

IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION – SECOND DIVISION

**RICHARD SHUMATE, JR. and
DAMON REED, on behalf of themselves
and all other similarly situated persons and entities**

PLAINTIFFS

v.

CASE NO. CV 2012-855

CITY OF CONWAY, an Arkansas Municipality

DEFENDANT

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY
APPROVAL OF CLASS SETTLEMENT AND APPROVAL
OF NOTICE TO CLASS MEMBERS**

Plaintiffs Richard Shumate, Jr. and Damon Reed, on behalf of themselves and the certified Class, hereby move the Court to grant preliminary approval of the class Stipulation of Settlement (attached as Exhibit 1) and to approve the proposed Class Action Settlement Notice (attached to the Stipulation of Settlement as Exhibit D) for the reasons set forth in Plaintiffs' supporting memorandum filed contemporaneously with this Motion. A proposed Class Settlement Preliminary Approval Order is attached to this Motion as Exhibit 2.

DATED: April 22, 2019

Respectfully Submitted,

/s/ Thomas P. Thrash

Thomas P. Thrash (#80147)

Marcus Neil Bozeman (#95287)

THRASH LAW FIRM, P.A.

1101 Garland Street

Little Rock, AR 72201

Phone: (501) 374-1058

Fax: (501) 374-2222

Russell A. Wood (#2001137)

Wood Law Firm, P.A.

501 East 4th Street, Ste. #4

Russellville, AR 72801

Phone: (479) 967-9663

Fax: (479) 967-9664

Attorneys for Plaintiffs and the Certified Class

CERTIFICATE OF SERVICE

I, Marcus Bozeman, hereby certify that a true and correct copy of this document was filed with the Clerk via the eFlex system which will send notification of filing to the following:

Thomas N. Kieklak

Justin Eichmann

Harrington, Miller, Kieklak, Eichmann & Brown, P.A.

4710 S. Thompson, Ste. 102

Springdale, Arkansas 72764

/s/ Marcus Bozeman

Marcus Bozeman

EXHIBIT 1

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION – SECOND DIVISION**

**RICHARD SHUMATE, JR. and
DAMON REED, on behalf of themselves
and all other similarly situated persons and entities**

PLAINTIFFS

v.

CASE NO. CV 2012-855

CITY OF CONWAY, an Arkansas Municipality

DEFENDANT

STIPULATION OF SETTLEMENT

Subject to approval of the Court and to the other terms and conditions set forth herein, this Stipulation of Settlement¹ is made and entered into by and among (a) Richard Shumate, Jr. and Damon Reed, individually and on behalf of each member of a class of all other persons similarly situated (“Plaintiffs”), and (b) the City of Conway, an Arkansas municipality (the “City” or “Defendant”). This Settlement Stipulation is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions hereof.

I. THE LITIGATION

Richard Shumate, Jr. and Damon Reed, individually and on behalf of a Class of all other persons similarly situated, are the named Plaintiffs in this action against the City. This action arises from Plaintiffs’ allegations that the City entered into contracts with all persons employed or hired as Police Officers or Firefighters from December 1, 2001 through December 31, 2012, which obligated the City to pay those employees pursuant to Police and Fire Pay Scales approved by the City Council. Plaintiffs contend that Defendant breached those contracts when it failed in 2010,

¹ As used herein, unless the context otherwise requires, capitalized terms have the meanings ascribed to them in Section V.A. hereof. This document may also be referenced as the Settlement Stipulation or Settlement Agreement.

2011, and 2012 to make annual salary “step” increases required by the Pay Scales. Plaintiffs further alleged in their Complaint that the City’s failure to make those step increases constituted a diversion of tax revenues amounting to an illegal exaction under Arkansas law. The City rejects Plaintiffs’ contentions both as to liability and damages and rejects other allegations in the Complaint.

On July 7, 2017, the Court approved a form and procedure for notifying the Class of the pendency of this Class Action and affording Class Members an opportunity to opt-out of the Class. Such notice of the pendency of this Class Action and opportunity to opt-out was provided to the Class in 2017, via personal notice mailed to Class Members’ last known addresses and publication notice appearing in the *Conway Log Cabin Democrat*. Additional efforts to notify Class Members occurred via e-mail, prominent informational displays on websites maintained by Class Counsel, and through the institutional, Facebook, and Twitter websites maintained by the City of Conway and various associations aligned with the Conway Police Department and the Conway Fire Department. No Class Members elected to opt-out of the Class.

II. THE STATUS OF THE LITIGATION

Plaintiffs filed the initial Complaint in this lawsuit on September 18, 2012, and early in the Litigation the Parties filed competing Motions for Summary Judgment on the illegal exaction claim in the Complaint. At the same time, for purposes of pursuing the breach of contract claim also pleaded against the City, Plaintiffs sought certification of a Class comprised of all Police Officers and Firefighters (excluding department heads and elected officials) employed by the City between December 1, 2001 and December 31, 2012. On December 7, 2015, the Court granted Defendant’s Motion for Summary Judgment on the illegal exaction claim, but it granted Plaintiff’s Motion for Class Certification on the breach of contract claim. Defendant appealed the Class Certification

Order to the Arkansas Supreme Court, which ultimately affirmed certification. *City of Conway v. Shumate*, 2017 Ark. 36.

The parties have engaged in discovery on the remaining claim for breach of contract, and Class Counsel has undertaken activities including, but not limited to: (a) inspection of documents obtained from non-parties; (b) review of documents and information produced by Defendant during discovery; (c) consultation with prospective witnesses, including expert witnesses; (d) obtaining expert reports on individual and class damages; (e) review of documents to determine liability and damage issues; (f) research of the applicable law with respect to the claims asserted in the Litigation and the defenses raised by the City; (g) preparation of and responding to numerous additional motions, including motions for summary judgment; (h) preparation for trial set to begin on May 6, 2019.

On December 17, 2018 and March 25, 2019, counsel for the City and Class Counsel participated in mediation as ordered by the Court with James W. Tilley as Mediator. The Mediator has continued to engage the Parties in settlement discussions thereafter. These discussions have included conversations concerning liability and damage issues underlying Plaintiffs' and Class Members' claims. All Parties have had the benefit of the Mediator's input in arriving at this settlement. The Parties have engaged in arms' length negotiations and reached the resolution set forth herein.

Plaintiffs and Class Counsel have considered the benefits to the Class that will be received as a result of this settlement, and the potential benefits, costs, uncertainties, and risks of further litigating this matter, and have concluded that this settlement is fair, reasonable, adequate, and in the best interests of the Class, subject to the terms and conditions set forth herein.

This Litigation is currently pending before the Circuit Court of Faulkner County, Arkansas,

Judge Troy Braswell presiding.

III. DEFENDANT'S DENIAL OF WRONGDOING AND LIABILITY

Defendant has vigorously denied and continues to vigorously deny each and all of the claims and contentions alleged by Plaintiffs and the Class, including all claims concerning Defendant's conduct, as well as the contention that such conduct constitutes wrongdoing or gives rise to legal liability. The Parties agree that neither this Settlement Stipulation nor any document referred to herein, nor any action taken to carry out this Settlement Stipulation is, may be construed as, or may be used as evidence of, an admission or concession on the part of Defendant with respect to any claims, potential claims or of any fault or liability or wrongdoing or damage whatsoever, or any infirmity in the defenses that the Defendant has asserted or intended to assert in this Litigation. Nonetheless, Defendant wishes to settle and compromise the Litigation to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in any litigation, especially in complex cases like this Litigation.

Defendant has, therefore, without conceding any infirmity in the defenses that it has asserted or could assert in this Litigation, determined that it is desirable and beneficial that the Litigation be settled in the manner and upon the terms and conditions set forth in this Settlement Stipulation.

IV. CLAIMS OF THE PLAINTIFFS AND BENEFITS OF SETTLEMENT

Plaintiffs and Class Counsel believe that the claims asserted in the Litigation have merit and that the information obtained by Class Counsel supports the claims asserted. Plaintiffs and Class Counsel nonetheless recognize that there are significant risks, uncertainties, and expenses in proceeding with the Litigation through trial, and any appeals. Plaintiffs and Class Counsel believe

that, in the present circumstances of the Litigation, the settlement set forth in this Settlement Stipulation confers substantial benefits upon the Class. Based upon their evaluation, Plaintiffs and Class Counsel have determined that the settlement set forth in this Settlement Stipulation is in the best interests of Plaintiffs and the Class, subject to the terms and conditions now set forth.

V. **TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs (for themselves and the Members of the Class) and the Defendant, subject to the approval of the Court and other conditions set forth herein, the Released Claims shall be finally and fully compromised, settled, and released, and the Released Claims shall be dismissed with prejudice and without costs as to any settling Party, upon and subject to the terms and conditions of this Settlement Stipulation, as follows.

