240
4. Samco Construction	\$44,890	8. Dayco Construction	\$65,800

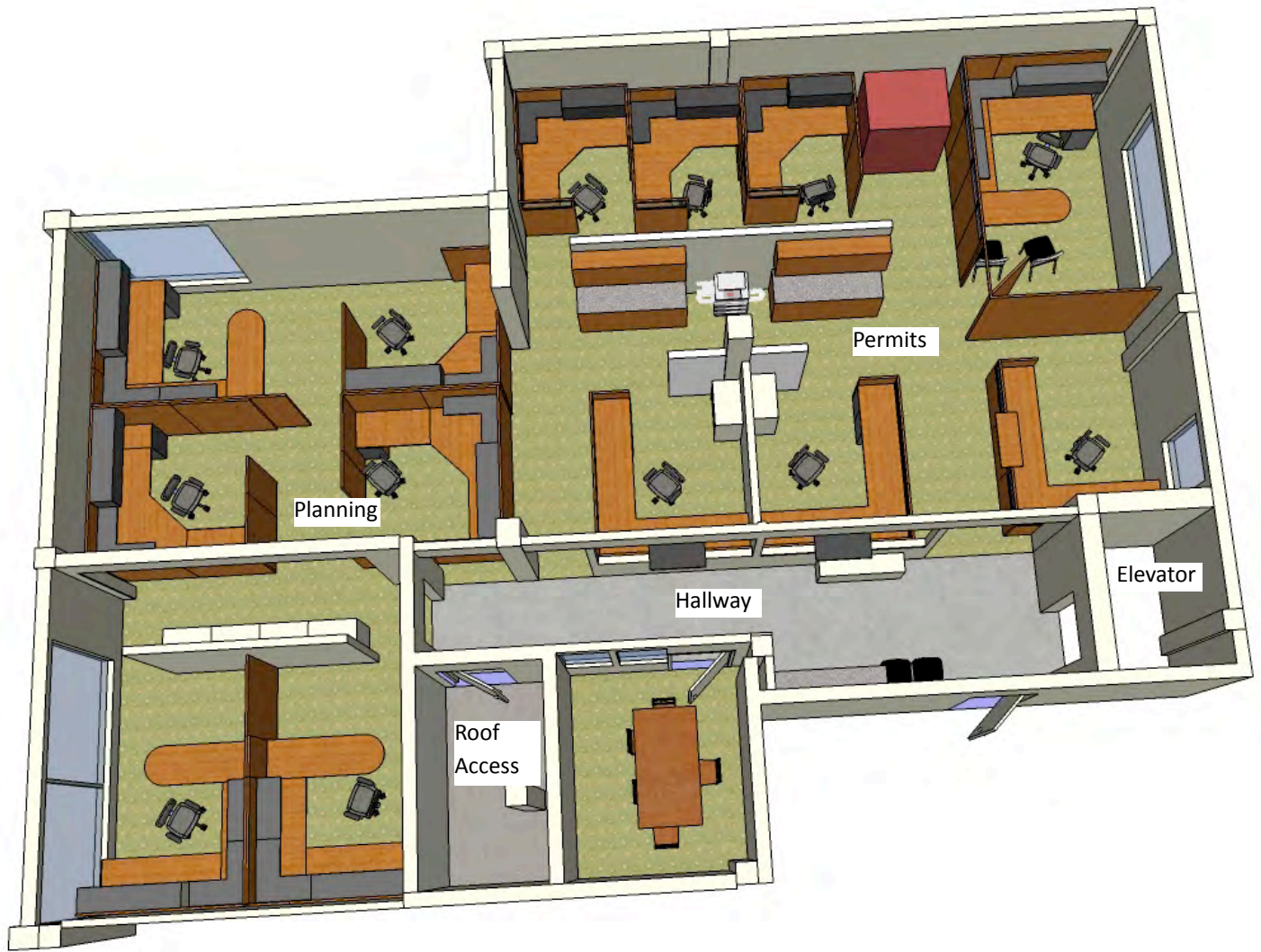
I recommend award of the office renovation work to the low bidder, Mallory Construction.

**Panelized Office Furniture System:**

Bidder's Name	Bid Amount	Bidder's Name	Bid Amount
1. Coleman's Office Supply	\$30,245.59	4. The Outlet Store	\$40,029.93
2. Corporate Express/ Staples *	\$31,706.63 - Bid w/ tax \$29,290.19 - Bid w/o tax	5. Pettus Office Interiors	\$41,918.26
3. Coleman's Office Supply	\$35,265.14		

\* Corporate Express/Staples submitted bid did not include sales tax or furniture brand/type as required per bid specifications.

I recommend award of the panelized office furniture system to the actual low bidder, Coleman's Office Supply.



**Planning and Development  
Renovation Plan**



**City of Conway, Arkansas  
Resolution No. R-09-\_\_\_\_\_**

**A RESOLUTION ACCEPTING DONATED LAND ON MORNINGSIDE DRIVE:**

**WHEREAS**, the City of Conway intends to increase its network of public spaces available to Conway's citizens and visitors by utilizing lands near the southeast corner of Tyler Street and Morningside Drive as a future park; and

**WHEREAS**, Myers Properties LLC, which holds legal title to Lot 4B of Oak Tree Subdivision, has requested that the City of Conway accept Lot 4B of Oak Tree Subdivision as dedicated public land:

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

That the City of Conway, Arkansas, does hereby accept Lot 4B of Oak Tree Subdivision as public land and claim ownership of said property.

**PASSED** this 14th day April, 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

\_\_\_\_\_  
**Michael O. Garrett**  
City Clerk

# **A Resolution Accepting Donated Land on Morningside Drive**

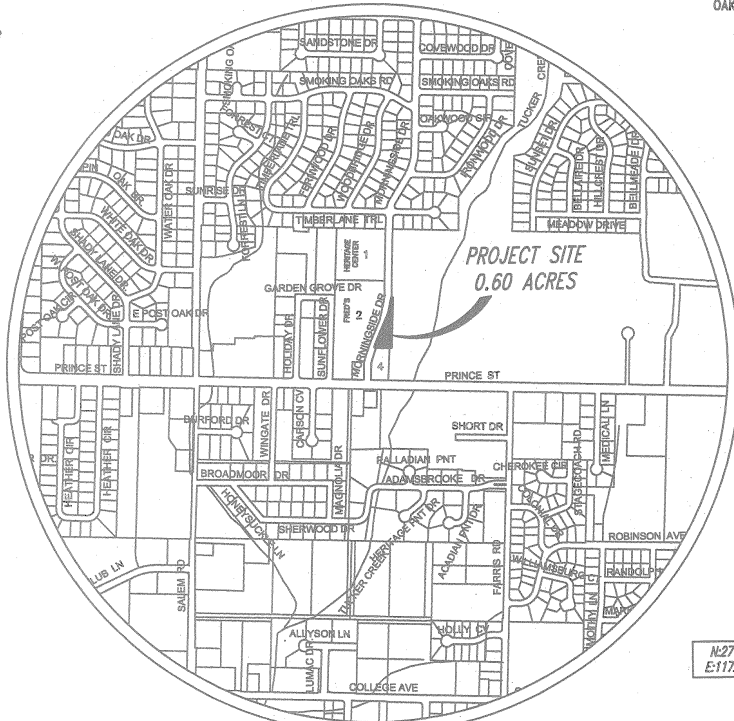
## **Description of the Proposed Resolution**

Dr. David Myers, a local orthodontist, intends to construct a new orthodontics office at 1050 Morningside Drive on property formerly occupied by St. Matthew Lutheran Church. Lot 4B, which is the northernmost portion of the property, would be of little use to the overall site layout because of that portion's unique triangular shape and size (27.17 feet at its widest and five feet at its narrowest). Dr. Myers has offered this portion of the property to the City. The property adjoins the future Pompe Park property and would give the City an additional 0.6 acres and 129.65 feet of frontage along Morningside Drive for the future park.

A replat of the property has been completed and filed (Brace Place Replat of Lot 4 of Oak Tree Subdivision). However, a quit claim deed has not yet been filed. Passage of this Resolution should be contingent upon the filing of a quit claim deed for the property.

## **Enclosure**

A portion of the replat showing the affected property is attached.



OAK TREE SUB.

N 02°16'27" E 817.25'  
S 02°16'27" W 817.23'

CITY OF CONWAY  
710-08269-000

NW CORNER  
LOT-4  
OAK TREE SUB.  
1/2" REBAR

N:277245.969  
E:1172989.403

S 89°06'55" E  
5.00'

LOT-4B  
ZONED C-3  
THIS AREA TO BE  
DEDICATED TO THE CITY  
WITH THE FILING OF  
THIS PLAT

N:277245.969  
E:1172989.403

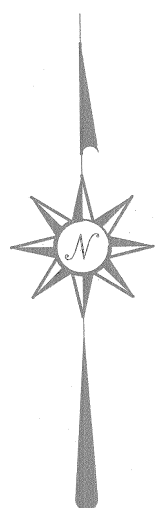
N:277119.210  
E:1172962.170

MICROMILE BANK OF  
CENTRAL ARKANSAS  
ZONED C-3

MORNINGSIDE DRIVE 60' R/W

LOT-4A  
ZONED C-3

CITY OF CONWAY  
ZONED R-1



N:276850.654  
E:1172948.873

N 14°38'21" E  
27.20'

N:276833.337  
E:1172842.001

N 88°16'54" W 135.92'  
(PLATTED 135.40')

N:276828.261  
E:1172977.859

S 02°16'27" W 416.86'  
(PLATTED 417.82')

N 02°16'27" E 702.91'  
(PLATTED 703.72')

THIS PROPERTY IS REFERENCED TO:  
CAGIS MONUMENT #1003  
NAD83 (1997) COORDINATES  
N: 276538.016  
E: 1174734.992

PART OF LOT-4  
OAK TREE SUBDIVISION  
DERECK & DIANE LEE  
ZONED C-3

Myers Replat



**City of Conway, Arkansas  
Ordinance No. O-09-\_\_\_**

**AN ORDINANCE GRANTING A FRANCHISE TO ARKANSAS RESEARCH AND EDUCATION OPTICAL NETWORK (ARE-ON) TO UTILIZE STREET RIGHTS-OF-WAY FOR PLACEMENT OF FIBER OPTIC TELECOMMUNICATIONS EQUIPMENT; DECLARING AN EMERGENCY AND FOR OTHER PURPOSES:**

**Whereas**, Arkansas Research and Education Optical Network (ARE-ON) desires to utilize street rights-of-way, easements and public grounds and places for the purpose of placing communications plant and appurtenances within those rights-of-way, easements and public grounds and places and

**Whereas**, the City of Conway has control of such rights-of-way, easements and public grounds and places and finds it advantageous to grant a franchise for the use of such rights-of-way, easements and public grounds and places for the placement of such communications plant and appurtenances:

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

**Section 1:** That a franchise is hereby granted from the City of Conway, Arkansas (hereinafter referred to as "City") to Arkansas Research and Education Optical Network (hereinafter referred to as "ARE-ON") and to its successors and assigns for the purpose of installing, operating and maintaining its telecommunications system and all business incidental to or connected with the conducting of a telecommunications system in the City of Conway, State of Arkansas. ARE-ON, in the conduct of its business shall be authorized to exercise its right to place, remove, construct and reconstruct, and extend and maintain its said plant and appurtenances as the business and purpose for which it is or may be incorporated may from time to time require, along, across, on, over, through, above and under all the public rights-of-way and the public grounds and places within the limits of said City as the same from time to time may be established.

**Section 2:** Fees - That ARE-ON shall pay to the City for the period July 1, 2005 through June 30, 2006 inclusive and thereafter for like periods an amount equal to 4.25% of local exchange access line charges collected in the corporate limits of the City for the previous calendar year. Said sum to be paid in equal quarterly installments on or before the last day of March, June, September, and December of each year.

**Section 3:** That the annual payment herein required shall be in lieu of all other licenses, charges, fees or impositions (other than the usual general or special ad valorem taxes) which may be imposed by the City under authority conferred by law. ARE-ON shall have the privilege of crediting such sums with any unpaid balance due said Company for telephone services rendered or facilities furnished to said City.



