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FAULKNER COUNTY CIRCUIT CLERK

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by Blm D.C.

313207



City of Conway, Arkansas

Ordinance No. O-08-112

**AN ORDINANCE PROVIDING FOR THE LEASING OF THE CITY CABLE TELEVISION SYSTEM TO THE CONWAY CORPORATION; AND FOR OTHER PURPOSES**

**WHEREAS**, the City of Conway has leased certain cable service facilities to Conway Corporation under Ordinance 0-79-22 as amended; and

**WHEREAS**, the City and Conway Corporation desire to modernize the lease agreement;

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

**SECTION ONE:**

Unless the context specifically indicates otherwise, the meaning of the terms used in this ordinance shall be as follows:

City – shall be the City of Conway, Arkansas.

City Council – shall be the City Council of the City of Conway, Arkansas.

Corporation (Corp.) – shall be the Conway Corporation.

Cable Communication System-shall mean the facility consisting of a set of closed transmission paths and associated signal, generation, reception and control equipment that is designed to provide cable service which includes video programming.

Cable Service – shall mean the transmission of video programming or other programming service, to subscribers and the subscription interaction, if any, which is required for the selection and use of such video programming or other programmer service.

Force Majeure – shall mean any cause or causes beyond the control of Corporation, including, but not limited to, acts of God or the public enemy, failure of the Corporation’s facilities, flood, earthquake, storm, lightning, fire, epidemic, war, embargo, riot, civil disturbances, sabotage, or restraint or prevention of performance by act of any court, regulatory body or defense agency, which by the exercise of due diligence and foresight the Corporation could not reasonably have been expected to avoid.

**SECTION TWO.**

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

### **SECTION THREE**

#### **LEASE**

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

1 – The Lessor does hereby lease and rent for the consideration set forth below, unto the Lessee the following real estate and personal property, to-wit: The Cable Communication System and all lands and property, real and personal, acquired for the location and operation of the System for a term ending December 31, 2025.

The Lessee agrees and promises to pay a lease payment of \$25,000 per month in calendar years 2009 and 2010 to the Lessor, City of Conway. On January 1, of each year, beginning January 1, 2011, the monthly lease fee shall be reduced by one-twelfth (1/12) of the increase in the total franchise fees paid for the year then just ended over the year which preceded it. Provided, however the lease fee shall not be less than \$10,000 per month.

The said Conway Corporation shall make and enforce all such proper rules as to collection of delinquent bills and as to discontinuance of service to delinquent customers as it may, in its opinion, deem necessary.

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

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

3 – Lessee further agrees that it will, during the term of this lease, make all necessary additions and extensions to the System and that it will, through its own production or by purchase, make available to customers, such additional service as shall be necessary to take care of any increased demands caused by the growth of the City of Conway, or otherwise, during the term of this lease; provided, however, that lessee shall not be responsible for service interruptions caused by force Majeure, failure of equipment or governmental intervention.

4 – The Lessee shall at all times during the term of this lease keep an accurate set of books in conformance with accepted accounting procedures, showing all receipts and expenditures of said Corporation, and said books shall at all times be open to inspection by the Mayor and members of the City Council, or is designated agents. The Mayor and members of the City Council, or its designated agents,

shall have the right at all times to go upon the properties of the said System and make such inspection thereof as they may deem proper.

IN WITNESS WHEREOF, this Lease has been executed on behalf of the City of Conway, and the corporate seal of said City affixed hereto by its Mayor and City Clerk, hereunto duly authorized by ordinance of the City Council of the City of Conway, and has been executed by the Conway Corporation and the corporate seal of Conway Corporation affixed hereto by its Chief Executive Officer and its Secretary, hereunto duly authorized by Resolution of the Board of Directors of the said Conway Corporation on this 21<sup>st</sup> day of October, 2008 day of it being distinctly understood and agreed, however, that neither the Mayor nor City Clerk, nor the Chief Executive Officer or the Secretary of the Conway Corporation, shall in any manner be personally liable or responsible hereunder.

**CONWAY CORPORATION**

  
Chief Executive Officer

  
Secretary

**CITY OF CONWAY**

  
Mayor

  
City Clerk/Treasurer

**SECTION FOUR.**

All ordinances and parts of ordinances in conflict are repealed and this ordinance shall be in force on the 1st, day of January, 2009.

**PASSED: September 23<sup>rd</sup>, 2008**

**APPROVED:**

  
MAYOR Tab Townsell

**ATTEST:**

  
Michael O. Garrett  
City Clerk/Treasurer