A. **Definitions**

As used in this Settlement Stipulation, the following terms have the meanings specified below:

1. "Available Funds" shall mean \$1,150,000 less the Court approved costs of administration, Class Representative fees, attorneys' fees, and litigation costs.
2. "Benefit" is the cash amount an Eligible Class Member will receive from the Available Funds. The lost wages sustained by each Eligible Class Member due to Defendant's failure to make step increases during 2010, 2011, and 2012, along with the total lost wages suffered by the Class as a whole, are shown on Exhibit A to this Stipulation. Because the Available Funds are less than the total damages suffered by the Class (which include inadequate LOPFI contributions), each Eligible Class Member (as identified in Exhibit "A") will receive a percentage of Available Funds equivalent to the ratio the Eligible Class Member's individual lost wages bear

to the total lost wages sustained by the Class. In addition to the cash Benefit paid to each Eligible Class Member who can be located, all attorneys' fees and litigation costs, Class Representatives' fees, and administrative costs of settlement are other benefits that will be paid from the Settlement Fund.

3. "Class" means:

All City of Conway Policemen² and Firemen³ (excluding department heads and elected officials) who were employed by the City of Conway during the period commencing December 1, 2001, through December 31, 2012.

4. "Class Action" or "Litigation" means this action, captioned *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. 23CV-12-855, Circuit Court of Faulkner County, Arkansas, and all of the claims asserted herein.

5. "Class Member" or "Member of the Class" means a Person who falls within the definition of the Class as set forth herein.

6. "Class Period" means the period commencing December 1, 2001 through December 31, 2012.

7. "Costs of Notice and Administration" means costs and expenses actually incurred in connection with providing Settlement Notice to the Class, administering, and distributing Benefits to the Members of the Class. Notice and Administration of the Settlement shall be the exclusive responsibility of Plaintiffs.

8. "Court" means the Circuit Court of Faulkner County, Arkansas.

9. "Defendant" means the City of Conway, an Arkansas municipality.

² Code Enforcement Officer, Officer I-IV, Master Officer, Sergeant, Lieutenant, Major, and Chief.

³ Firefighter, Lieutenant, Captain, Division/District Chief, and Chief.

10. "Defendant's Counsel" means Thomas Kieklak and R. Justin Eichmann, HARRINGTON, MILLER, KIEKLAK, EICHMANN & BROWN, P.A., 4710 S. Thompson, Suite 102, Springdale, Arkansas 77264.

11. "Effective Date" means the first business day after the Judgment becomes Final.

12. "Eligible Class Member" is a Class Member who was employed as a Conway Police Officer or Firefighter at any time between December 1, 2001 and January 31, 2011, and who suffered lost wages as a result of the City's failure to make promised step increases in 2010, 2011, and/or 2012. The City in or around January 2011 began printing on its Pay Scales a statement that future "[s]tep increases are subject to the approval of the City Council for each fiscal year." Consequently, the term "Eligible Class Member" does not include any person first hired as a Police Officer or Firefighter after January 2011.

13. "Final" means (a) if no appeal is filed or other review is sought, thirty (30) days after entry of Judgment; or (b) if any appeal is taken, or any re-argument or other form of review occurs, the date on which the Judgment shall have been affirmed in all respects and the time for any further appeal, re-argument, or other form of review shall have expired.

14. "Judgment" means the Judgment to be entered by the Circuit Court of Faulkner County, Arkansas, substantially in the form attached hereto as Exhibit "C," Final Judgment Order. The Judgment shall dismiss with prejudice the Released Claims.

15. "Mediator" means Jim Tilley, WATTS, DONOVAN, and TILLEY, P.A., 200 River Market Avenue, Suite 200, Little Rock, Arkansas 72201.

16. "Party" means Defendant or the Plaintiffs (on behalf of themselves and Members of the Class), and "Parties" means, collectively, Defendant and the Plaintiffs (on behalf of themselves and Members of the Class).

17. "Person" means an individual, corporation, partnership, limited partnership, enterprise, association, joint stock company, estate, legal representative, trust, unincorporated association, government, or any political subdivision or agency thereof, or any business or legal entity, and their spouses, heirs, affiliates, subsidiaries, predecessors, successors, representatives, or assignees.

18. "Plaintiffs" means Richard Shumate, Jr. and Damon Reed, individually and on behalf of each Class Member and each of their respective current, former or future heirs, estates, attorneys, assigns, and agents.

19. "Plaintiffs' Counsel" and/or "Class Counsel" means Thomas P. Thrash and Marcus Neil Bozeman, THRASH LAW FIRM, P.A., 1101 Garland Street, Little Rock, Arkansas 72201, and Russell A. Wood, WOOD LAW FIRM, P.A., 501 East 4th Street, Suite 4, Russellville, Arkansas 72801.

19. "Preliminary Approval" means the entry of Exhibit "C," Preliminary Approval Order.

20. "Released Claims" means all claims, demands, rights, liabilities, and causes of action of every nature and description whatsoever, known or unknown, as asserted or that might have been asserted in the Litigation against the Released Persons for the period commencing December 1, 2001 through and including December 31, 2012, whether based upon contract or tort (including, without limitation, unjust enrichment, breach of contract, negligence, recklessness, misrepresentation, fraud, violations of the Arkansas Deceptive Trade Practices Act, and suppression), contribution, indemnification, or violations of any federal, state, local, statutory or common law or any other law, rule, or regulation, including both known and unknown claims, that have been or could have been asserted in any form by Plaintiffs or any Member of the Class or any

of them, or the successors and assigns of any of them, including but not limited to all claims, rights, or causes of action which have been or could have been asserted in the Litigation for the Class Period and/or the acts, omissions, or failures to act which were or could have been alleged in the Litigation for the Class Period, involving or arising out of Defendant's failure to make salary "step" increases pursuant to approved Pay Scales during 2010, 2011, and 2012.

21. "Released Persons" means Defendant and any and all of Defendant's current, former, and future mayors, officers, directors, city council members, employees, managers, members, fiduciaries, agents, legal counsel, advisors, consultants, insurers, accountants, auditors, trustees, associates, representatives, affiliates, successors, and assigns, and their respective former, current, and future direct or indirect controlling persons or assignees and including, but not limited to, any directors, officers, agents, partners, members, managers, or employees of any of the foregoing.

22. "Settlement Fund" means the \$1.15 Million to be paid by the City as consideration for Settlement.

23. "Settlement Stipulation" and "Stipulation of Settlement" means this Stipulation of Settlement.

B. Class Benefits

1. Class Benefits include the \$1.15 Million Settlement Fund. The \$1.15 Million Settlement Fund will be used to pay any and all (1) Settlement Benefits to Eligible Class Members, (2) costs of administration of the Settlement, (3) attorneys' fees and litigation costs, and (4) Class Representative fees.

C. Preliminary Approval Settlement Hearing

1. As soon as is practicable following the execution of this Settlement Stipulation,

Plaintiffs shall move and Defendant shall either separately or in the same document join in seeking entry of an order (the "Preliminary Approval Order"), substantially in the form of Exhibit "B" attached hereto preliminarily approving the Settlement. The Preliminary Approval Order shall include: (a) preliminary approval of the settlement set forth in this Settlement Stipulation; (b) approval of the Settlement Notice sent to members of the Class via (i) personal notice sent to the addresses of Class Members as memorialized in Defendant's files, and (ii) publication to occur in the *Conway Log Cabin Democrat*, all such notice must be completed within forty-five days of the entry of the Preliminary Approval Order; (c) determination that the notice given pursuant to subparagraph (b) above constitutes the best notice practicable in the circumstances, and constitutes valid, due, and sufficient notice to all Class Members, complying fully with the requirements of Rule 23 of the Arkansas Rules of Civil Procedure, the Constitution of the United States, and any other applicable law.

2. The Notice described in the preceding paragraph shall fully explain the Benefit set forth in Paragraph V.A.2. of this Settlement Stipulation. Plaintiffs alone are and shall be responsible for the determination of the amount of Benefit set forth in Paragraph V.A.2. of this Settlement Stipulation. Plaintiffs also alone are and shall be responsible for submitting the language to be used in the Notice and plan for distributing that Notice and for obtaining the Court's approval of that language and distribution plan.

3. The Parties shall request that, after notice is given, the Court hold a hearing (the "Settlement Hearing") and finally approve the Settlement as set forth herein. If the Court approves the Settlement, Plaintiffs shall promptly move the Court for entry of the Judgment in the form attached hereto as Exhibit "C," Final Judgment Order.

D. Payment of Settlement Fund

1. In full satisfaction of the Released Claims, the City will pay to or for the benefit of the Class Members and Class Counsel the sum of one million one hundred fifty thousand dollars and no cents (\$1,150,000.00), which amount shall constitute the Settlement Fund. The City will pay the Settlement Fund into the trust account of Class Counsel Thrash Law Firm, P.A. no later than seven (7) days after the Effective Date.

E. Releases

1. Upon the Effective Date, the Plaintiffs shall, and each of the Members of the Class, who has not requested exclusion from the Class, shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged all Released Claims against each and all of the Released Persons, whether or not any such Member of the Class receives a Benefit.