**Section 4:** ARE-ON, on the request of any person, shall remove or raise or lower its wires temporarily to permit the moving of houses or other structures. The expense of such temporary removal, raising or lowering of wires shall be paid by the party or parties requesting the same and ARE-ON may require such payment in advance. ARE-ON shall be given not less than forty-eight (48) hours advance notice to arrange such temporary wire changes.

**Section 5:** Permission is hereby granted to ARE-ON to trim trees upon and overhanging streets, alleys, sidewalks and public places of said City so as to prevent the branches of such trees from coming in contact with the wires and cables of ARE-ON, all the said trimming to be done under supervision and direction of any City officials to whom said duties have been or may be delegated.

**Section 6:** Nothing in this ordinance contained shall be construed to require or permit any electric light or power wire attachment by the City or for the City. If light or power attachments are desired by the City, then a separate non-contingent agreement shall be a prerequisite to such attachments.

**Section 7:** Nothing herein contained shall be construed as giving to ARE-ON any exclusive privileges, nor shall it affect any prior or existing rights of ARE-ON to maintain a telephone system within the City. However, ARE-ON will be required to be a member of Arkansas One Call.

**Section 8:** That all underground installations of fiber optic cable shall be no less than (4) feet below grade and no less than (2) two feet below the elevation of drainage pipes or drainage ditches and that any damage to streets, sidewalks, driveways, curbs, gutters or other infrastructure taking place due to placement of fiber optic cable shall be repaired by ARE-ON at their expense. The facilities shall be adjusted by the owner at no cost to the City to accommodate any future streets or drainage improvements.

**Section 9:** That the City assumes no maintenance responsibility for the ARE-ON plant and appurtenances. The City shall not be responsible for damage to the ARE-ON plant and appurtenances by the City or by utility (public or franchised private) crews while performing normal maintenance work in the public right-of-way, easements or public grounds or places. The City assumes no liability for personal injury or property damage as a result of the placement of any plant and appurtenances and ARE-ON shall indemnify and hold the City harmless from actions, claims, costs, damages and expenses to which the City may be subjected arising out of the placement of any plant and appurtenance in the public right-of-way or easement or in any public ground or place.

**Section 10:** That upon notice from the appropriate city department (as established by the Mayor), ARE-ON shall remove plant and appurtenances from public right-of-ways, easements or public ground or place at their own expenses for any public improvement project or if the situation becomes a public nuisance.

**Section 11:** ARE-ON shall have ninety (90) days from and after its passage and approval to file its written acceptance of this ordinance with the City Clerk, and upon such acceptance being filed; this ordinance shall be considered as taking effect and being in force from and after the date of its passage and approval by the Mayor. The ordinance shall continue in effect and be in force until terminated by the City or ARE-ON as of the end of any year giving one (1) year's written notice of intention to terminate.

**Section 12:** That all ordinances or parts of ordinances of a permanent and general nature in effect at the time of adoption of this ordinance and not included herein, are hereby repealed where they are in conflict with this ordinance.

**Section 13:** That it is ascertained and declared that is necessary for the public peace and welfare of the citizens of the City of Conway, Arkansas, an emergency is hereby declared to exist and this ordinance shall take effect and be in force from and after its passage and publication and shall benefit and run in favor of all future owners of the property and their successors and assigns.

PASSED this 14<sup>th</sup> day of April 2009.

**APPROVED:**

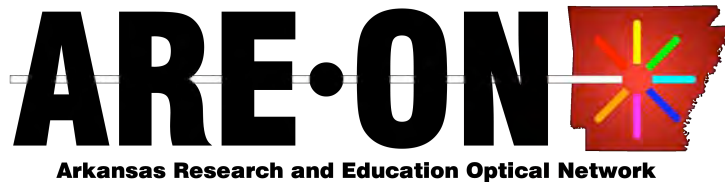
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**Mayor Tab Townsell**

**ATTEST:**

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



April 6, 2009

Mr. Bryan Patrick  
Director of Planning  
City of Conway  
1201 Oak St.  
Conway, AR 72032

Dear Mr. Patrick,

It was a pleasure to speak with you Friday regarding the Arkansas Research and Education Optical Network (ARE-ON) and our project to build fiber optic cable to the University of Central Arkansas campus in Conway. Through this letter we are submitting a request for a Conway city franchise that will permit ARE-ON to construct underground fiber optic cable in Conway city rights-of-way.

ARE-ON is a consortium made up of the four-year public universities in Arkansas, the University of Arkansas for Medical Sciences, and the University of Arkansas Division of Agriculture. UCA is one of our founding members. We are a state-funded, non-profit organization whose objective is to connect our members with extremely high-speed fiber optic networking to enhance their work in research, education, public service, and economic development. Our mission statement is as follows:

*The mission of ARE-ON is to promote, develop and apply advanced application and communication technologies to support and enhance education, research, public service and economic development.*

Over the past two years ARE-ON has acquired fiber optic cable from longhaul fiber providers that runs between the cities where our members are located. In Conway, we have fiber that runs along Interstate-40 stretching between Memphis and Tulsa. Our construction project in Conway is to build new fiber along two separate routes from pre-established splice points on the longhaul fiber to the UCA campus. Part of the most northern route will be provided by Conway Corporation, with extensions on each end built by ARE-ON's contractors to reach the longhaul fiber at I-40 and the UCA campus. The southern route will be built entirely by ARE-ON contractors.

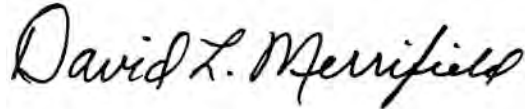
The routes that ARE-ON is planning run along city and state highway rights-of-way. Except for the portion of fiber that Conway Corporation will provide, ARE-ON's construction will be all underground cable, most of which will be installed by directional boring. This method of construction minimizes the amount of disruption to the streets

and rights-of-way. Our contractors will follow all city requirements for coordinating with city and other utilities, including using Arkansas OneCall for utility locates prior to construction. Complete engineering prints of the portions of both routes have been provided separately. If you need additional copies, please don't hesitate to let me know.

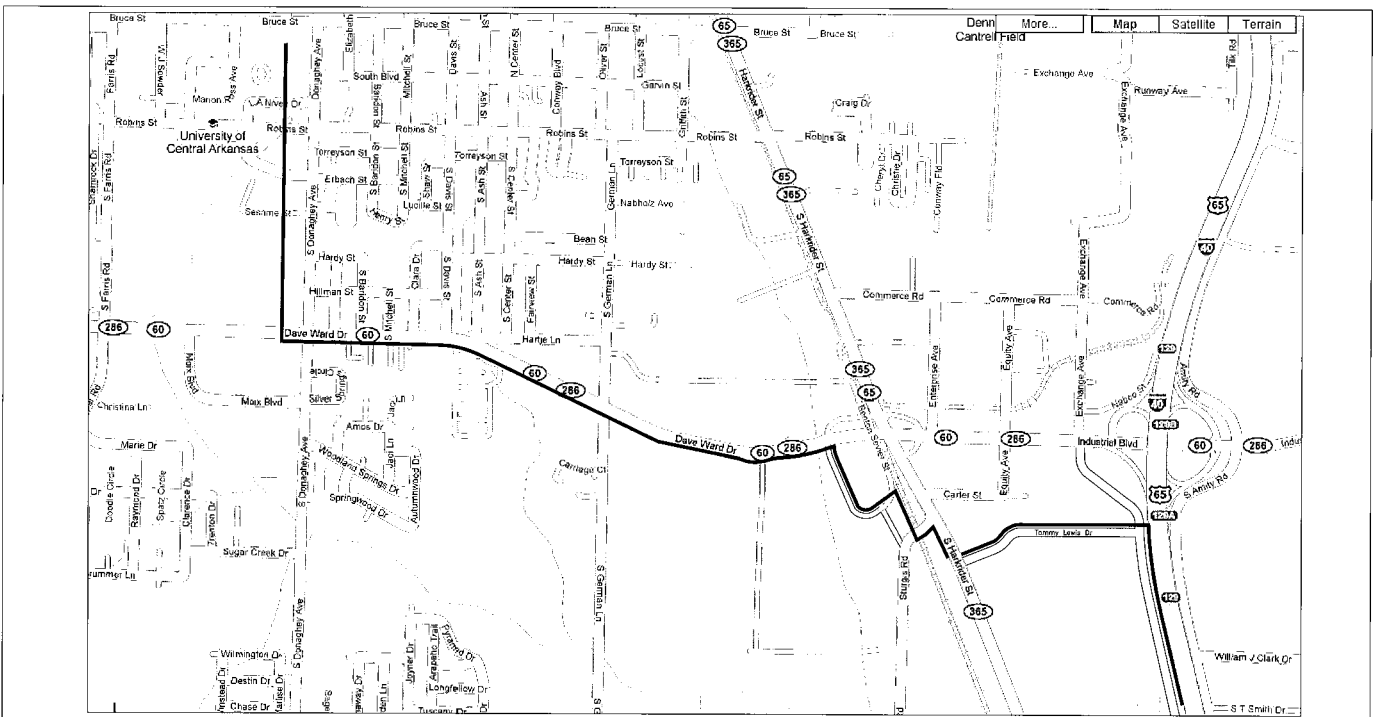
We ask that the City of Conway consider ARE-ON's status as a non-profit organization. ARE-ON's mission is to deliver services to our members. As discussed by phone, ARE-ON is not a public utility. Moreover, we will not be offering commercial services to businesses or individuals. As such, we ask that the City waive any franchise fees.

Thank you again for the opportunity to present this request to the City of Conway for consideration of the franchise described herein. If you have any questions or concerns, please do not hesitate to contact me. My office number is 479-575-5829, and my cell phone is 479-236-0770. You can also reach me through my email address, [d1m@areon.net](mailto:d1m@areon.net).

Sincerely,

A handwritten signature in black ink that reads "David L. Merrifield". The signature is written in a cursive, flowing style.

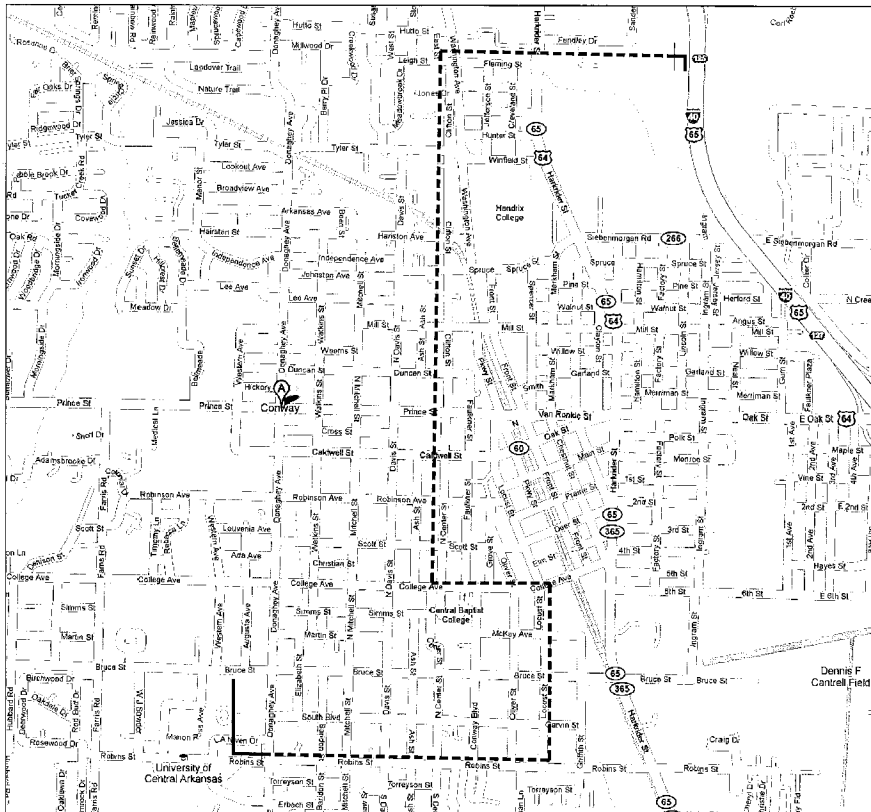
David L. Merrifield  
Chief Technology Officer



CONWAY SOUTH ROUTE  
LOCATION MAP

CONTRACTOR TO LOCATE ALL BURIED UTILITIES PRIOR TO CONSTRUCTION

	STAKED BY/DATE: CT&T 1/09	RELEASED FOR OTHER USE: 2/20/09	AS BUILT POSTED						TAX DISTRICT	REA PROJECT: CONWAY	EXCHANGE: UCA
	DRAWN BY/DATE: CT&T 2/09	STAKING BY/DATE:	SCHEMATICS BY/DATE:	MAPS BY/DATE:	CPR'S BY/DATE:	WORK ORDER			ROUTE: SOUTH	SHEET 1 OF 1	
									PAR/CO.: FAULKNER	P/S SHEET 225 OF 260	



CONWAY NORTH ROUTE  
LOCATION MAP

DASHED LINE = CONWAY CORP.  
CONSTRUCTION.

CONTRACTOR TO LOCATE ALL BURIED UTILITIES PRIOR TO CONSTRUCTION

	STAKED BY/DATE: CT&T 1/09	RELEASED FOR OTHER USE: 2/20/09	AS BUILT POSTED						TAX DISTRICT	REA PROJECT: CONWAY	EXCHANGE: UCA
	DRAWN BY/DATE: CT&T 2/09	STAKING BY/DATE:	SCHEMATICS BY/DATE:	MAPS BY/DATE:	CPR'S BY/DATE:	WORK ORDER			ROUTE: NORTH	SHEET 1 OF 1	
									PAR/CO.: FAULKNER	P/S SHEET 254 OF 260	



**City of Conway, Arkansas  
Ordinance No. O-09-\_\_**

**AN ORDINANCE AMENDING THE CONWAY ZONING ORDINANCE TO ALLOW RESTRICTED OFFICE IN RESIDENTIAL ZONES BY CONDITIONAL USE PERMIT, DECLARING AN EMERGENCY AND FOR OTHER PURPOSES:**

**WHEREAS**, the City of Conway wishes to allow the conversion of older residential structures no longer useful, serviceable, or desirable in present use to office use,

**WHEREAS**, the City of Conway wishes that such offices have minimal to no negative impact on residential areas, parking and heights will be designed for compatibility with any residential area adjacent to it:

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

**SECTION 1.** That ARTICLE 301, SECTION 301.2 – DEFINITIONS of the Conway Zoning Ordinance as adopted by Ordinance O-94-54, September 27, 1994 is hereby amended to add the following language:

**Office, Restricted:** A residential structure or new structure compatible in scale with a residential area available for the transaction of general business but excluding retail, artisan, and manufacturing uses. Activity is limited to administrative, executive, general, professional, and medical office uses that will not generate significant amounts of traffic. See Section 601.27 for required conditions.

**SECTION 2.** That ARTICLE 401 SECTION 401.4 – RESIDENTIAL DISTRICTS – USE REGULATIONS 1. PERMITTED USES of the Conway Zoning Ordinance as adopted by Ordinance O-94-54 on September 27, 1994 is hereby amended to add the following language:

USES (PERMITTED – X) (CONDITIONAL – C)	ZONING DISTRICTS									
	R-1	R-2A	R-2	SR	MF-1	MF-2	MF-3	RMH	HR	
<b>3. OTHER USES</b>										
▪ <b>Office, Restricted</b>		<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>	<b>C</b>

\*See Article 601 Special Provisions Conditions Applying to Uses.

**SECTION 3.** That ARTICLE 601 SPECIAL PROVISIONS, SECTION 601.27 – OFFICE AS CONDITIONAL USE IN RESIDENTIAL DISTRICTS of the Conway Zoning Ordinance as adopted by Ordinance O-94-54 on September 27, 1994 is hereby added with the following language:

A conditional use may be granted to allow the conversion of older structures within residential districts that are no longer useful, serviceable, or desirable in their present use to Restricted Office use. Such offices will have minimal to no negative impact on the residential areas. The following conditions are required:

- Hours of operation: Appropriate hours of operation must be determined.
- Signage: Wall signage shall be limited to a non-illuminated faceplate attached to the structure no greater than 2 square feet in area. Freestanding signage shall be a non-illuminated monument or two pole sign no greater than 4 feet in height and 4 feet wide. A non-illuminated post and arm sign as defined by Conway sign regulations, may be substituted for a monument or two pole sign. No banners shall be permitted.
- Architectural Compatibility: Any remodeling or new construction must be compatible with the surrounding architecture. In areas outside of the Old Conway Design Overlay District or any

Certified Local Government Historic District, compatibility shall be decided by the City Council after review by the Planning Commission.

Within the Old Conway Design Overlay District or any Certified Local Government Historic District, the Old Conway Design Review Board or Historic District Commission shall review and decide compatibility. This review shall include overall exterior appearance, materials, setbacks, height, lot coverage, etc. The setbacks, height, and lot coverage restrictions will be no greater than allowed by the lot regulations per zone, overlay, or historic district.

- Term of the Conditional Use: Conditions are limited to the applicant. If the applicant does not own the property within 6 months of approval, the conditional use permit shall be void. If the property is sold, the conditional use shall be void.
- Lighting, parking, screening/buffering shall minimally match Conway Development Review Standards. Additional parking and/or screening/buffering requirements may be recommended by the Planning Commission and required by the City Council including, but not limited to, parking location and design, fencing or landscaping as required to provide an adequate buffer for neighboring properties.
- Sidewalks: Construction and or repair of existing sidewalks, if necessary, is required as per Conway Development Review Standards.

These conditions are to ensure the compatibility of the office use with any adjacent residential use. New construction designed to reinforce existing residential area characteristics that would not be detrimental to the surrounding residential area may also be allowed by conditional use.

**SECTION 4.** That ADDENDUM A to the Conway Zoning Ordinance USES ALLOWED IN THE VARIOUS ZONING DISTRICTS as adopted by Ordinance O-94-54 on September 27, 1994 is hereby amended to add the following language:

Allowed Uses	R-1	R-2	R-2SR	MF	MF	MF	RM	HR	C-1	C-2	C-3	C-4	O-1	O-2	O-3	I-1	RU	I-3	A-1	S-1	S-2	
Office (See 601.27)		A		-1	-2	-3	H										-1					
	C	C	C	C	C	C	C	C	X	X	X	X	X	X	X	X	X	X			X	X

**SECTION 5.** That any ordinances or parts of ordinances in effect at the time of the passage of this ordinance that are in conflict with this ordinance are repealed to the extent of the conflict.

**SECTION 6.** That this ordinance is necessary for the protection of the public peace, health and safety and an emergency is hereby declared to exist, and this ordinance will be in full force and effect from and after its passage and approval.

**SECTION 7.** All ordinances in conflict herewith are repealed to the extent of the conflict.

**SECTION 8.** That this ordinance is necessary for the protection of the public peace, health and safety, and an emergency is hereby declared to exist, and this ordinance shall be in full force and effect from its passage and approval.

**PASSED** this 14th day of April, 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

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

# Amendment To The Zoning Ordinance

## **An Amendment to Allow Office Use in Residential Zones**

This amendment was first proposed in March 2006 at the request of a Councilman and Planning Commissioner. The amendment went before the Planning Commission, but was held in committee for more public input. A special meeting was held in April 2006 and the modified amendment came back before the Planning Commission in May 2006. The Planning Commission ultimately denied the amendment 6-2. The amendment was never reviewed by the City Council.

### **Synopsis of New Amendment:**

The proposed amending ordinance is largely based on Planning Commission discussion and public comment from the March and April 2006 meetings. The amendment's main points are outlined below:

Section 1 defines Restricted Office as a residential or new structure compatible in scale with the surrounding residential area. Activity is limited to administrative, executive, general, professional, and medical office uses with typical traffic generation.

Sections 2 and 4 modify the zoning matrices to allow Restricted Office in all residential zones by conditional use excluding R-1 and A-1. Restricted office by conditional use may be seen as undesirable in R-1. However, there are several potential R-1 locations along Donaghey that might seek a conditional use if available.

Section 3 mandates a set of conditions that must be included and examined as part of a Restricted Office conditional use request. These restrictions include: hours of operation, signage limitations, architectural compatibility, term of the conditional use, sidewalks, and any lighting, parking, screening/buffering measures above and beyond Conway development review regulations.

For Restricted Office requests located outside the Old Conway Design Overlay or Historic Districts, exterior renovations/architectural compatibility will be reviewed by the Planning Commission and City Council. If the Restricted Office is within the Old Conway Overlay or Historic Districts, architectural compatibility will be subject to review by the Old Conway Design Review Board or Historic District Commission.

### Enclosures:

A copy of the proposed ordinance





City of Conway, Arkansas  
Ordinance No. O-09-\_\_\_\_\_

ORDINANCE OF THE CITY COUNCIL OF CONWAY, ARKANSAS, PERTAINING TO A STREET-RAILROAD CROSSING CORRIDOR PROJECT FOR THE ELIMINATION AND INSTALLATION OF, AND MODIFICATIONS AND ENHANCEMENTS TO, CERTAIN STREET-RAILROAD CROSSINGS WHICH WILL ENCLUDE VACATING AND ABANDONING CERTAIN SECTIONS OF HEREIN ENUMERATED CITY STREETS.

WHEREAS, the City Council of Conway, Arkansas, has considered a street-railroad crossing corridor project involving eliminating the existing at-grade crossings of Davis, Independence, and Deer Streets over the Union Pacific Railroad, installing an at-grade crossing at Elm Street, converting the existing at-grade crossing of College Street over the Union Pacific Railroad to pedestrian use only, and modifying and enhancing the existing at-grade crossing of Prairie Streets over the Union Pacific Railroad and the impact of such at-grade railroad crossing consolidation, modifications, and enhancements on the safety of pedestrian and automobile traffic by its citizens; and

WHEREAS, following its review of the proposed street-railroad crossing corridor project, the City Council of Conway, Arkansas, has concluded that:

1. the benefits of consolidating unnecessary at-grade railroad crossings include:
  - a. fewer intersections at which collisions between motor vehicles and trains can occur; and
  - b. redirection of limited resources to the remaining at-grade railroad crossings which have the greatest public necessity;
2. the elimination of the existing at-grade railroad crossings at Davis, Deer, and Independence Streets, installation of an at-grade railroad crossing at Elm Street, and modifications of and enhancements to the existing at-grade railroad crossings at College and Prairie Streets would accommodate transportation and safety for the citizens of the City; and
3. such modifications of these at-grade railroad crossings would improve traffic flow and safety, and would cause improved development of commerce within the City; and
4. such modifications of the at-grade railroad crossings would be in the best interest and would improve the safety and welfare of citizens and traffic within the City.
5. such modifications would be made pursuant to power granted to the City by ARK. CODE ANN. § 14-54-104.

NOW, THEREFORE, BE IT ORDAINED by the City Council of Conway, Arkansas, as follows:

1. Street and Crossing Closures. The street/railroad crossings formed by the intersection of the Union Pacific Railroad with (a) Davis Street (Department of Transportation No.

434 242 V, Mile Post 374.03, Van Buren Subdivision), (b) Independence Street (Department of Transportation No. 134 239 M, Mile Post 373.71, Van Buren Subdivision), and (c) Deer Street (Department of Transportation No. 434 234 D, Mile Post 372.92, Van Buren Subdivision) are hereby closed, and the portions of the streets which are on the railroad right-of-way are hereby permanently vacated and abandoned, as no longer required for corporate purposes, and the roadway surfaces of the street/railroad crossings shall be removed and permanent barricades installed on each side of the railroad right-of-way at the street/railroad crossings at the City's sole expense.

2. Street and Crossing Opening. A street/railroad crossing formed by the intersection of the Union Pacific Railroad with Elm Street (Department of Transportation No. 924 455 U, Mile Post 372.88, Van Buren Subdivision) shall be installed with flashing lights and gates as protective devices with the City providing and maintaining the roadway surface at its sole expense.

3. Street and Crossing Modification. The street/railroad crossing formed by the intersection of the Union Pacific Railroad with College Street (Department of Transportation No. 434 233 W, Mile Post 372.86, Van Buren Subdivision) shall be converted from a vehicular crossing to a pedestrian crossing with flashing lights and gates as protective devices with the City removing the excess roadway surface and providing such devices as reasonably necessary to prevent motor vehicular traffic across the crossing at its sole expense.

4. Street and Crossing Enhancement. The street/railroad crossing formed by the intersection of the Union Pacific Railroad with Prairie Street (Department of Transportation No. 434 235 K, Mile Post 373.00, Van Buren Subdivision) shall be enhanced by the installation of flashing lights and gates as protective devices at no expense to the City.