2. Upon the Effective Date, each of the Released Persons shall be deemed to have, and by operation of the Judgment shall have, fully, finally, and forever released, relinquished, and discharged each of the Plaintiffs, the Class Members, and Class Counsel from all claims arising out of, relating to, or in connection with the institution, prosecution, assertion, or resolution of the Released Claims.

F. Administration of Settlement

1. Administration of the Settlement shall be subject to the supervision, direction, and approval of the Court. The administration of this Class Action Settlement shall be as provided in this Settlement Stipulation.

2. The City takes no position on the amount of Benefit, how the Settlement Fund will be distributed, on how the distribution of the Settlement Fund will occur, or on how the distribution

of the Settlement Fund will be administered. The City also will play no role in and have no responsibility for any aspect of the administration or distribution of the Settlement Fund. The City's only responsibility with respect to the Settlement Fund will be to pay \$1,150,000 under the terms of this Settlement.

3. Plaintiffs propose that distribution of Settlement Benefits to the Class shall occur automatically, without the necessity of Class Members' submission of claims to participate in the Settlement. Only Eligible Class Members will receive Settlement Benefits, meaning that no Settlement Benefits will be distributed to any person first hired as a Police Officer or Firefighter after January 2011. (*See* Section V.A.12. of this Stipulation.) Each Eligible Class Member will receive a percentage of Available Funds equivalent to the ratio the Eligible Class Member's individual lost wages bear to the total lost wages sustained by the Class (*see* Exhibit A).

4. Plaintiffs are responsible for the administration of Notice to Class Members. Notice shall be the best Notice practicable in the circumstances and shall constitute valid, due, and sufficient Notice to the Class, approved by the Court.

5. Defendant takes no position on how the Settlement Fund should be disbursed other than as set forth in this Agreement.

G. Class Counsel's Attorneys' Fees and Reimbursement of Expenses; and Class Representatives' Fees

1. Any award of attorneys' fees and expenses shall be made out of the Settlement Fund. The award of attorneys' fees and expenses shall be subject to the final approval of the Court. A hearing for approval of the attorneys' fees and expenses for Class Counsel shall be held after the end of the period for filing objections to the Settlement. Payment of the Court approved attorneys' fees and expenses shall be made exclusively from the Settlement Fund and within ten (10) days of the Effective Date. Defendant shall not be responsible for the payment of attorneys'

fees in any circumstances, other than as awarded by the Court to be paid from the Settlement Fund.

2. Plaintiffs shall request an award of Class Representatives' fees. The award of any Class Representatives' fees shall be subject to the final approval of the Court. A hearing for approval of the Class Representatives' fees shall be held after the end of the period for filing objections to the Settlement. Payment of the Court approved Class Representatives' fees shall be made exclusively from the Settlement Fund and within ten (10) days of the Effective Date.

H. Conditions of Settlement, Effect of Disapproval, Cancellation, or Termination

1. The Effective Date of this Settlement Stipulation shall be conditioned on the occurrence of the following events: (a) the Court's entry of the Preliminary Approval Order substantially in the form of Exhibit "B"; (b) the Court's entry of Final Judgment substantially in the form of Exhibit "C"; (c) the Judgment shall have become Final; (d) The City shall have paid the Settlement Fund as set forth in Section D of this Settlement Stipulation.

2. In the event the Settlement Stipulation is not approved by the Court or is otherwise cancelled in accordance with its terms, or the settlement set forth in this Settlement Stipulation is otherwise cancelled or terminated or fails to become effective in accordance with its terms, it shall become null and void and shall have no further force and effect and neither this Settlement Stipulation, any of its provisions, the Exhibits hereto, nor any of the negotiations and proceedings related thereto: (a) shall be offered, received in evidence, or otherwise used in the Litigation or in any other action or proceedings for any purpose including as it relates to class certification or discovery, or (b) shall prejudice the rights of any of the Parties hereto, who shall be restored to their respective positions immediately prior to the execution of this Settlement Stipulation.

I. Miscellaneous Provisions

1. The Parties (a) acknowledge that it is their intent to consummate this agreement

and (b) agree to cooperate to the extent necessary to effectuate and implement all terms and conditions of the Settlement Stipulation and to exercise reasonable efforts to accomplish the foregoing terms and conditions of the Settlement Stipulation. Nothing in this Section I.1. shall be considered a limitation on the covenants and obligations of the Parties set forth elsewhere in this Settlement Stipulation.

2. Defendant agrees with Plaintiffs that the terms of the Settlement Stipulation reflect a good faith settlement of Plaintiffs' and the Class's claims, reached voluntarily after consultation with legal counsel and is fair and reasonable to all parties. Neither the Settlement Stipulation nor the settlement contained herein, nor any act performed or document executed pursuant to or in furtherance of the Settlement Stipulation or the settlement: (a) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (b) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal.

3. Nothing in this Stipulation and Agreement of Settlement, or the negotiations relating thereto, is intended or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, attorney/client privilege, joint defense privilege, or work product immunity.

4. All of the Exhibits to the Settlement Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

5. The Settlement Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Parties or their successors in interest.

6. The Settlement Stipulation and the Exhibits attached hereto constitute the entire

agreement among the Parties hereto and no representations, warranties, or inducements have been made to any Party concerning the Settlement Stipulation or its Exhibits other than the representations, warranties, and covenants contained and memorialized in such documents except as expressly herein provided. Except as otherwise provided herein, each Party shall bear its own costs and attorney's fees.

7. Class Counsel, on behalf of the Class, are expressly authorized by the Plaintiffs to take all appropriate action required or permitted to be taken by the Class pursuant to the Settlement Stipulation to effectuate its terms and also are expressly authorized to enter into any modifications or amendments to the Settlement Stipulation on behalf of the Class which they deem appropriate.

8. Each counsel or other Person executing the Settlement Stipulation or any of its Exhibits on behalf of any Party hereto hereby warrants that such Person has the full authority to do so.

9. The Settlement Stipulation may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. Counsel for the Parties to the Settlement Stipulation shall exchange among themselves original signed counterparts and a complete set of original executed counterparts shall be filed with the Court.

10. The Settlement Stipulation shall be binding upon, and inure to the benefit of, the Parties hereto, all Class Members who have not timely filed requests for exclusion from the Class, the Released Persons, and their respective heirs, executors, administrators, successors, and assigns, and upon any corporation or other entity into or with which any Party hereto may merge or consolidate.

11. The Parties acknowledge that they each participated in drafting this Stipulation, and

there shall be no presumption against any Party on the ground that such Party was responsible for preparing this Stipulation or any part hereof.

12. The waiver by one Party of any breach of this Settlement Stipulation by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Settlement Stipulation.

13. The Court shall retain jurisdiction with respect to the implementation and enforcement of the terms of the Settlement Stipulation, and all Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the settlement embodied in the Settlement Stipulation.

14. The Settlement Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Arkansas, and the rights and obligations of the Parties to the Settlement Stipulation, shall be construed and enforced in accordance with the laws of the State of Arkansas, without giving effect to that State's choice of law principles.

IN WITNESS WHEREOF, the Parties have caused this Settlement Stipulation to be executed this ____ day of April, 2019.

By:



Plaintiff Richard Shumate, Jr.



Plaintiff Damon Reed



Bart Castleberry
Mayor, City of Conway



Thomas P. Thrash, Esq.
THRASH LAW FIRM, P.A.
1101 Garland Street
Little Rock, Arkansas 72201



Russell A. Wood
WOOD LAW FIRM, P.A.
501 East 4th Street, Ste. #4
Russellville, Arkansas 72801

ATTORNEYS FOR PLAINTIFFS



Thomas N. Kieklak
HARRINGTON, MILLER, KIEKLAK,
EICHMANN & BROWN, P.A.
4710 S. Thomson, Suite 102
Springdale, Arkansas 77264

ATTORNEY FOR DEFENDANT

SCHEDULE OF EXHIBITS

Exhibit "A"	Class Members' Individual Damages and Total Damages Suffered by Class
Exhibit "B"	Preliminary Approval Order
Exhibit "C"	Final Judgment Order
Exhibit "D"	Settlement Notice