FURTHER ORDAINED, that the Mayor should be, and hereby is, further authorized to take such further steps and actions on behalf of the City as such officer shall deem necessary or appropriate to accomplish the purposes of this Ordinance and to consummate the transactions contemplated hereby.

PASSED this 14<sup>th</sup> day of April, 2009

Approved:

\_\_\_\_\_  
Mayor Tab Townsell

ATTEST:

\_\_\_\_\_  
Michael O. Garrett  
City Clerk/Treasurer



CITY OF CONWAY  
STREET AND ENGINEERING DEPT.

100 East Robins • Conway, AR 72032  
501-450-6165 • Fax 501-513-3566

6A-7  
Ronnie D. Hall, P.E.  
City Engineer

April 9, 2009

Mayor Tab Townsell  
City Hall  
1201 Oak Street  
Conway, Arkansas 72032

Re: Meadows Corporate Center Offsite Street Improvements  
Meadows North Entrance - Nina Russ Lane

Dear Mayor Townsell,

Bids were received at 10:00 AM, Wednesday, April 9, 2009 at Conway City Hall for the above referenced project. This project involves the construction of 2,200 feet of 36' curbed street from Stanley Russ Road at Ronald Lane to the Ledgelawn Dr. in the Meadows Subdivision. This street improvement is part of the commitment to infrastructure improvements for the Hewlett Packard project. The nine bids received are listed below and detailed on the enclosed bid tabulation.

J's Construction Co.	\$974,027.61
A & B Dirt Movers	\$989,814.00
COBAR	\$986,615.49
Tom Lindsey Contractor, Inc.	\$1,084,177.00
Paladino-Nash, Inc.	\$1,114,609.29
F.P. Bivens Construction Co.	\$1,163,042.00
Robinson Backhoe Dozer	\$1,167,710.58
Big River Construction, Inc.	\$1,189,825.50
Jerico	\$1,262,806.13
Engineers Estimate	\$1,246,425.00

I recommend award of this bid to the low bidder J's Construction Company in the amount of \$974,027.612.

It is my understanding that the majority of the funding for this project is the remaining balance (approximately \$800,000) in the Industrial Infrastructure Improvement bonds with the remainder from the "pay as we go" sales tax fund.

In addition to the above cost, this project will require approximately \$125,000 for asphalt paving (thru the annual asphalt bid), a budget amount of \$100,000 for fencing and landscaping, and \$145,000 for sanitary sewer improvements.

Please advise if you have questions or need additional information,

Sincerely,

Ronnie Hall, P.E.



**City of Conway, Arkansas**  
**Ordinance No. O-09- \_\_\_\_\_**

**AN ORDINANCE ACCEPTING ASSETS OBTAINED THROUGH COURT ORDER; AND FOR OTHER PURPOSES**

**WHEREAS**, the United States District Court has granted a court order awarding specific seized assets to the Conway Police Department as enumerated on the attached list.

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

**Section 1.** The Conway Police Department shall accept the assets outlined on the attached listing through court order by the United States District Court for the use of the Conway Police Departments having a stated value of \$520

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

PASSED this 14th day of April, 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

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

FILED

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS, DIVISION 1

2009 APR 1 05

IN THE MATTER OF PROPERTY TO BE RETAINED BY THE CONWAY POLICE DEPARTMENT

RHONDA WHEARTON, CLERK CIV 2009-72

PETITION

BY \_\_\_\_\_ DO

Comes now before the Court the Conway Police Department and for its petition doth state:

1) That the items contained on the attached evidence reports are items which are not subject to being returned to any lawful owners although due effort has been made by the Conway Police Department and that therefore said items should be titled in the Conway Police Department and retained by the Conway Police Department for its use.

WHEREFORE the Conway Police Department doth pray this Honorable Court for an order directing that the items listed on attached evidence reports be forfeit to the Conway Police Department for its use.

*[Handwritten Signature]*

Marcus Vaden  
Prosecuting Attorney  
Twentieth Judicial District

VERIFICATION

State of Arkansas  
County of Faulkner

On this day Chief A.J. Gary appeared before the undersigned Notary Public, and after being duly sworn states and affirms under oath that the facts contained hereinabove are true and correct to the best of his knowledge and belief.

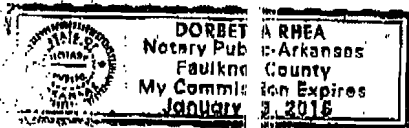
*[Handwritten Signature]*  
Chief A.J. Gary

Subscribed and sworn to before me April 8, 2009.

My commission expires:

1-03-2015

*[Handwritten Signature]*  
Notary Public



IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS  
DIVISION 1

IN THE MATTER OF PROPERTY TO BE RETAINED  
BY THE CONWAY POLICE DEPARTMENT

2009 APR 7 PM 4:05  
CIV 2009-72  
RHONDA WHARTON, CLERK

ORDER

Comes now before the Court the matter of the petition filed DO  
herein by the Conway Police Department and based upon said petition  
and being fully advised of the premises herein this Court doth find,  
order, adjudge and decree that the items listed on the evidence  
reports filed with said Petition should be and hereby are deemed  
titled in the Conway Police Department and shall be retained by said  
Conway Police Department for its use.

IT IS SO ORDERED



\_\_\_\_\_  
Circuit Judge

4/7/09

\_\_\_\_\_  
Date

INCIDENT NUMBER	SUSPECT	RETAIN FOR DEPARTMENT USE	LOCATION	ESTIMATED COST
2008-04125		REMINGTON POLE SAW, SERIAL #108526-01	TRAILER	\$50.00
2008-04125		PORTER CABLE MITER SAW, SERIAL #043466	TRAILER	\$140.00
2008-04125		CRAFTSMAN DRILL, SERIAL #A99421	TRAILER	\$75.00
2008-04125		MAKITA SKILL SAW, SERIAL #118461	TRAILER	\$75.00
2008-04125		CRAFTSMAN BELT SANDER, SERIAL #RB4080	TRAILER	\$50.00
2008-04982		SKILL SAW, SERIAL #2201467-1	TRAILER	\$30.00



**City of Conway, Arkansas**  
**Ordinance No. O-09-\_\_\_\_\_**

**AN ORDINANCE APPROPRIATING GRANT FUNDS TO THE CONWAY POLICE DEPARTMENT; AND  
 FOR OTHER PURPOSES**

**WHEREAS**, the Conway Police Department received grant funds in the amount of \$16,632.68 for reimbursement of bullet proof vests and;

**WHEREAS**, the Conway Police Department needs these funds to purchase vests for new officers as well as for replacement of expired vests;

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

**SECTION 1.** The City of Conway shall accept the grant proceeds and appropriate from the City's General Fund Revenue Account to the Police Department's accountable equipment expenditure account (01.113.354).

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

**PASSED** this 14<sup>th</sup> date of April, 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

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



**MEMORANDUM**

**TO:** City Council Members/Mayor Tab Townsell

**FROM:** Chief A.J. Gary

**DATE:** April 8, 2009

**SUBJECT:** Request for Approval to Destroy Records

The Conway Police Department has recently converted all Supervisory Investigation and Internal Affairs Investigation files older than 3 years from hard copy to electronic format. Numerous files contained audio and visual tapes of interviews with employees regarding these investigations. It is the desire of the Conway Police Department to destroy all audio and visual tapes related to these files.

We appreciate your consideration in this matter.



**City of Conway, Arkansas  
Resolution No. R-09-\_\_\_\_\_**

**A RESOLUTION REQUIRING AN AUDIT OF THE ACCOUNTING RECORDS OF THE CITY OF  
CONWAY**

**WHEREAS**, state statute requires that municipalities indicate through annual resolution their desire to issue audited financial statements performed in accordance with the guidelines and format prescribed by the Governmental Accounting Standards Board (GASB), the American Institute of Certified Public Accountants and the United States Government Accountability Office; and

**WHEREAS**, the City of Conway has issued debt which requires annual audited financial statements prepared in accordance with accounting principles generally accepted in the United States (GAAP) as such principles are modified by the governmental accounting standards promulgated by the GASB and by mandated principles of the State of Arkansas;

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

**SECTION 1:** The City Council of the City of Conway hereby ratifies the completion of an audit for the year ended December 31, 2008, in accordance with the guidelines and format prescribed by the Governmental Accounting Standards Board, the American Institute of Certified Public Accountants and the United States Government Accountability Office.

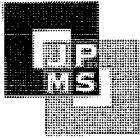
**PASSED** this 14th day of April, 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

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



March 23, 2009

Members of the Council  
City of Conway  
1201 Oak Street  
Conway, Arkansas 72032

Dear Members of the Council:

We are excited about our continued service to you and the opportunity to audit the financial statements of the City of Conway as of and for the year ended December 31, 2008. Attached you will find two letters related to our engagement.

The *Government Auditing Standards* require us to specifically communicate with the auditee, the individuals contracting for or requesting the audit services, and the audit committee or its equivalent, information regarding the nature and extent of planned testing and reporting on compliance with laws and regulations and internal control over financial reporting.

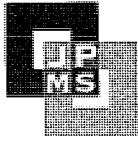
To that end, we are providing you with the attached copy of our arrangement letter related to our audit of City of Conway for your consideration and signature by Mayor Tab Townsell.

In addition, in accordance with Statement on Auditing Standards No. 114, *The Auditor's Communication with those in Governance*, we have included additional information about our audit plan for your information.

If you have any questions concerning the attached, please contact me at (501) 978-8303.

Sincerely,

David L. Mosley  
Jeffrey Phillips Mosley & Scott, P.A.



**JPMS | COX**

ACCOUNTANTS & CONSULTANTS

BRYAN S. JEFFREY  
JIM L. PHILLIPS  
DAVID L. MOSLEY  
GARY D. COOPER  
PHILLIP W. COX  
STEVEN G. BOOTH  
MALLORY S. TAYLOR  
MARY ELLEN VANGILDER

March 23, 2009

Mayor Tab Townsell  
Members of the Council  
City of Conway  
1201 Oak Street  
Conway, Arkansas 72032

Dear Mayor Townsell and Council Members:

This letter is to explain our understanding of the arrangements for the services we are to perform for the City of Conway for the year ending December 31, 2008. We ask that you either confirm or amend that understanding.

We will perform an audit of the City of Conway's governmental activities, business-type activities, aggregate discretely presented component units, each major fund, and aggregate remaining fund information as of and for the year ended December 31, 2008 which collectively comprise the basic financial statements. We understand that these financial statements will be prepared in accordance with accounting principles generally accepted in the United States of America. The objective of an audit of financial statements is to express an opinion on those statements.

We will also perform the audit of the City of Conway as of December 31, 2008, so as to satisfy the audit requirements imposed by the Single Audit Act and the U.S. Office of Management and Budget (OMB) Circular No. A-133.

We will conduct our audit in accordance with auditing standards generally accepted in the United States of America; *Government Auditing Standards* issued by the Comptroller General of the United States; and the provisions of the Single Audit Act, OMB Circular A-133 and OMB's Compliance Supplement. Those standards, circulars, or supplements require that we plan and perform the audit to obtain reasonable rather than absolute, assurance about whether the financial statements are free of material misstatement whether caused by error, fraudulent financial reporting or misappropriation of assets. Accordingly, a material misstatement, whether caused by error, fraudulent financial reporting, or misappropriation of assets, may remain undetected. The determination of abuse is subjective, therefore, *Government Auditing Standards* do not expect us to provide reasonable assurance of detecting abuse. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. As a result, an audit is not designed to detect errors or fraud that are immaterial to the financial statements. An audit also includes assessing the accounting principles used and significant

estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audit will provide a reasonable basis for our reports.

In addition to our reports on the City's financial statements, we will also issue the following reports or types of reports:

A report on the fairness of the presentation of the City's schedule of expenditures of Federal awards for the year ending December 31, 2008.

Reports on internal control related to the financial statements and major programs. These reports will describe the scope of testing of internal control and the results of our tests of internal controls.

Reports on compliance with laws, regulations, and the provision of contracts or grant agreements. We will report on any noncompliance which could have a material effect on the financial statements and any noncompliance which could have a direct and material effect on each major program.

A schedule of findings and questioned costs.

The funds that you have told us are maintained by the City and that are to be included as part of our audit are consistent with those of the prior year.

The federal financial assistance programs that you have informed us that the City participates in and that are to be included as part of the single audit are those listed in the December 31, 2007 audit report plus any new sources of federal and state financial assistance received in 2008 of which you will inform us.

The component units whose financial statements you have told us are to be combined with and included as part of the City's basic financial statements are the Planning Commission of the City of Conway, City of Conway Advertising and Promotion Commission, Conway Corporation, and the Public Facilities Board of the City of Conway. There are no component units whose financial statements you have told us will be omitted from the basic financial statements.

Our reports on internal control will include any significant deficiencies and material weaknesses in the system of which we become aware as a result of obtaining an understanding of internal control and performing tests of internal control consistent with requirements of the standards and circular identified above. Our reports on compliance will address material errors, fraud, abuse, violations of compliance requirements, and other responsibilities imposed by state and federal statutes and regulations and assumed by contracts; and any state or federal grant, entitlement of loan program questioned costs of which we become aware, consistent with requirements of the standards and circulars identified above.

If circumstances arise relating to the conditions of your records, the availability of sufficient, competent evidential matter, or indications of a significant risk of material misstatement of the financial statements because of error, fraudulent financial reporting, misappropriation of assets, or noncompliance which in our professional judgment prevent us from completing the audit or forming an opinion, we retain the unilateral right to take any course of action permitted by

professional standards, including declining to express an opinion or issue a report, or withdrawal from the engagement.

As you know, management is responsible for (1) the preparation of the City of Conway's financial statements and the supplemental schedule of federal awards, (2) establishing and maintaining effective internal control over financial reporting and safeguarding assets and internal control over compliance, including monitoring ongoing activities, and for informing us of all deficiencies in the design or operation of such controls of which it has knowledge, (3) properly recording transactions in the records, (4) identifying and ensuring that City of Conway complies with the laws and regulations applicable to its activities, and for informing us about all known material violations of such laws or regulations, (5) the design and implementation of programs and controls to prevent and detect fraud, and for informing us about all known or suspected fraud affecting the City involving management, employees who have significant roles in internal control and others where the fraud could have a material effect on the financial statements, (6) informing us of its knowledge of any allegations of fraud or suspected fraud affecting the City received in communications from employees, regulators, or others, (7) making us aware of significant vendor relationships where the vendor is responsible for program compliance, (8) making all financial records and related information available to us, (9) adjusting the financial statements to correct material misstatements, (10) following up and taking corrective action on audit findings, including the preparation of a summary schedule of prior audit findings, if applicable, and a corrective action plan; and (11) report distribution including submitting the reporting packages. At the conclusion of our audit, we will request certain written representations from management about the financial statements and matters related thereto. We will also require that you affirm to us that the effects of any uncorrected misstatements aggregated by us during the current engagement and pertaining to the latest period presented are immaterial, both individually and in the aggregate, to the opinion units of the financial statements.

The City Council is responsible for informing us of its views about the risks of fraud within the City, and its knowledge of any fraud or suspected fraud or abuse affecting the City. We will also determine that certain matters related to the conduct of the audit are communicated to the City Council including (1) fraud involving senior management and fraud (whether caused by senior management or other employees) that causes a material misstatement of the financial statements, (2) illegal acts or abuse that come to our attention (unless they are clearly inconsequential), (3) disagreements with management and other serious difficulties encountered in performing the audit, and (4) various matters related to the City's accounting policies and financial statements.

The City of Conway hereby indemnifies Jeffrey Phillips Mosley & Scott, P.A. and its partners, principals and employees and holds them harmless from all claims, liabilities, losses and costs arising in circumstances where there has been a knowing misrepresentation by a member of City of Conway's management, regardless of whether such person was acting in the City of Conway's interest. This indemnification will survive termination of this letter.

You have informed us that City personnel intend to prepare a Comprehensive Annual Financial Report (CAFR) and submit it by June 30, 2009, for evaluation by the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting. While we will be responsible for reading this document, the primary preparation responsibility will be with City personnel.

The working papers for this engagement are the property of Jeffrey Phillips Mosley & Scott, P.A. However, you acknowledge and grant your assent that representatives of the cognizant or oversight agency or their designee, other government audit staffs, and the U.S. Government Accountability Office shall have access to the audit working papers upon their request; and that we shall maintain the working papers for a period of at least three years after the date of the report, or for a longer period if we are requested to do so by the cognizant or oversight agency. Access to requested workpapers will be provided under the supervision of Jeffrey Phillips Mosley & Scott, P.A. audit personnel and at a location designated by our Firm.

During the course of our engagement, we may accumulate records containing data which should be reflected in your books and records. You will determine that all such data, if necessary, will be so reflected. Accordingly, you will not expect us to maintain copies of such records in our possession.

We understand that prior to beginning our audit, City personnel will prepare certain items requested by us and detailed in the attached listing entitled Preliminary List of Items Needed for Audit and that City personnel will locate any additional documents selected by us for testing. In the event that City personnel are unable to provide these items, we will be available to assist with the preparation at our standard hourly rates, in addition to the audit fee below. The timely and accurate completion of this work is an essential condition to our completion of the audit and issuance of our report.

It is our understanding that the City intends to prepare the accounting entries and related worksheets and provide us with a completed CAFR, including financial statements prepared in accordance with the financial reporting model. The timing of the availability of the CAFR and related supporting workpapers is critical to allow us time to include our procedures thereon during our year-end fieldwork and complete our audit of the CAFR for submission to the GFOA by June 30, 2009.

You have indicated that the sections of the CAFR be completed and be available for our review in accordance with the following timeline:

- CAFR Sections to be provided by June 1, 2009:
  - Basic Financial Statements
  - Notes to Financial Statements
  - Required Supplementary Information, including combining schedules and budget to actual schedules
- CAFR Sections to be provided by June 15, 2009:
  - Letter of Transmittal
  - Management's Discussion and Analysis
  - Statistical Section

This timeline takes into consideration your CAFR preparation process whereby the trial balance and basic financial statements must be finalized, compiled, and reconciled in the format required by GASB 34 prior to preparation of the remaining sections.

Our fee to perform the audit for the year ended December 31, 2008 in accordance with the above timelines for receipt of the CAFR is estimated at \$79,000. This fee represents no increase over the prior year which had been based on the fee quoted in our five-year proposal to you dated December 30, 2005 as adjusted for the impact of Auditing Standard No. 104-111 implemented for the year ended December 31, 2007. Should the information detailed above not be available within the timeframe listed above, our fee could be impacted by as much as 10%.

Should there be assistance requested from us outside the scope of our normal auditing procedures, these procedures will be billed in addition to the audit fee below, at our standard hourly rates, and the magnitude of such procedures will be discussed with City personnel prior to these procedures being performed. All other provisions of this letter will survive any fee adjustment. Interim billings will be submitted as work progresses and as expenses are incurred. Billings are due upon submission.

Our professional standards require that we perform certain additional procedures, on current and previous years' engagements, whenever a partner or professional employee leaves the firm and is subsequently employed by or associated with a client. Accordingly, City of Conway agrees it will compensate Jeffrey Phillips Mosley & Scott, P.A. for any additional costs incurred as a result of the employment of a partner or professional employee of Jeffrey Phillips Mosley & Scott, P.A.

In the event we are requested or authorized by City of Conway or are required by government regulation, subpoena, or other legal process to produce our documents or our personnel as witnesses with respect to our engagements for City of Conway, City of Conway will, so long as we are not a party to the proceeding in which the information is sought, reimburse us for our professional time and expenses, as well as the fees and expenses of our counsel, incurred in responding to such requests.

Professional standards and our Firm policies require that we perform certain additional procedures whenever our reports are included, or we are named as accountants, auditors, or "experts" in a document used in a public offering of debt securities. Our report on the financial statements is not to be included in an official statement or other document involved with the sale of debt instruments without our prior consent. Additionally, if you intend to publish or otherwise reproduce the financial statements and/or make reference to us or our audit, you agree to provide us with printer's proofs or master for our review and consent before reproduction and/or release occurs. You also agree to provide us with a copy of the final reproduced material for our consent before it is distributed or released. Our fees for any additional services that may be required under our quality assurance system as a result of the above will be established with you at the time such services are determined to be necessary. In the event our auditor/client relationship has been terminated when the City seeks such consent, we will be under obligation to grant such approval.

It is agreed by City of Conway and Jeffrey Phillips Mosley & Scott, P.A. or any successors in interest that no claim arising out of services rendered pursuant to this agreement by or on behalf of City of Conway shall be asserted more than two years after the date of the last audit report issued by Jeffrey Phillips Mosley & Scott, P.A.



This letter constitutes the complete and exclusive statement of agreement between Jeffrey Phillips Mosley & Scott, P.A. and City of Conway, superseding all proposals oral or written and all other communication, with respect to the terms of the engagement between the parties.

In accordance with *Government Auditing Standards*, a copy of our most recent 2006 peer review report has been provided to you, for your information.

We appreciate the opportunity to be of service to City of Conway and believe this letter accurately summarizes the significant terms of our engagement. If you have any questions, please let us know. If you agree with the terms of our engagement as described in this letter, please sign and date the enclosed copy and return it to us.

Sincerely,



David L. Mosley  
Jeffrey Phillips Mosley & Scott, P.A.

RESPONSE:

This letter correctly sets forth the understanding of City of Conway.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

**City of Conway, Arkansas**  
**December 31, 2008**  
**Preliminary List of Items Needed for Audit**

Please provide the following in connection with your 2008 audit. Please call us at 501-227-5800 with any questions or concerns. If you have any doubt as to what we are requesting, please contact us for clarification. We will have other requests throughout our audit fieldwork which we will provide to you as they are identified.

Unless otherwise indicated, please have the items available upon our arrival for our planning fieldwork on March 30, 2009 and our year-end fieldwork on May 11, 2009. Items that we would like to receive as soon as they are available (*prior to our arrival*) have been indicated with *italics*. We would appreciate as much of the requested information in electronic format. Please e-mail to [bgrice@jpmscox.com](mailto:bgrice@jpmscox.com).

**General**

1. Fully adjusted departmentalized balance sheets and income statements, by fund as well as a complete trial balance as of December 31, 2008. Post the necessary entries to convert the accounting records from a cash basis to an accrual basis in the accounting records at year-end. Review prior year audit entries to see that similar items have been addressed, calculated and recorded prior to our arrival. This should include receivables from tax authorities, accounts payable, accrued payroll, accrued vacation, landfill closure and post-closure costs, reconciliation of interfund accounts, inclusion of pension funds converted from their separate trial balances, and any entries necessary to record grants, funds or other activity of certain departments at December 31, 2008. Also make sure the change in fund balance from December 31, 2007 to December 31, 2008 is the same as net income or loss for that fund. *Please provide these financial statements and summarized trial balance as soon as they are available* for our preliminary planning.
2. Draft of 2008 Comprehensive Annual Financial Report (CAFR), including all financial statements and related footnotes, introductory section, required supplementary information, combining schedules, other reports, and statistical section, all due by June 1, 2009 in order to meet June 30, 2009 deadline.
3. Financial statement supporting worksheets that reconcile the account groupings of the detailed trial balance to GASB 34 financial statements as included in the CAFR requested above.
4. Completed GAAP Checklist for Local Governments (GASB 34 Edition) and completed General Purpose Checklist – New Financial Reporting Model for the CAFR requested above.
5. General ledger detail for selected accounts to be identified and communicated during fieldwork, listing all account activity for the selected account for 2008.
6. Listing of related entities and details of any related party transactions occurring during the year (i.e. transactions with employees or City Council members or businesses they have an ownership interest in) including amounts due to or from these entities at December 31, 2008.
7. Copy of any amendments to the pension trust funds in effect during 2008.
8. Listing of City Council members and their occupations, serving during 2008.