EXHIBIT A

Conway Police 2010-2012 Total Unpaid Wages

	Total	
	Unpaid Wages	Prorated Percentage
Christopher Adkins	\$10,969.00	1.06%
Jeff Anderson	\$9,484.00	0.92%
Sarah Ault	\$12,829.00	1.25%
Joey Balentine	\$12,238.00	1.19%
Jerry Bird	\$4,376.00	0.42%
Charles Bledsoe	\$2,070.00	0.20%
Joseph Bolling	\$12,315.00	1.20%
Ryan Britton	\$8,733.00	0.85%
Jason Brown	\$11,926.00	1.16%
Andrew Burningham	\$13,100.00	1.27%
James Burroughs	\$2,019.00	0.20%
Thad Burrow	\$5,822.00	0.57%
Travis Caldwell	\$12,217.00	1.19%
Jason Cameron	\$14,522.00	1.41%
Sean Canady	\$2,421.00	0.24%
Sharen Carter	\$10,403.00	1.01%
Jason Case	\$11,747.00	1.14%
Thomas Cole	\$12,577.00	1.22%
Thomas Glen Cooper	\$1,065.00	0.10%
Steven Culliford	\$12,334.00	1.20%
Jason Davis	\$8,668.00	0.84%
Matthew Edgmon	\$8,165.00	0.79%
Delwyn Elkins	\$11,391.00	1.11%
Derrick Flowers	\$12,049.00	1.17%
William Fosko	\$12,962.00	1.26%
Joshua Fulbright	\$12,066.00	1.17%
Laura Glover	\$11,098.00	1.08%
Gottspomer	\$478.00	0.05%
Justin Green	\$11,587.00	1.12%
Christopher Harris	\$2,197.00	0.21%
Larry Hearn	\$8,294.00	0.81%
Jimmy Henson	\$7,084.00	0.69%
Jennifer Hill	\$4,568.00	0.44%
Gene Hodges	\$2,531.00	0.25%
Laura Hodges	\$894.00	0.09%
Daniel Hogan	\$12,836.00	1.25%

Jeremy Holliman	\$11,897.00	1.15%
Matthew Hugen	\$5,831.00	0.57%
Andrew James	\$12,473.00	1.21%
Stephen Johnson	\$1,922.00	0.19%
William Keller	\$5,950.00	0.58%
Thomas Kennedy	\$10,877.00	1.06%
Matthew Kimery	\$10,497.00	1.02%
Matthew Lichty	\$1,698.00	0.16%
Angelina Loeschner	\$1,051.00	0.10%
Rustin McCarty	\$1,920.00	0.19%
Tracy McDermott	\$8,183.00	0.79%
Gregory McKay	\$760.00	0.07%
Dylan Mistrille	\$5,877.00	0.57%
James Mitchell	\$11,871.00	1.15%
Daniel Mullaney	\$2,005.00	0.19%
Chris Padgett	\$7,193.00	0.70%
Christopher Ray	\$286.00	0.03%
Richard Shumate	\$11,669.00	1.13%
Lloyd Smith	\$2,262.00	0.22%
William Tapley	\$1,910.00	0.19%
Joseph Taylor	\$3,180.00	0.31%
Laura Taylor	\$4,583.00	0.44%
Daniel Teague	\$11,308.00	1.10%
Steven Thorpe	\$11,853.00	1.15%
Todd Wesbecher	\$9,095.00	0.88%
Michael Welsh	\$5,197.00	0.50%
Chad Wilson	\$11,523.00	1.12%
Lee Wood	\$2,094.00	0.20%
Timothy Woods	\$14,360.00	1.39%
John Zanin	\$6,207.00	0.60%

Conway Fire 2010-2012 Total Unpaid Wages

	Total	
Name	Unpaid Wages	Prorated Percentage
Jonathan Bailey	\$6,328.00	0.61%
Kenneth Bartlett	\$7,513.00	0.73%
Charles Bates	\$5,944.00	0.58%
Luke Birdsong	\$11,005.00	1.07%
Daniel Bridges	\$9,409.00	0.91%
Evan Buerer	\$3,841.00	0.37%
Diana Burks	\$5,364.00	0.52%
Brian Cannon	\$7,122.00	0.69%
Todd Cardin	\$9,474.00	0.92%
Andrew Cargile (Drew)	\$4,252.00	0.41%
Billie Carter	\$5,782.00	0.56%
Jerry Case	\$13,240.00	1.29%
Helm "Buster" Cooper	\$4,395.00	0.43%
Hugh Cooper	\$5,651.00	0.55%
William Cowger	\$11,345.00	1.10%
Steven Craig	\$11,565.00	1.12%
Randy Crowell	\$9,701.00	0.94%
Larry Daves	\$8,261.00	0.80%
Roy Droste	\$11,728.00	1.14%
James Duvall	\$14,352.00	1.39%
Scot Erwin	\$9,228.00	0.90%
Michael Felty	\$14,243.00	1.38%
Jerry Gipson	\$8,545.00	0.83%
Randel Green	\$14,078.00	1.37%
Charles Hankins	\$7,140.00	0.69%
Kenneth Hartness	\$5,450.00	0.53%
Asa Harvey	\$12,137.00	1.18%
Clayton Heslep	\$2,171.00	0.21%
Chad Eric Johnson	\$7,074.00	0.69%
William Keathley	\$12,966.00	1.26%
Philip Kirkland	\$4,156.00	0.40%
Colby Heath Lester	\$12,919.00	1.25%

Mark Ledbetter	\$6,683.00	0.65%
Desmond Lewis	\$11,603.00	1.13%
Justin Martin	\$1,933.00	0.19%
Preston Martin	\$12,040.00	1.17%
John Mattox	\$3,250.00	0.32%
Myron Milholland	\$6,235.00	0.61%
Mark Mobbs	\$9,651.00	0.94%
Jeff Moix	\$6,570.00	0.64%
Ernest Moore	\$5,998.00	0.58%
Rebecca Morton	\$5,705.00	0.55%
Gene Neumeier	\$5,126.00	0.50%
Farris Park	\$3,591.00	0.35%
Holly Perkins	\$4,000.00	0.39%
Ricky Powell	\$6,214.00	0.60%
Edward Prout	\$5,394.00	0.52%
Brinton Ramoly	\$6,389.00	0.62%
Damon Reed	\$12,175.00	1.18%
James Mike Rhoades	\$9,026.00	0.88%
Robin Roberts	\$9,947.00	0.97%
Kent Schreiber	\$5,708.00	0.55%
Danny Shock	\$6,493.00	0.63%
Phillip Short	\$6,982.00	0.68%
John Skinner	\$1,921.00	0.19%
Clint Smith	\$12,713.00	1.23%
James Stapleton	\$12,822.00	1.24%
Kenny Starkey	\$5,458.00	0.53%
Jason Sutton	\$1,893.00	0.18%
Jonathan Talley	\$13,228.00	1.28%
Ronald Doug Tilley	\$800.00	0.08%
Benjamin Chad Upton	\$7,220.00	0.70%
Gregory White	\$1,973.00	0.19%
Kenny Wiedower	\$12,010.00	1.17%
Stewart Wilcox	\$6,827.00	0.66%
Luke Williamson	\$12,456.00	1.21%
Michael Winter	\$8,133.00	0.79%

Total Unpaid Wages
\$1,030,113.00

EXHIBIT B

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION – SECOND DIVISION**

**RICHARD SHUMATE, JR. and
DAMON REED, on behalf of themselves
and all other similarly situated persons and entities**

PLAINTIFFS

v.

CASE NO. CV 2012-855

CITY OF CONWAY, an Arkansas Municipality

DEFENDANT

CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER

On April 22, 2019, Plaintiffs Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities, Class Counsel, and Defendant City of Conway, an Arkansas Municipality (collectively, the “Parties”), executed a proposed Settlement Agreement (the “Settlement Agreement” or “Agreement”). Pursuant to the Agreement, the Parties have jointly moved for entry of an order granting preliminary approval to the Settlement provided for in the Settlement Agreement (the “Settlement”). Having reviewed the Settlement Agreement and the Parties’ submissions in support of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS as follows:

I. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

A. Defendant has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the lawsuit and maintained, and continues to maintain, that it has defenses to the claims asserted. Nonetheless, to avoid the burdens and costs of protracted litigation and to provide timely relief to the Class, the Parties have agreed to a settlement providing financial recovery to each Eligible Class Member, defined as a Class Member employed as a Conway Police Officer or Firefighter at any time between December 1, 2001 and January 31, 2011, and who suffered lost wages as a result of Defendant’s failure to make salary “step” increases in 2010, 2011, and/or 2012.

B. On a preliminary basis, and taking into account that (1) the Settlement Agreement

provides immediate relief to the Class; (2) the defenses that have been asserted by Defendant; (3) the risks to members of the Class that Defendant would successfully defend the claims asserted by Plaintiffs; and (4) the length of time that would be required by the Plaintiffs and the Class to obtain a final judgment through one or more trials and additional appeals, the Settlement appears to be fair, reasonable, and adequate. Moreover, the Parties have reached the settlement after extended, arm's length negotiations, which have included multiple formal and informal sessions with Jim Tilley, a skilled and qualified mediator appointed by the Court. For all these reasons, the Settlement falls within the appropriate range of reasonableness for preliminary approval and does not appear in any way to be the product of collusion.

C. Accordingly, it is ORDERED and ADJUDGED that the Settlement Agreement and corresponding Settlement are hereby preliminarily APPROVED.