9. *Access to all minutes of Council meetings (to be accessed on-line) and pension fund committee meetings for 2008 and any meetings up to our fieldwork dates needed by planning fieldwork date of March 30, 2009.*
10. Copies of any changes to personnel policy manual in effect during 2008.
11. *Update the e-mailed internal control forms that were prepared in the prior year. These will help us perform our walkthroughs during the current year. Please update for any changes that have taken place during the current year.*
12. *Signed copy of enclosed engagement letter.*
13. The final budgets approved by the Council for 2008 put in the format needed for inclusion in the audit report in the Schedule of Revenues and Expenditures – Budget to Actual – General and Street Funds for the Year Ended December 31, 2008.
14. *Debt, revenue and ADEQ confirmations, printed on your letterhead and returned to Jeffrey, Phillips, Mosley & Scott, P.A. for mailing at our office. (Do not mail directly to addressees.)*
15. *General ledger detail of legal and professional expenses with access to accompanying file of legal invoices supporting each item in the detail including fund, payee, amount, date and type of litigation or consultation, including all pension fund legal and professional expenses.*
16. Attorney's letter printed on your letterhead and returned to Jeffrey, Phillips, Mosley and Scott, P.A. for mailing from our office at the beginning of our year-end fieldwork. (Do not mail directly to addressees.)
17. Management's evaluation of all items noted in attorney's letter replies to be provided to you upon receipt of the reply from the attorneys.
18. *Summary of all pending litigation.*
19. *Update of prior year risk management memo.*
20. Details of any events or conditions arising subsequent to December 31, 2008 that might impact the financial statements and should be considered for disclosure purposes. Continue to update us on this item through the issuance of our report.
21. Number of copies of final Audited Financial Statements and Letter of Recommendations to Management (if applicable) that will be needed.
22. Signed copy of management representation letter to be provided to you at the end of the audit.
23. Detail of insurance coverage, including policy number, coverage period, date paid, type, premium amount and coverage.
24. *Copy of Conway Corporation's December 31, 2008 combined financial statements and audit report.*
25. Copy of all correspondence with the EPA or any other federal / state agency from January 1, 2008 through the date of our year-end fieldwork.

26. Listing of Conway Corporation Board of Directors serving during 2008.
27. Listing of Advertising and Promotions Commission Board of Directors serving during 2008.
28. Copy of Advertising and Promotions Commission audited financial statements for the year ended December 31, 2008.
29. Copies of any other reports issued by other accountants that are supplemental to the City's financial statements (such as audit reports of component units not requested above, etc.)
30. Listing of current fund and department numbers with descriptions.
31. Copies of each of the city department's summary of the year 2008.
32. Analysis of the City's fidelity bond requirement and documentation related to the current bond held.
33. Assistance with reconciliation of any amounts or information returned with confirmation letters to the City's accounting records.
34. *Details of any actions taken related to feedback from the December 31, 2007 audit. Note that no formal Letter of Recommendations to Management was issued.*
35. Resolution or current status of all items resulting in waived audit adjustments in the December 31, 2007 audit.

#### **Cash**

36. Summary bank reconciliation schedule as of December 31, 2008 indicating restricted cash accounts and any CDs with 90 day or less original maturities. This should include every cash account that appears on the trial balance of the City.
37. Copies of the reconciliations of bank balances to general ledger balances as of December 31, 2008. Make available all 2008 and January 2009 bank statements with enclosures.
38. Analysis of collateralization of the City's cash balances and copies of correspondence or agreements from banks indicating the collateral pledged on the City's accounts during the year. This schedule will provide a portion of the footnote disclosure information to be included in footnote one Cash and Investments.
39. Detail of cash on hand, if any, as of December 31, 2008 with supporting documentation for ultimate disposition such as validated deposit slip.

#### **Investments**

40. Copies of investment statements as of December 31, 2008 and reconciliation to general ledger if necessary and a copy of the annual statement showing investment activity for 2008.
41. Rollforward of investment activity, primarily consisting of the pension fund investments, showing balance as of December 31, 2007, contributions of securities, reinvested dividends, purchases, sales, unrealized and realized gains, and balance at December 31, 2008.

42. *Investment and CD confirmations including the indication of credit risk category typed on your letterhead, which are to be returned to Jeffrey, Phillips, Mosley & Scott, P.A. for mailing at our office. (Do not mail directly to addressees.)*
43. Summary reconciliation of all pension investment activity per the investment manager statements to the balances per the general ledger.
44. Copies of supporting documentation for any investments not held and confirmed by a trustee such as K-1s for investments in partnerships, if any.
45. Detailed calculation of accrued investment interest and dividends at December 31, 2008.
46. Calculation of unrealized gain or loss by pension fund and by investment type for 2008.
47. Detail of investment sales and resulting realized gain or loss by pension fund and by investment type for 2008.

#### **Accounts Receivable**

48. Detail of every accounts receivable account by fund, including pension funds, at December 31, 2008 with reconciliation to general ledger. This should include a separate detail and reconciliation for every account receivable account on the trial balance of the City. For components of the details that are unlocated amounts, consider adjusting off the unlocated items leaving only valid receivable balances that are expected to be collected.
49. Access to all cash receipts journals for the year ending December 31, 2008 and from January 1, 2009 through February 28, 2009 and matching of significant cash receipts in 2009 to inclusion on the accounts receivable details requested above.
50. Copies of supporting documentation for all cash receipts from January 1, 2009 through February 28, 2009 exceeding \$10,000.
51. Detail of unbilled receivables by fund at December 31, 2008 with reconciliation to the general ledger.

#### **Other Assets**

52. Detail of the seized asset account with descriptions including approvals of all disbursements.
53. Detail listing or calculation of any significant prepaid expenses at December 31, 2008.
54. Analysis or detail of any other significant asset accounts by fund not previously requested above as of December 31, 2008.

#### **Fixed Assets**

55. Detail of all fixed assets by cost as of December 31, 2008 by fund and reconciliation to the general ledger. Ensure that all fixed asset items are properly capitalized in accordance with the City's capitalization policy.

56. Rollforward of all fixed asset accounts by fund showing beginning balance, total additions, total retirements, and ending balance as of December 31, 2008, including a column for transfers of completed construction in progress so that these transfers are not included in the additions amounts of the various asset categories.
57. Rollforward of construction in progress for 2008.
58. Detail of fixed assets additions that agree to the rollforward, including cost and date acquired.
59. Details of disposals and related proceeds with validated deposit slips and calculation of loss on any disposals for 2008. Insure that trade-ins are properly accounted for.
60. Copies of invoices and cancelled checks for fixed assets additions over \$50,000.
61. Reconciliation of the capital outlay accounts by fund to fixed asset additions for 2008.
62. Reconciliation of capital project expenditures by department per the trial balance to the withdrawals per the capital project bank accounts for 2008, if any.
63. General ledger detail of all repair and maintenance accounts and supporting documentation for items over \$10,000.
64. Detailed description of and current status report for all construction projects in process at December 31, 2008 including all information needed for footnote 9 Commitments.
65. Copies of bids for all fixed assets purchased over \$10,000.
66. Evaluation of compliance with all bond trust indentures in effect for 2008.

#### **Debt**

67. Copies of any debt agreements entered into during 2008 and up to the date of our fieldwork.
68. Rollforward of bonds payable showing balance as of December 31, 2007, new borrowings, repayments, and ending balance as of December 31, 2008 and reconciliation to the general ledger.
69. Analysis of the breakdown between principal and interest on debt payments made in 2008.
70. Reconciliation of transfers to and from the debt service fund during 2008.
71. Copies of the trust account bank statements for the debt service fund as of December 31, 2008.
72. Schedule of debt service maturity requirements as of December 31, 2008.
73. Management's evaluation of any financial debt covenants and evaluation of compliance at December 31, 2008 with all debt covenants.
74. Analysis of landfill closure and postclosure costs as of December 31, 2008 including all information to be included in footnote 12 Closure and Postclosure Care Costs.

75. Copy of the City Engineer's annual solid waste report.
76. *Letter confirming the reasonableness of the annual solid waste report to be printed on City letterhead and sent to the outside consulting firm who assists the City with the landfill.*
77. Conduit debt outstanding balances as of December 31, 2008 for inclusion in the audit report in footnote 11 Long Term Debt.
78. Information related to the legal debt limit, i.e. 2008 taxable values, and the disclosure to be included in footnote 11 under Legal Debt Limit.
79. Detail of all known commitments, contingencies, or any pending or threatened litigation, claims or assessments or unasserted claims or assessments that are required to be accrued or disclosed in the financial statements in footnote 16 in accordance with Statement of Financial Accounting Standards No. 5, of the City as of December 31, 2008.
80. Update of the current status of all outstanding Consent Administrative Orders for consideration for inclusion in footnote 16 Claims and Judgments, if any.

#### **Accounts Payable and Other Liabilities**

81. Detail of every accounts payable account by fund and reconciliation to general ledger as of December 31, 2008. This should include a separate detail and reconciliation for every accounts payable account on the trail balance of the City. For components of the details that are unlocated amounts, consider adjusting off the unlocated items leaving only valid payable balances that are expected to be paid.
82. Detail of accrued accounts payable for additional liabilities at December 31, 2008 for goods or services received in 2009.
83. Printout or access to on-screen check register for all funds for the period of January 1, 2009 through February 28, 2009 and January 1, 2009 through the date of our arrival for the enterprise fund.
84. Voucher package with check copy, vendor invoice, and other supporting documentation for all payments from January 1, 2009 through February 28, 2009 over \$23,500 for the general fund, \$15,500 for the street fund and \$84,000 for the other funds except enterprise. For the enterprise fund please provide supporting documentation for all payments from January 1, 2009 through the date of our arrival over \$15,000.
85. Access to all unpaid invoices on hand as of the date of our arrival.
86. Detail of the Bond and Fine Account from the Police department as of December 31, 2008.
87. Calculation or detail of municipal court disbursements and reconciliation to the corresponding general fund receivable as of December 31, 2008.
88. Total of open encumbrances as of December 31, 2008 for footnote disclosure purposes.
89. Update of prior year Group Insurance memo and analysis of Group Insurance Payable at December 31, 2008.

90. Calculation of accrued salaries as of December 31, 2008, for all hourly and salaried employees, and documentation (i.e. payroll register totals for the first payroll in January 2009) of any salaries earned in fiscal 2008 but paid in January 2009. Reconcile the calculation to the related general ledger accrual accounts.
91. Detailed listing of accrued vacation due all employees as of December 31, 2008, reconciliation to the related general ledger accounts, and including the portion not recorded for sick leave that is disclosed.
92. Copies of payroll tax reports filed for the 4<sup>th</sup> quarter of 2008 and supporting documentation for payroll tax liabilities paid in January 2009 that related to December 2008.
93. Details or calculations of any other significant accrued expenses as of December 31, 2008.
94. Copies of any new or revised lease agreements in effect during 2008 and up to the date of our fieldwork and reconciliation of rent expense for fiscal 2008 to leases in effect during fiscal 2008.
95. Update of prior year detail schedule of all lessee lease commitments and lessor lease receivables as of December 31, 2008.
96. Evaluation of all new lease agreements for 2008 as to proper classification as operating or capital and determination that leases are accounted for in the proper manner based on the results of your evaluation.
97. Details of any debts or obligations of others for which the City is contingently liable.

#### **Fund Balance**

98. Rollforward of fund balance for all funds at December 31, 2008 from the balance per the 2007 audit report with an explanation of differences for any items other than current year revenues over expenditures.

#### **Revenue and Expenses**

99. Comparison of 2008 revenues and expenses to 2007 and 2009 budget with explanations for significant or unusual fluctuations.
100. Documents such as grant agreements and correspondence related to any grants or other special funding received during fiscal 2008.
101. Ad Valorem Tax breakout by fund for 2008.
102. Detail of all amounts deposited and expended under the CDBG program during 2008.
103. Update of prior year Airport revenue memo.
104. In Lieu of Tax Disbursement schedule.
105. Audit report related to the airport lease and number of gallons of fuel used for 2008.



## **Interfund Transfers/Interfund Payables and Receivables**

106. Detail and reconciliation of all interfund receivables/payables or transfer accounts showing proper elimination as of December 31, 2008. Please provide the schedule in the format that will be included in footnote 6 Interfund Balances.