II. APPROVAL OF THE CLASS ACTION SETTLEMENT NOTICE

As provided for in the Settlement Agreement, Plaintiffs have submitted a proposed Class Action Settlement Notice (the "Settlement Notice"), consisting of both direct mail notice to Class Members and publication notice to occur in the *Conway Log Cabin Democrat*. Copies of the direct mail notice and publication notice are attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Approval of Notice to Settlement Class Members as collective Exhibit D. The Court finds that the Settlement Notice fairly, accurately, and reasonably provides members of the Class with (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; and (3) appropriate information about how to challenge or exclude themselves from the Settlement, if they wish to do so. The Settlement Notice also fairly, accurately, and reasonably informs members of the Class

that failure to comply with the provisions contained therein could constitute a waiver of their right to challenge or object to the Settlement, at the Fairness Hearing or otherwise, or to appeal from any order or judgment entered by this Court in connection with the Settlement.

B. The Court also finds that the proposed plan for direct mail notice to Class Members, combined with publication notice in the *Conway Log Cabin Democrat*, is the best notice that is practicable in the circumstances and is reasonably calculated to reach the members of the Class and to apprise them of the Action, the terms and conditions of the Settlement Agreement, their right to opt-out and be excluded from the Class, to object to the Settlement Agreement, and to appear at the Fairness Hearing. The Notice Plan satisfies the requirements of Arkansas Rules of Civil Procedure 23 and due process.

C. Accordingly, the Court hereby ORDERS as follows:

1. The form and content of the proposed Settlement Notice is hereby approved.
2. Promptly following the entry of this Order, Plaintiffs shall prepare final versions of the Settlement Notice, incorporating into the Settlement Notice the Fairness Hearing dates and deadlines set forth in Section III of this Order.
3. By June 1, 2019, Plaintiffs shall have completed the distribution and publication of notice as described in the Notice Plan. A copy of the Settlement Notice also will be posted on Class Counsel's websites.
4. By June 20, 2019, Plaintiffs shall file with this Court a declaration of compliance with the Notice Plan, confirming that Settlement Notice was distributed in the manner directed by the Court, including a description of the manner in which publication notice occurred;
5. Plaintiffs' reasonable costs in administering the Settlement are to be paid

from the Settlement Fund. Plaintiffs bear the costs of administering the Settlement unless and until Payment of the Settlement Funds is made, at which time Plaintiffs will be reimbursed from that Fund.

7. Class Counsel shall report in writing to the Court, no less than ten (10) days before the Fairness Hearing, the following:

- a. The names of all Class Members who sought to be excluded, the date each such Class Member sought to be excluded, and whether the Class Member's request for exclusion was timely and properly made; and
- b. A copy of all documentation concerning each request for exclusion received by Plaintiffs.

III. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Fairness Hearing

1. The Court hereby schedules a final fairness hearing at ____ a.m. on September ____, 2019, at the Faulkner County Circuit Court, Division 2, 510 South German Lane, Conway, Arkansas 72034 (the "Fairness Hearing"), to determine whether the Settlement Agreement and the Settlement should receive final approval.

2. The Parties will have up to and including 10 (ten) days prior to the date of the Fairness Hearing to file their motion or motions for final approval of the Settlement and any briefs in support of the motion(s).

3. The Court stays all further proceedings in this Action as between Plaintiffs and Defendant pending the Fairness Hearing and final determination of whether the Settlement should be approved.

4. The Court enjoins the members of the Class, pending the Fairness Hearing and final determination of whether the Settlement Agreement should be approved, from

challenging in any action or proceeding any matter covered by this Settlement Agreement or its release, except for proceedings in this case related to effectuating and complying with the Settlement Agreement.

B. Deadline for Members of the Class to Request Exclusion from the Settlement

1. Any member of the Class who does not wish to participate in the Settlement shall have until August 15, 2019 to submit a request for exclusion from the Class.

2. A member of the Class may effect such exclusion by sending a written request to Class Counsel. The written request must be signed by the Class Member seeking exclusion, or an authorized representative of that person, and provide all of the following information:

- a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
- b. A statement of the Class Member's full name, address, and telephone number;
- c. A statement that the Class Member desires to be excluded from the Class; and
- d. For authorized representatives, a statement of the basis for the signing person's authority to sign on behalf of the Class Member requesting exclusion.

C. Deadline for Filing Objections to Matters to be Heard at the Fairness Hearing and for Filing Requests to Appear and Present Argument or Evidence

1. All objections to the Settlement and/or the Settlement Agreement shall be made in writing and, no later than August 15, 2019, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

2. Any written objection must include all of the following:
 - a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
 - b. The objector's full name, address, telephone number, and e-mail address;
 - c. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
 - d. The identity of all counsel representing the objector;
 - e. The identity of all counsel representing the objector who will appear at the Fairness Hearing;
 - f. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and
 - g. Disclosure of all other objections filed by the objector and/or objector's counsel to any other class action settlement.

3. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the Settlement or the Settlement Agreement must file with the Court and serve on Class Counsel and Defendant's counsel, no later than ten (10) days prior to the Fairness Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

4. At least ten (10) days before the Fairness Hearing, Class Counsel will file and serve on Defendant's counsel all supporting papers seeking the Court's final approval of the Settlement Agreement.

D. Approval of Attorneys' Fee Awards, Expense Reimbursements, and Incentive Awards

1. The Court will also at the Fairness Hearing consider any request that may be made by Class Counsel for an award of attorneys' fees and costs to Class Counsel and for a service award to Plaintiffs, all in accord with the Settlement Agreement.

2. Any award of attorneys' fees shall be paid from the Settlement Fund. Defendant shall not be responsible for the payment of attorneys' fees in any circumstances, other than as awarded by the Court to be paid from the Settlement Fund.

3. Class Counsel will have up to and including July 15, 2019 to file their motion for approval of fees and expenses and a service award to Plaintiffs, with any brief in support.

4. All objections to Class Counsel's Request for fee and service awards, and reimbursement of expenses, shall be made in writing and, no later than August 15, 2019, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

5. Any written objection filed pursuant to the preceding paragraph must include all of the following:

- a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
- b. The objector's full name, address, telephone number, and e-mail address;
- c. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- d. The identity of all counsel representing the objector;

- e. The identity of all counsel representing the objector who will appear at the Fairness Hearing;
- f. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation) and
- g. Disclosure of all other objections filed by the objector and/or objector's counsel to any other class action settlement.

6. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to Class Counsel's request for fee and service awards and reimbursement of expenses must file with the Court and serve on Class Counsel and Defendant's counsel, no later than ten (10) days prior to the date of the Fairness Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

IV. ABSENCE OF ANY ADMISSION OF LIABILITY; DENIAL OF ANY WRONGFUL ACT OR OMISSION AND OF ANY LIABILITY

The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Nothing contained in this Order, the Settlement Agreement, the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation and Agreement of Settlement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In entering this Order with this provision and other limiting provisions, this Court

specifically refers to and invoked the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce such limiting provision.

IT IS SO ORDERED.

DATED:

HONORABLE TROY BRASWELL
FAULKNER COUNTY CIRCUIT JUDGE

EXHIBIT C

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION – SECOND DIVISION**

**RICHARD SHUMATE, JR. and
DAMON REED, on behalf of themselves
and all other similarly situated persons and entities**

PLAINTIFFS

v.

CASE NO. CV 2012-855

CITY OF CONWAY, an Arkansas Municipality

DEFENDANT

FINAL JUDGMENT AND ORDER OF DISMISSAL

THIS MATTER comes before the Court upon the “Motion for Final Approval of the Class Settlement” filed by Plaintiffs. This Court, being fully advised of the premises of the Motion, FINDS:

1. Plaintiffs filed their Complaint on September 18, 2012. The Complaint alleges claims for breach of contract and illegal exaction. On December 7, 2015, this Court granted Defendant’s Motion for Summary Judgment to dismiss the illegal exaction claim. Plaintiffs are seeking compensatory damages on the remaining claim for breach of contract.

2. Plaintiffs allege that Defendant entered into contracts with all persons employed or hired as Police Officers or Firefighters from December 1, 2001 through December 31, 2012, and that those contracts required the City to pay its Police Officers and Firefighters pursuant to Police and Fire Pay Scales approved by the City Council. Plaintiffs further allege that Defendant breached those contracts when it failed in 2010, 2011, and 2012 to make annual salary “step” increases called for by the Pay Scales, certificate pay increases, and promotion pay increases.

3. The Class previously certified by this Court to pursue Plaintiffs’ breach of contract claim, as affirmed by the Arkansas Supreme Court, includes the following:

All City of Conway Policemen¹ and Firemen² (excluding department heads and elected officials) who were employed by the City of Conway during the period commencing December 1, 2001 through December 31, 2012.

4. The Parties have negotiated a class action settlement (the “Settlement Agreement,” Exhibit 1 to Plaintiffs’ Motion for Preliminary Approval of Class Settlement and Approval of Notice to Class Members (the “Preliminary Approval Motion”). Through this Settlement Agreement, Defendant will fully and completely satisfy any and all claims of Class Members by paying a total payment of \$1,150,000. The cost of administration of the settlement, class representative service awards, and attorneys’ fees and costs of Class Counsel will be paid from the \$1,150,000. By entering into the Settlement Agreement, neither Plaintiffs nor Defendant make any admissions relating to the claims and defenses raised in this lawsuit.

5. On April 23, 2019, Plaintiffs filed the Preliminary Approval Motion, seeking preliminary approval of a Settlement Agreement that fully, finally, and forever resolves, discharges, and settles on behalf of Plaintiffs, Class Members, and Class Counsel the Released Claims against Defendant.

6. Attached as Exhibit “1” to the Preliminary Approval Motion is the Settlement Agreement describing the claims that are being settled on behalf of the Class (the “Released Claims”), setting forth the terms of the Parties’ settlement, and incorporating the terms of this Final Judgment and Order of Dismissal (the “Final Judgment”). The Settlement Agreement is attached to this Final Judgment as Exhibit 1 and its terms, including the definitions, are incorporated into the Final Judgment as if fully set forth verbatim. The Agreement and Final Judgment shall be referred to collectively in this Final Judgment as the “Settlement.”

¹ Code Enforcement Officer, Officer I-IV, Master Officer, Sergeant, Lieutenant, Major, and Chief.

² Firefighter, Lieutenant, Captain, Division/District Chief, and Chief.

7. After a hearing on the Preliminary Approval Motion, this Court entered an order dated April 23, 2019 (the “Preliminary Approval Order”) preliminarily approving the Settlement and directing that notice of the proposed settlement be published and distributed to Class Members pursuant to the Court-approved Notice Plan. The Court also set a final fairness hearing for September ___, 2019, to determine whether the proposed Settlement should be approved as fair, reasonable, and adequate.

8. In accordance with the Court’s Preliminary Approval Order, Plaintiffs caused to be mailed to the last known addresses of Class Members as maintained by Defendant, and also published in the *Conway Log Cabin Democrat*, pertinent information about this Settlement (the “Settlement Notice”) in the form approved by the Court in the Preliminary Approval Order. Class Counsel has provided additional information about the distribution and publication of Settlement Notice in Exhibit ___ to Plaintiffs’ Unopposed Motion for Final Approval of Class Action Settlement (the “Final Approval Motion”). The Court finds that the Settlement Notice provided to Class Members constituted the best and most practicable notice in the circumstances, thereby complying fully with due process and Rule 23 of the Arkansas Rules of Civil Procedure.

9. On September ___, 2019, the Court held a hearing on the proposed Settlement, at which time all interested persons were given an opportunity to be heard. Furthermore, the Court has read and considered all submissions in connection with the Settlement. Having done so, the Court has determined that approval of the Settlement will bestow a substantial economic benefit on the Class, result in substantial savings in time and money to the litigants and the Court and will further the interests of justice, and that the Settlement is the product of good-faith, arm’s length negotiations between the Parties.

NOW, THEREFORE, GOOD CAUSE APPEARING, IT IS HEREBY ORDERED,

ADJUDGED, AND DECREED THAT:

10. The Settlement Agreement, including all of the terms defined in the document including but not limited to the definition of “Released Claims,” is incorporated into this Final Judgment. The Court has jurisdiction over the subject matter of this litigation and all parties to this litigation, including all members of the Class.

11. The certified Class is defined for purposes of the Agreement and this Final Judgment as set forth in paragraph 3 above.

12. The Settlement was made in good faith and its terms are fair, reasonable, and adequate as to the Class. Therefore, the Settlement is approved in all respects, and shall be binding upon all members of the Class.

13. Class Members who requested exclusion from the Class are not bound by either the Agreement or this Final Judgment and shall not recover any award under the Agreement or the Final Judgment or be paid any amount from the Settlement Fund. The Excluded Members are identified by name in a Schedule filed contemporaneously herewith. The Excluded Members may pursue their own individual remedies, if any, as to any of the Released Claims.

14. As of the Effective Date, Plaintiffs, Class Members, and Class Counsel, and each of them, for themselves, their respective heirs, agents, officers, directors, shareholders, employees, consultants, joint venturers, partners, members, legal representatives, successor and assigns, shall fully and forever release and discharge the Defendant, and its affiliated entities, predecessors, successors, and assigns, and each of its present, former, and future, Mayors, Council Members, officers, directors, employees, agents, and any third party payment processors, independent contractors, successors, assigns, attorneys, and legal representatives (collectively, “Defendant Releasees”) from any and all of the Released Claims, except for the rights and obligations created

by the Settlement Agreement, and shall not commence, participate in, or prosecute, or cause to be commenced or prosecuted against the Defendant Releasees any action or other proceeding based upon any of the Released Claims released pursuant to the Settlement Agreement. The relief afforded under the Agreement fully and completely satisfies the Class Members' claims for relief in this case. This Release also covers, without limitation, any and all claims for attorneys' fees, costs, or disbursements incurred by Class Counsel or any other counsel representing Plaintiffs or Class Members or by Plaintiffs or the Class Members, or any of them, in connection with or related in any manner to this litigation, the settlement of this litigation, the administration of this Settlement and/or the Released Claims. This Final Judgment shall not, however, operate or be construed to release any claims the Parties may have against any person or entity who is not a Party to the Settlement Agreement except as provided above.

15. All Released Claims are dismissed with prejudice.

16. The Court awards to Class Counsel attorneys' fees in the amount of \$_____ and litigation and administration expenses of \$_____. The Court also awards to Class Representatives Richard Shumate, Jr. and Damon Reed class representative service awards of \$5,000 apiece. Class Counsel's attorneys' fees, the litigation and administration expenses, and class representative service awards shall be paid from the Settlement Fund.

17. Neither this Final Judgment, the Settlement Agreement, nor any documents referred to herein nor any action taken pursuant to – or to carry out – the Settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other

tribunal.

18. All motions presently pending in this litigation, including the Parties' competing Motions for Summary Judgment, Defendant's Motion to Decertify the Class, Plaintiffs' Motion to Strike Defendant's Motion to Decertify the Class, and all Motions in Limine, are DENIED AS MOOT.

19. The Court reserves jurisdiction over this matter, the Parties, and all counsel herein, without affecting the finality of this Final Judgment, including over (a) implementing, administering, and enforcing this Settlement and any award or distribution from the Settlement Funds as provided for in the Settlement Agreement; (b) disposition of the Settlement Funds; and (c) other matters related to or ancillary to the foregoing.

20. Nothing set forth in this Final Judgment shall be construed to modify or limit the terms of the Settlement Agreement, but rather, the Settlement Agreement and this Final Judgment are to be construed together as one Settlement between the Parties.

21. The Settlement and this Final Judgment shall have no *res judicata*, collateral estoppel, or other preclusive effect as to any claims other than the Released Claims.

IT IS SO ORDERED.

DATED:

HONORABLE TROY BRASWELL
FAULKNER COUNTY CIRCUIT JUDGE

EXHIBIT D

CLASS ACTION SETTLEMENT NOTICE

RICHARD SHUMATE, JR. AND DAMON REED, ON BEHALF OF THEMSELVES AND
ALL OTHER SIMILARLY SITUATED PERSONS AND ENTITIES

VS.

CITY OF CONWAY, AN ARKANSAS MUNICIPALITY

CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CASE NO. CV 2012-855

Please read this Court-Ordered Class Action Settlement Notice carefully.

TO: All City of Conway Policemen (Code Enforcement Officer, Officer I-IV, Master Officer, Sergeant, Lieutenant, Major, and Chief) and Firemen (Firefighter, Lieutenant, Captain, Division/District Chief, and Chief) – excluding department heads and elected officials – who were employed by the City of Conway during the period commencing December 1, 2001 through December 31, 2012.

IF YOU WERE HIRED OR EMPLOYED BY THE CITY OF CONWAY, ARKANSAS AS A POLICE OFFICER OR FIREFIGHTER AT ANY TIME BETWEEN DECEMBER 1, 2001 AND JANUARY 31, 2011, AND YOU DID NOT RECEIVE SALARY “STEP” INCREASES DURING 2010, 2011, AND/OR 2012 BECAUSE OF THE CITY’S FAILURE TO MAKE RAISES REQUIRED BY PAY SCALES APPROVED BY THE CONWAY CITY COUNCIL, YOU ARE SCHEDULED TO RECEIVE BENEFITS PURSUANT TO THE TERMS OF THIS SETTLEMENT.

YOU MAY BE ABLE TO RECOVER A PORTION OF YOUR DAMAGES UNDER THIS SETTLEMENT.