## **Pension Funds**

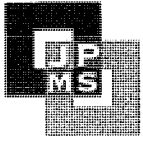
107. Summarization of all pension fund activity from the separate pension trial balances onto the City's trial balance as indicated in No. 1 above.
108. Separate trial balances for pension funds for 2008.
109. Rollforward and calculation of current year activity for all DROP accounts for 2008 with support for current year interest rates.
110. Most recent actuarial reports for all pension trust funds including the municipal judges' and clerks' retirement plan and the benefits provided to former elected officials.
111. Copy of documentation supporting allocation of LOPFI contribution for 2008.
112. Calculation of participant contributions by pension fund for 2008.
113. Detail listing of participant distributions, including DROP participants, for each pension fund and reconciliation to general ledger for 2008.
114. Detail listing of the pension amount paid for 2008, for all pension funds as of December 31, 2008.
115. Detail of participant contributions refunded for the non-uniformed pension fund for 2008 and up to the date of our fieldwork.
116. Reconciliation of employee and employer contributions by pension fund to the corresponding expenditure on the general and street funds for 2008.
117. Access to employer contribution records for a sample of payroll periods to be selected and communicated to you.
118. Access to personnel files and check copies for a sample of participant distributions for each pension fund for 2008.
119. Investment statements as of the most recent month available prior to our arrival and a calculation based on these statements of any significant changes in the market value of the investments requiring disclosure.

## **Government Compliance (A-133)**

120. *Detailed list of all grant funds (including all state and federal funds) received and expended in 2008 including the related CFDA numbers. For all federal funds expended, please prepare the Schedule of Expenditure of Federal Awards for the Year Ended December 31, 2008 for inclusion in the audit report and update footnote 17 Federal Funds Program Compliance needed by March 25, the week prior to planning fieldwork date of March 30, 2009.*

For the programs selected for testing in accordance with A-133:

121. Details of the federal agency from where the federal funding originates, i.e. if any federal funding is received from a pass through entity, the entity the pass through entity received the funding from.
122. Copies of the December 31, 2008 or most recent reports submitted to the Federal funding sources during the current year. Also, access to all reports submitted for 2008, including any reconciliation to the financial statements of any financial information included.
123. Discussion and details of any new or revised reporting requirements of the City by its Federal funding sources.



March 23, 2009

Mayor Tab Townsell  
Members of the Council  
City of Conway  
1201 Oak Street  
Conway, Arkansas 72032

Dear Mayor Townsell and Council Members:

We are pleased to submit the following information about our December 31, 2008 audit plan, including the planned scope and timing of our audit, and overall audit approach for the City of Conway. We believe our audit plan will satisfy our primary objective of rendering a report on the financial statements of the City of Conway as of December 31, 2008 and for the year then ended.

### **Communication**

Effective two-way communication between our Firm and the Members of the Council of the City of Conway is important to understanding matters related to the audit and in developing a constructive working relationship.

Your insights may assist us in understanding the City of Conway and its environment, in identifying appropriate sources of audit evidence, and in providing information about specific transactions or events. We will discuss with you your oversight of the effectiveness of internal control and any areas where you request additional procedures to be undertaken. We expect that you will timely communicate with us any matters you consider relevant to the audit. Such matters might include strategic decisions that may significantly affect the nature, timing, and extent of audit procedures, your suspicion or detection of fraud, or any concerns you may have about the integrity or competence of senior management.

We will timely communicate to you any fraud involving senior management and other fraud that causes a material misstatement of the financial statements, illegal acts that come to our attention (unless they are clearly inconsequential), and disagreements with management and other serious difficulties encountered in performing the audit. We also will communicate to you and to management any significant deficiencies or material weaknesses in internal control that become known to us during the course of the audit. Other matters arising from the audit that are, in our professional judgment, significant and relevant to you in your oversight of the financial reporting process will be communicated to you in writing after the audit.

### **Independence**

Our independence policies and procedures are designed to provide reasonable assurance that our firm and its personnel comply with applicable professional independence standards. Our policies address financial interests, the City and family relationships, and non-audit services that may be thought to bear on independence. For example, without our permission no partner or

professional employee of Jeffrey Phillips Mosley & Scott, P.A. is permitted to own any direct financial interest or a material indirect financial interest in a client or any affiliates of a client.

Also, if an immediate family member or close relative of a partner or professional employee is employed by a client in a key position, the incident must be reported and resolved in accordance with Firm policy. In addition, our policies restrict certain non-audit services that may be provided by Jeffrey Phillips Mosley & Scott, P.A. and require audit clients to accept certain responsibilities in connection with the provision of permitted non-attest services.

## **Engagement Objectives**

Our primary objective is to conduct our audit in accordance with auditing standards generally accepted in the United States of America, which may enable us to express an opinion as to whether the financial statements are fairly presented, in all material respects, in accordance with accounting principles generally accepted in the United States of America. Our audit is planned to provide reasonable, not absolute, assurance that the financial statements are free of material misstatement, whether caused by error, fraudulent financial reporting, or misappropriation of assets.

## **The Audit Planning Process**

Our audit approach places a strong emphasis on obtaining an understanding of how the City functions. This enables us to identify key audit components and tailor our procedures to the unique aspects of the City. The development of a specific audit plan will begin by meeting with you to obtain an understanding of the City's objectives, strategies, risks, and performance.

We will obtain an understanding of internal control to assess the impact of internal control on determining the nature, timing and extent of audit procedures, and we will establish an overall materiality limit for audit purposes. We will conduct formal discussions among engagement team members to consider how and where your financial statements might be susceptible to material misstatement due to fraud or error.

We will use this knowledge and understanding, together with other factors, to first assess the risk that errors or fraud may cause a material misstatement at the financial statement level. The assessment of the risks of material misstatement at the financial statement level provides us with parameters within which to design the audit procedures for specific account balances and classes of transactions. Our risk assessment process at the account-balance or class-of-transactions level consists of:

- An assessment of inherent risk (the susceptibility of an assertion relating to an account balance or class of transactions to a material misstatement, assuming there are no related controls); and
- An evaluation of the design effectiveness of internal control over financial reporting and our assessment of control risk (the risk that a material misstatement could occur in an assertion and not be prevented or detected on a timely basis by the City's internal control).

We will then determine the nature, timing and extent of tests of controls and substantive procedures necessary given the risks identified and the controls as we understand them.

## **The Concept of Materiality in Planning and Executing the Audit**

In planning the audit, the materiality limit is viewed as the maximum aggregate amount of misstatements, which if detected and not corrected, would cause us to modify our opinion on the financial statements. The materiality limit is an allowance not only for misstatements that will be detected and not corrected but also for misstatements that may not be detected by the audit. Our assessment of materiality throughout the audit will be based on both quantitative and qualitative considerations. Because of the interaction of quantitative and qualitative considerations, misstatements of a relatively small amount could have a material effect on the current financial statements as well as financial statements of future periods. At the end of the audit, we will inform you of all individual unrecorded misstatements aggregated by us in connection with our evaluation of our audit test results.

## **Our Approach to Internal Control Relevant to the Audit**

Our audit of the financial statements will include obtaining an understanding of internal control sufficient to plan the audit and to determine the nature, timing and extent of audit procedures to be performed. An audit is not designed to provide assurance on internal control or to identify significant deficiencies or material weaknesses. Our review and understanding of the City's internal control is not undertaken for the purpose of expressing an opinion on the effectiveness of internal control.

## **Timing of the Audit**

We have scheduled our planning and interim audit fieldwork for the week of March 30, 2009 and our year-end audit fieldwork to begin the week of May 11, 2009. We have planned our review of the final draft of the Comprehensive Annual Financial Report ("CAFR") to begin the week of June 1, 2009. Management's adherence to its closing schedule and timely completion of information used by us in performance of the audit is essential to timely completion of the audit and issuance by the deadline of June 30, 2009 for submission of the CAFR for evaluation by the Government Finance Officers Association's Certificate of Achievement for Excellence in Financial Reporting.

## **Engagement Team**

David Mosley will continue to be responsible for coordination of audit and other services to the City of Conway. David Mosley will be supported by an engagement team consisting of:

- Jacob Wells, Senior Audit Manager
- Brandon Grice, Audit Senior
- Beth Knipscheer, Audit Senior
- Tim Blansett, Audit Staff
- Bo Boschetti, Audit Staff

## Closing

This letter is intended solely for the information and use of the Members of the City Council of the City of Conway and is not intended to be and should not be used by anyone other than the specified parties.

We will be pleased to respond to any questions you have about the foregoing. We appreciate the opportunity to be of service to the City of Conway.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Mosley", with a long horizontal stroke extending to the right.

David L. Mosley  
Jeffery, Phillips, Mosley & Scott, P.A.



**City of Conway, Arkansas  
Ordinance No. O-09-\_\_\_**

**AN ORDINANCE WAIVING BIDS IN CONJUNCTION WITH HARDWARE AND SOFTWARE MAINTENANCE;  
APPROPRIATING FUNDS FOR SUCH SERVICES AND FOR OTHER PURPOSES:**

**WHEREAS**, The City of Conway desires to obtain maintenance for the City's AS/400 and ACS software for the period ending March 31, 2010 for which budgetary authority has not been provided; and

**WHEREAS**, The City of Conway currently utilizes the Affiliated Computer Services ("ACS" software and therefore it is deemed necessary to obtain maintenance services from ACS. Hardware maintenance for IBM equipment will be provided by Envision Computer Associates, Inc. on a month to month agreement.

**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 requirement for obtaining bids for hardware and software maintenance services and shall enter into an agreement with ACS for said services and will utilize Envision Computer Associates, Inc. for hardware maintenance at a total price not to exceed \$22,474.

**SECTION 2.** The Mayor is hereby authorized to enter into the attached network support plus agreement and software support agreement with ACS.

**SECTION 3.** The City of Conway shall appropriate an amount not to exceed \$22,474 as a General Fund balance appropriation for hardware and software maintenance costs..

**SECTION 4.** All ordinances in conflict herewith are repealed to the extent of the conflict.

PASSED this 14th day of April 2009.

**APPROVED:**

\_\_\_\_\_  
**Mayor Tab Townsell**

**ATTEST:**

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



**SUPPORT PLUS™  
SOFTWARE SUPPORT AGREEMENT (SSA)**

**City of Conway, AR**  
CLIENT

This AGREEMENT is between Affiliated Computer Services (ACS), and the signatory CLIENT, and clearly states their mutual responsibilities and commitments.

This agreement is in effect for three years, in return for the stated fees and rates. It can be modified at any time if both parties agree to the change in writing.

**SERVICES:** ACS will provide the computer consulting and programming services specified and defined entirely by this agreement. These may include: consulting, training, installation assistance, modification or maintenance of software.

**WARRANTIES AND LIABILITIES:** ACS endeavors to provide high quality services. All services are provided by qualified staff, properly supervised, and will meet the specifications agreed to by both parties. Those services performed by ACS and determined by ACS to be of less than professional quality are corrected without charge to the CLIENT. Corrections may take the form of: 1) changed documentation; 2) changed source or object code; 3) procedures to bypass the problem; or 4) additional support.

**UNDERSTANDINGS:** All services performed by ACS under this agreement will be paid by the CLIENT according to the agreed fee structure and within 10 days after the date of invoice.

ACS retains all proprietary rights to source programs, object programs, subroutines, layouts, formats, documentation, and techniques that are prepared on behalf of the CLIENT, unless a specific exception is stated herein.

ACS will make its best effort to schedule and meet scheduled commitments in the order of priority most important to the CLIENT. ACS takes into consideration the CLIENT'S time schedule, the workload of its employees and disruption of CLIENT'S schedule.

All enhancement distributions will be prepared for installation at the current OS/400 Operating System version and release level as well as one prior release level.

This agreement, governed by the laws of the State of Arkansas, is the entire agreement between the parties. A waiver of any part of this agreement is limited to that specific event and shall not waive the entire agreement. Any notices required shall be in writing and effective when deposited in the mail properly addressed with prepaid postage.

ACS will not initiate action on any item without the express consent of the CLIENT.

This Support Plus Agreement will automatically renew on its anniversary date. If ACS or the CLIENT elects not to renew the Agreement, the other party must be notified in writing at least 30 days prior to the anniversary date.

Fees are non-refundable.

**AFFILIATED COMPUTER SERVICES (ACS) will provide the following services ("Support Plus"™) in support of the applications listed for the listed annual fee:**  
 Unlimited training at an ACS training facility at regularly scheduled classes.      The problem analysis of items brought to ACS in Waite Park.  
 Hot-line telephone consultations.      The distribution of replacement libraries for disaster recovery.  
 The distribution of ACS standard application enhancements.      User group meetings.