Notice of this Settlement is given pursuant to an Order of the Court, to inform you of certain Benefits that *you* may be entitled to receive pursuant to the settlement of a lawsuit in the Circuit Court of Faulkner County, Arkansas titled *Ricard Shumate, Jr. and Damon Reed, on behalf of Themselves and all other Similarly Situated Persons and Entities*, Circuit Court of Faulkner County, Arkansas, Case No. CV 2012-855 (the lawsuit). This notice describes the Class Action and the Proposed Settlement and advises the date, time and place of hearing to be held by this Court to determine whether the Court will give final approval to the Settlement. All Class Members who do not exclude themselves from the Settlement on a timely basis (as described below) will be bound by the Orders issued by the Court regarding the Settlement. You should carefully read this ENTIRE NOTICE before making any decision regarding the Class Action lawsuit and this settlement.

Pursuant to the Settlement, representative Plaintiffs, *Richard Shumate, Jr. and Damon Reed*, on behalf of themselves and all other similarly situated persons and entities, have been appointed by the Court to function as representatives of the Class. Plaintiffs, on behalf of themselves and the Class, claim the City of Conway breached contracts with Class Members when it failed in 2010, 2011, and 2012 to make pay increases required by approved Pay Scales. Plaintiffs' Complaint asserts claims for (1) Breach of Contract, and (2) Illegal Exaction. The Court previously dismissed Plaintiffs' Illegal Exaction claim. The City of Conway denies any wrongdoing and contends that it has complied with all applicable law.

UNDER THE PROPOSED SETTLEMENT, the City has agreed to pay \$1,150,000.00 in order to settle this Litigation. That Settlement Fund will first be used to pay Court approved costs of settlement administration, Class Representative fees, attorneys' fees, and litigation costs. After payment of those authorized expenses, the remaining Available Funds will be divided among Eligible Class Members,

meaning those Class Members who were employed as Conway Police Officers or Firefighters at any time between December 1, 2001 and January 31, 2011, and who suffered lost wages as a result of the City's failure to make promised step increases in 2010, 2011, and/or 2012. The City in or around January 2011 began printing on its Pay Scales a statement that future "[s]tep increases are subject to the approval of the City Council for each fiscal year." **Consequently, no Settlement Benefits will be distributed to any person first hired as a Police Officer or Firefighter after January 2011.** Because the Available Funds are less than the total damages suffered by the Class (which include inadequate LOPFI contributions), each Eligible Class Member, as identified in Exhibit "A" to this Notice, will receive a percentage of Available Funds equivalent to the ratio the Eligible Class Member's individual lost wages bear to the total lost wages sustained by the Class (see Exhibit A).

Plaintiffs' Counsel has been appointed by the Court to represent the Interest of the Class. Class Counsel Include: *Thomas P. Thrash and Marcus N. Bozeman, Thrash Law Firm, P.A.*, 1101 Garland Street, Little Rock, Arkansas 72201 and *Russell A. Wood, Wood Law Firm, P.A.*, 501 East 4th Street, Ste. #4, Russellville, Arkansas 72801. You will not be charged for Class Counsel's services. Instead, Class Counsel will apply to the Court for payment of their attorneys' fees and costs from the Settlement Fund. You have the right to hire your own attorney. If you hire your own attorney, you will be responsible for paying that attorney's fee.

Defendant's Counsel in this Litigation is *Thomas N. Kieklak and R. Justin Eichmann*, Harrington, Miller, Kieklak, Eichmann & Brown, P.A., 4710 S. Thomson, Suite 102, Springdale, Arkansas 72764.

If you wish to remain a member of the class, YOU DO NOT NEED TO DO ANYTHING AT THIS TIME. As Class Members, you will be bound by all Orders and Judgments of the Court and you will be qualified to receive Settlement Benefits pursuant to the terms of the Settlement if you were employed as a Conway Police Officer or Firefighter at any time between January 1, 2001 and January 31, 2011, and you did not receive salary "step" increases during 2010, 2011, and/or 2012. You can object to the Proposed Settlement by filing and serving upon Class Counsel and Defendant's counsel a written objection on or before August 15, 2019. Your objection must be signed by you or your legal representative, identify this lawsuit, must provide your full name, address, telephone number, and e-mail address, and must state why you object to the Proposed Settlement and any reasons supporting your position. Your objection must also identify your lawyer, if you have one, and contain other information specified in the Court's Preliminary Approval Order available on the websites of Class Counsel: www.thrashlawfirm.com or www.russellwoodlawfirm.com. If you intend to appear, personally or through counsel, at the Final Fairness Hearing on September __, 2019, you must include with your objection notice of your intent to appear at the hearing. Your objections must be served upon Class Counsel and Defendant's Counsel and filed with the Clerk of the Court at the following address: Clerk of the Court, Faulkner County Circuit Court, Faulkner County Courthouse, 510 South German Lane, Conway, Arkansas 72034. File: *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Circuit Court of Faulkner County, Arkansas, Case No. CV 2012-855. Any Class Member who does not file and serve objections in the time and manner described herein will not be permitted to raise those objections later.

You may exclude yourself from the Class by writing to Class Counsel at the address below and expressly stating in a letter signed by you or your legal representative, and postmarked by August 15, 2019, that you wish to be excluded from the Class. The request for exclusion must identify this lawsuit and provide your full name, address, and telephone number. If you exclude yourself from the Class, you cannot participate in the Settlement for the Class and you will not be bound by the Settlement or any Court Orders or Judgments. If you wish to remain a Class Member, DO NOT send an exclusion letter.

There will be a final hearing to consider approval of the Proposed Settlement (the "Final Fairness Hearing") beginning at __ on September __, 2019 in the Faulkner County Circuit Court, Faulkner County Courthouse, Judge Troy Braswell's Courtroom, 2d Division, 510 South German Lane, Conway, Arkansas 72034. The hearing may be postponed to a later date without further notice to the Class (except those who have filed timely objections or entry of appearances). The purpose of the hearing is to determine the fairness, reasonableness and adequacy of the terms of the Settlement, and whether an Order and final

judgment should be entered approving the Proposed Settlement. The Court will also consider at the hearing Class Counsels' application for an award of attorneys' fees and reimbursement of costs and expenses to be paid from the Settlement Fund. By July 15, 2019, Class Counsel will petition the Court for an award of fees not to exceed forty percent (40%) of the Settlement Fund, plus expenses, and for Class Representative service awards not to exceed \$5,000 to be paid to each Class Representative, Richard Shumate, Jr. and Damon Reed. You can object to Class Counsel's fee petition and/or the Class Representative service award request by filing and serving upon Class Counsel and Defendant's Counsel a written objection on or before August 15, 2019. Your objection must be signed by you or your legal representative, identify this lawsuit, must provide your full name, address, telephone number, and e-mail address, and must state why you object to the fee petition and/or Class Representative service award request and any reasons supporting your position. Your objection must also identify your lawyer, if you have one, whether you or your lawyer plan to appear at the Final Fairness Hearing, and contain other information specified in the Court's Preliminary Approval Order available on the websites of Class Counsel: www.thrashlawfirmmpa.com or www.russellwoodlawfirm.com. Class Counsel will represent you at the hearing on the fairness of the Settlement, unless you choose to enter an appearance in person or through your own counsel. The appearance of an attorney is not necessary for you to participate in the Settlement or the Final Fairness Hearing.

Any and all claims in the lawsuit will be released if the Court approves the Settlement at the Final Fairness Hearing. The claims of all Class Members who do not opt out will be released and forever barred if the Court approves the Settlement.

This Notice is only a summary. The full Stipulation of Settlement and relevant pleadings filed in the lawsuit can be accessed via the websites of Class Counsel, www.thrashlawfirmmpa.com or www.russellwoodlawfirm.com, or can be inspected and copied during normal business hours at the office of the Clerk of the Court, Faulkner County Circuit Court, Faulkner County Courthouse, 510 South German Lane, Conway, Arkansas 72034.

ALL QUESTIONS ABOUT THIS NOTICE, THE CLASS ACTION OR THE PROPOSED SETTLEMENT SHOULD BE DIRECTED IN WRITING TO CLASS COUNSEL:

Class Counsel:

Thomas P. Thrash
Marcus Bozeman
Thrash Law Firm, P.A.
1101 Garland
Little Rock, Arkansas 72201

Russell Wood
Wood Law Firm, P.A.
501 East 4th Street, Ste. #4
Russellville, Arkansas 72801

PLEASE DO NOT CALL OR WRITE THE COURT OR THE CLERK'S OFFICE FOR INFORMATION.

Dated this _____ day of April, 2019

/s/ Honorable Troy Braswell
PULASKI COUNTY CIRCUIT JUDGE

Publication Notice

**If you were hired or employed as a
Conway Police Officer or Firefighter
between December 1, 2001 and
December 31, 2012, you could get
money from a class action
settlement.**

A \$1.15 million Settlement has been reached in a class action lawsuit against the City of Conway (the "City") about whether the City breached contracts with its Police Officers and Firefighters when it failed in 2010, 2011, and 2012 to pay salary increases pursuant to approved Pay Scales. The City denies the allegations in the lawsuit.