**APPLICATIONS COVERED AND ANNUAL FEE FOR SUPPORT PLUS™**

**Applications**

- Govt Financial System (GFS)**
- Govt Accounts Payable System (AP)**
- Govt Payroll System (PAYMATE)**
- Govt Cash Receipts (CR)**
- Govt Fixed Assets (FA)**
- Govt Purchase Order (PO)**
- Govt Requisitions (REQ)**

**TOTAL This Agreement**

**\$4,063.00**  
**included in GFS**  
**\$4,505.64**  
**\$1,485.02**  
**\$1,407.36**  
**\$ 825.77**  
**\$2,334.77**

**Total Amount: \$14,621.56**

**Term of Support Plus:**  
**April 1, 2009 - 03/31/2010**

**ADDITIONAL SERVICES (charged at ACS hourly rates)**

- On-site visits.
- Systems analysis, programming, program testing, documentation.
- Data entry and file conversions
- Planning, status meetings, and feasibility studies.
- Hardware and software interfaces.
- Application Specialist

Signed: X \_\_\_\_\_

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

Title: X \_\_\_\_\_

Phone #: \_\_\_\_\_

Client: \_\_\_\_\_

Fax #: \_\_\_\_\_

ACS Signature X \_\_\_\_\_

**Affiliated Computer Services      Phone: 320.253.2170**  
**2901 Third ST S. P.O. Box 548      Fax: 320.255.9986**  
**Waite Park, MN 56387-0548**

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





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## Network Support Plus Agreement – AS/400

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## Customer Support Agreement

This agreement is established to extend software support services, covered by the Software Support Agreement, to additionally support hardware and networking related issues that customers may encounter. With this agreement, ACS will provide unlimited phone support. This agreement is made and entered into this 19th day of February, 2007, by and between ACS GOVERNMENT SYSTEMS, INC., a Delaware Corporation, and the "customer"; City of Conway, Arkansas.

### Terms and Conditions:

**COVERAGE DATES:** This agreement will establish services to be provided by ACS to Customer for the annual period of February 1, 2009 thru January 31, 2010 .

**FEES:** The customer agrees to pay an annual fee of \$3,200 for a one-year period to commence on the contract date. Annual fees are non-refundable. This agreement will automatically renew on its anniversary date with an annual price increase of not more than 8%. If ACS or the Customer elects not to renew this agreement, the other party must be notified in writing at least 30 days prior to the anniversary date. ACS will provide unlimited phone support for the customer as outlined in the Scope of Services over the twelve-month period. Services provided are a best-effort remote-problem resolution. If unable to resolve the problem remotely, ACS will assist in providing direction on how the customer can resolve the problem. At the customer's request, ACS personnel will come on-site to help resolve the problem. The customer will be billed for the hours on-site plus travel and living expenses related to such on-site assistance.



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## Scope of Services

ACS will provide Level 2 phone support during the hours Monday-Friday, 8:00am-5:00pm Eastern Standard Time except on the following holidays: New Years Day, Memorial Day, July 4th, Labor Day, Thanksgiving Day, and Christmas Day. Level 2 support is defined as troubleshooting issues within the network or server environment located within the customer organization.

The following services are provided by ACS under the Level 2 support framework:

- Remote troubleshooting of IBM AS/400 software and hardware issues, inclusion of IBM software and Hardware support contract in certain cases may require calls to IBM. Those customers under an alternate IR (Independent Reseller) will be given contact information to place IBM direct calls (1-800-IBM-SERV)
- Environment wiring installed by a third party under ACS control is covered for the warranty period via the third party.
- Client Access, New Vision and PACE desktop clients.
- Problem determination based on IP, DHCP and network related problems.
- Printers attached in the following manners.
  - Jet Direct network attachment for use with the AS400 or I-series machines
  - Parallel attachment for use with the AS400 or I-series machines
  - External Jet Direct modules for use with the AS400 or I-series machines
  - WYCOM modular check signing converters for use with the AS400 or I-series machines
  - Large volume printers such as copier will be attempted on a model by model basis.
  - Those printers under contract installed by ACS personel
  - New Vision printer setup and PC defined printer selection against session.

## Network Support Plus Agreement



- 
- Hand held scanners, multiple style (Keyboard, wedge, USB etc..)
  - Table top scanners (Legatto & USSI(UTI))
  - Remote workstation controllers (Perle or IBM 394,494 5394/494)
  - Land rover remote communications devices
  - KVM switch boxes
  - Routers Installed by ACS
  - Twinax terminals
  - Twinax Console
  - ASYNC Console
  - Ethernet Hubs/Switches Installed by ACS
  - UPS systems (help given to install battery if purchased via ACS)
  - Remote troubleshooting of the data backup management application on servers installed by ACS.
  - I-series or AS400 nightly/entire machine backups. Define and institute these saves at customer request. Also investigate problems. **ACS is not responsible for the actual data backup. Client is responsible for checking system log (DSPLOG) daily.**
  - Meter read handheld data migration to and from the 400. The third party software vendor is responsible for supplying the location to/from which directory on the PC, the data files are moved to/from.
  - No training for Microsoft products, it is expected those users on PC's will have pre training, at there own cost to accommodate normal PC usage. Personnel who do not have training on PC usage can increase the problem determination process.



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***Items not covered under this agreement:***

User training for Microsoft Operating Systems.

Microsoft Office, exception those customers with ODBC/Microsoft query/client access data extraction contract.

Spyware, Adware, Data Mining and other infections that may be sustained during Internet usage. The affects of these elements are also to be removed at customer cost. This includes those computers owned by ACS.

Daily monitoring of servers or network devices.

Pre existing Twinax and Category 5, once a diagnosis has been done wiring issues are passed back to the customer for investigation.

Customer Data. Customer responsible for monitoring nightly backups. Will assist with problem determination if the backups are not successful.

Network Services does not restore software package data files but will direct customer to the correct software group for assistance.



**Warranty**

ACS warrants the services provided hereunder will be performed in a professional and workmanlike manner. Except as specifically provided herein, there are no warranties expressed or implied, including but not limited to, any implied warranties of merchantability or fitness for a particular purpose.

**Limitation of Liability**

*ACS AND THE CUSTOMER ACKNOWLEDGE AND AGREE THAT IN NO EVENT WILL ACS' LIABILITY IN CONNECTION WITH THE SERVICES PROVIDED UNDER THIS SCOPE OF SERVICES, OR ANY OTHER MATTER RELATING TO THIS SCOPE OF SERVICES (EXCEPT FOR LIABILITY FOR BODILY INJURY OR PHYSICAL DAMAGE TO TANGIBLE PERSONAL PROPERTY DIRECTLY CAUSED BY THE NEGLIGENT ACTS OR OMISSIONS OF ACS EMPLOYEES, FOR WHICH ACTS ACS' LIABILITY SHALL INSTEAD AND NOT ADDITIONALLY BE LIMITED TO THE AVAILABLE PROCEEDS OF THE INSURANCE THAT ACS MAINTAINS FOR SUCH ACTS AND OMISSIONS), EXCEED THE AMOUNT ACTUALLY PAID TO ACS BY THE CUSTOMER UNDER THIS SCOPE OF SERVICES, AND ACS WILL NOT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF PROFITS, LOSS OF DATA, AND LOSS OF REVENUES, EVEN IF INFORMED OF THE POSSIBILITY THEREOF IN ADVANCE. THESE LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, MISREPRESENTATION, AND OTHER CAUSES OF ACTION BASED ON SIMILAR LEGAL THEORIES.*



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## Customer General Provision

### **1. CONTROL**

All services by ACS will be performed in a manner satisfactory to the Customer, and in accordance with the generally accepted business practices and procedures of the Customer. In the unlikely event the Customer is not satisfied with services provided, they will communicate to ACS in writing the services for which they were dissatisfied and the reason for their dissatisfaction. ACS and the Customer will then discuss and decide upon an appropriate plan of action to remedy the dissatisfaction.

### **2. INDEPENDENT STATUS**

Nothing in this Scope of Services shall be deemed to represent that ACS, or any of ACS' employees or agents, are the agents, representatives, or employees of the Customer. ACS will be an independent contractor over the details and means for performing its obligations under this Scope of Services. Anything in this Scope of Services which may appear to give Customer the right to direct ACS as to the details of the performance of its obligations under this Scope of Services or to exercise a measure of control over ACS is solely for purposes of compliance with local, state and federal regulations and means that ACS will follow the desires of the Customer only as to the intended results of the scope of this Scope of Services.

It is further expressly agreed and understood by ACS that neither it nor its employees or agents are entitled to any benefits which normally accrue to employees of the Customer; that ACS has been retained by the Customer to perform the services specified herein (not hired) and that the remuneration specified herein is considered fees for services performed (not wages) and that invoices submitted to the Customer by ACS for services performed shall be on ACS' letterhead.

### **3. CONFLICT OF INTEREST**

ACS covenants that it has no public or private interest, and will not acquire directly or indirectly any interest, which would conflict in any manner with the performance of its services. ACS warrants that no part of the total contract amount provided herein shall be paid directly or indirectly to any officer or employee of the Customer as wages, compensation, or gifts in exchange for acting as officer, agent, employee, subcontractor or representative to ACS in connection with any work contemplated or performed relative to this Scope of Services.

### **4. EMPLOYMENT**

During the term of this Agreement and for a period of one (1) year following either the expiration or termination thereof, neither party shall directly hire or hire as consultants, nor knowingly allow any of its employees, agents, officers, or representatives to directly hire or hire as consultants, any employee(s) of the other party who are associated with



or involved in the performance of the Prime Contract of this Subcontract without the prior written consent of such other party.

**5. ARBITRATION**

Any dispute concerning a question of fact in connection with the work not disposed of by agreement between ACS and the Customer will be referred to the Contract Administrator or his duly authorized representative, whose decision regarding same will be final.

**6. RESPONSIBILITIES FOR CLAIMS AND LIABILITIES**

ACS shall immediately notify the Customer, of any claim or suit made or filed against ACS or its subcontractors regarding any matter resulting from or relating to ACS' obligations under the Agreement, and will cooperate, assist, and consult with the Customer in the defense or investigation thereof.

**7. GENERAL COMPLIANCE WITH LAWS**

ACS agrees that at all times it will observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the work to be performed under this Scope of Services. This Scope of Services will be interpreted in accordance with the laws of the State of Delaware. By execution of this Scope of Services ACS agrees that all actions, whether sounding in Scope of Services or in tort, relating to the validity, construction, interpretation and enforcement of this Scope of Services will be instituted and litigated in the courts of the State of Delaware, and in no other. In accordance herewith, the parties to this Scope of Services submit to the jurisdiction of the courts of the State of Delaware.

**8. ENTIRE AGREEMENT**

This Scope of Services contains the entire Scope of Services of the parties regarding the subject matter hereof, and there are no other promises or conditions in any other Contract whether oral or written. This Contract supersedes any prior written or oral understandings of any kind between the parties regarding the subject matter hereof.

**9. SEVERABILITY**

If any provision of this Scope of Services is held to be unlawful, invalid or unenforceable under any present or future laws, such provision shall be fully severable; and this Scope of Services shall then be construed and enforced as if such unlawful, invalid or unenforceable provision had not been a part hereof. The remaining provisions of this Scope of Services shall remain in full force and effect and shall not be affected by such unlawful, invalid or unenforceable provision or by its severance here from. Furthermore,





in lieu of such unlawful, invalid, or unenforceable provision, there shall be added automatically as a part of this Scope of Services a provision as similar in terms to such unlawful, invalid or unenforceable provision as may be possible, and be legal, valid and enforceable.

**10. MATTERS TO BE DISREGARDED**

The titles of the several sections, subsections, and paragraphs set forth in this Scope of Services are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this Scope of Services.

**11. ORGANIZATION STATUS & AUTHORITY**

**Organizational Status.** ACS represents and warrants that it is a corporation, duly organized, validly existing and in good standing under the laws of the state of Delaware; it has the power and authority to own its properties and assets and is duly qualified to carry on its business in every jurisdiction wherein such qualification is necessary.

**Power and Authority.** The execution, delivery and performance of this Scope of Services by ACS has been duly authorized by all requisite action and will not violate any provision of law, any order of any court or other agency of government, the organizational documents of ACS, any provision of any indenture, agreement or other instrument to which ACS is a party, or by which ACS' respective properties or assets are bound, or be in conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the properties or assets.

**Network Support Plus Agreement**



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THE PARTIES have executed this Scope of Services through the signatures of their respective authorized representatives.

**ACS**

**CUSTOMER**

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Printed Name and Title of Signatory)

\_\_\_\_\_  
(Printed Name and Title of Signatory)

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

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