Who's Included? The Settlement includes all persons hired or employed as Conway Police Officers or Firefighters between December 1, 2001 and December 31, 2012.

What Are the Settlement Terms? Class Benefits include the \$1.15 Million Settlement Fund, which will be used to make payments to Class Members and for the cost of administration of the Settlement, attorneys' fees and litigation costs, and Class Representative fees. Class Members will receive a pro-rata portion of Available Funds corresponding to the ratio of their individual unpaid wages to the total unpaid wages suffered by the Class. Because the City around January 2011 began printing on its Pay Scales a statement that future "[s]tep increases are subject to the approval of the City Council for each fiscal year," **no Settlement Benefits will be distributed to any person first hired as a Police Officer or Firefighter after January 2011.**

Your Other Options. If you do not want to be legally bound by the Settlement, you must exclude yourself by **August 15, 2019**. If you exclude yourself from the Settlement, you will not get a payment from the Settlement Fund. If you do not timely exclude yourself, you will release any claims you may have against the City of Conway relating to the lawsuit. You may object to the Settlement by **August 15, 2019**. A Detailed Notice available on Class Counsels' websites explains how to exclude yourself or object. The Court will hold a Final Fairness Hearing on **September __, 2019** to consider whether to approve the Settlement. You may appear at the hearing, either yourself or through an attorney hired by you, but you don't have to. Class Counsel will also request an award of attorneys' fees and Service Awards for the Class Representatives to be paid from the Settlement Fund, plus reimbursement of reasonable expenses. For more information, visit Class Counsels' websites.

www.thrashlawfirm.com
www.russellwoodlawfirm.com

EXHIBIT 2

**IN THE CIRCUIT COURT OF FAULKNER COUNTY, ARKANSAS
CIVIL DIVISION – SECOND DIVISION**

**RICHARD SHUMATE, JR. and
DAMON REED, on behalf of themselves
and all other similarly situated persons and entities**

PLAINTIFFS

v.

CASE NO. CV 2012-855

CITY OF CONWAY, an Arkansas Municipality

DEFENDANT

CLASS SETTLEMENT PRELIMINARY APPROVAL ORDER

On April 22, 2019, Plaintiffs Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities, Class Counsel, and Defendant City of Conway, an Arkansas Municipality (collectively, the “Parties”), executed a proposed Settlement Agreement (the “Settlement Agreement” or “Agreement”). Pursuant to the Agreement, the Parties have jointly moved for entry of an order granting preliminary approval to the Settlement provided for in the Settlement Agreement (the “Settlement”). Having reviewed the Settlement Agreement and the Parties’ submissions in support of preliminary approval of the Settlement, the Court now FINDS, CONCLUDES, AND ORDERS as follows:

I. PRELIMINARY APPROVAL OF THE TERMS OF THE SETTLEMENT

A. Defendant has at all times disputed, and continues to dispute, Plaintiffs’ allegations in the lawsuit and maintained, and continues to maintain, that it has defenses to the claims asserted. Nonetheless, to avoid the burdens and costs of protracted litigation and to provide timely relief to the Class, the Parties have agreed to a settlement providing financial recovery to each Eligible Class Member, defined as a Class Member employed as a Conway Police Officer or Firefighter at any time between December 1, 2001 and January 31, 2011, and who suffered lost wages as a result of Defendant’s failure to make salary “step” increases in 2010, 2011, and/or 2012.

B. On a preliminary basis, and taking into account that (1) the Settlement Agreement

provides immediate relief to the Class; (2) the defenses that have been asserted by Defendant; (3) the risks to members of the Class that Defendant would successfully defend the claims asserted by Plaintiffs; and (4) the length of time that would be required by the Plaintiffs and the Class to obtain a final judgment through one or more trials and additional appeals, the Settlement appears to be fair, reasonable, and adequate. Moreover, the Parties have reached the settlement after extended, arm's length negotiations, which have included multiple formal and informal sessions with Jim Tilley, a skilled and qualified mediator appointed by the Court. For all these reasons, the Settlement falls within the appropriate range of reasonableness for preliminary approval and does not appear in any way to be the product of collusion.

C. Accordingly, it is ORDERED and ADJUDGED that the Settlement Agreement and corresponding Settlement are hereby preliminarily APPROVED.

II. APPROVAL OF THE CLASS ACTION SETTLEMENT NOTICE

As provided for in the Settlement Agreement, Plaintiffs have submitted a proposed Class Action Settlement Notice (the "Settlement Notice"), consisting of both direct mail notice to Class Members and publication notice to occur in the *Conway Log Cabin Democrat*. Copies of the direct mail notice and publication notice are attached to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Settlement and Approval of Notice to Settlement Class Members as collective Exhibit D. The Court finds that the Settlement Notice fairly, accurately, and reasonably provides members of the Class with (1) appropriate information about the nature of this litigation and the essential terms of the Settlement Agreement; (2) appropriate information about how to obtain additional information regarding this matter and the Settlement Agreement; and (3) appropriate information about how to challenge or exclude themselves from the Settlement, if they wish to do so. The Settlement Notice also fairly, accurately, and reasonably informs members of the Class

that failure to comply with the provisions contained therein could constitute a waiver of their right to challenge or object to the Settlement, at the Fairness Hearing or otherwise, or to appeal from any order or judgment entered by this Court in connection with the Settlement.

B. The Court also finds that the proposed plan for direct mail notice to Class Members, combined with publication notice in the *Conway Log Cabin Democrat*, is the best notice that is practicable in the circumstances and is reasonably calculated to reach the members of the Class and to apprise them of the Action, the terms and conditions of the Settlement Agreement, their right to opt-out and be excluded from the Class, to object to the Settlement Agreement, and to appear at the Fairness Hearing. The Notice Plan satisfies the requirements of Arkansas Rules of Civil Procedure 23 and due process.

C. Accordingly, the Court hereby ORDERS as follows:

1. The form and content of the proposed Settlement Notice is hereby approved.
2. Promptly following the entry of this Order, Plaintiffs shall prepare final versions of the Settlement Notice, incorporating into the Settlement Notice the Fairness Hearing dates and deadlines set forth in Section III of this Order.
3. By June 1, 2019, Plaintiffs shall have completed the distribution and publication of notice as described in the Notice Plan. A copy of the Settlement Notice also will be posted on Class Counsel's websites.
4. By June 20, 2019, Plaintiffs shall file with this Court a declaration of compliance with the Notice Plan, confirming that Settlement Notice was distributed in the manner directed by the Court, including a description of the manner in which publication notice occurred;
5. Plaintiffs' reasonable costs in administering the Settlement are to be paid

from the Settlement Fund. Plaintiffs bear the costs of administering the Settlement unless and until Payment of the Settlement Funds is made, at which time Plaintiffs will be reimbursed from that Fund.

7. Class Counsel shall report in writing to the Court, no less than ten (10) days before the Fairness Hearing, the following:

- a. The names of all Class Members who sought to be excluded, the date each such Class Member sought to be excluded, and whether the Class Member's request for exclusion was timely and properly made; and
- b. A copy of all documentation concerning each request for exclusion received by Plaintiffs.

III. PROCEDURES FOR FINAL APPROVAL OF THE SETTLEMENT

A. Fairness Hearing

1. The Court hereby schedules a final fairness hearing at ___ a.m. on September ___, 2019, at the Faulkner County Circuit Court, Division 2, 510 South German Lane, Conway, Arkansas 72034 (the "Fairness Hearing"), to determine whether the Settlement Agreement and the Settlement should receive final approval.

2. The Parties will have up to and including 10 (ten) days prior to the date of the Fairness Hearing to file their motion or motions for final approval of the Settlement and any briefs in support of the motion(s).

3. The Court stays all further proceedings in this Action as between Plaintiffs and Defendant pending the Fairness Hearing and final determination of whether the Settlement should be approved.

4. The Court enjoins the members of the Class, pending the Fairness Hearing and final determination of whether the Settlement Agreement should be approved, from

challenging in any action or proceeding any matter covered by this Settlement Agreement or its release, except for proceedings in this case related to effectuating and complying with the Settlement Agreement.

B. Deadline for Members of the Class to Request Exclusion from the Settlement

1. Any member of the Class who does not wish to participate in the Settlement shall have until August 15, 2019 to submit a request for exclusion from the Class.

2. A member of the Class may effect such exclusion by sending a written request to Class Counsel. The written request must be signed by the Class Member seeking exclusion, or an authorized representative of that person, and provide all of the following information:

- a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
- b. A statement of the Class Member's full name, address, and telephone number;
- c. A statement that the Class Member desires to be excluded from the Class; and
- d. For authorized representatives, a statement of the basis for the signing person's authority to sign on behalf of the Class Member requesting exclusion.

C. Deadline for Filing Objections to Matters to be Heard at the Fairness Hearing and for Filing Requests to Appear and Present Argument or Evidence

1. All objections to the Settlement and/or the Settlement Agreement shall be made in writing and, no later than August 15, 2019, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

2. Any written objection must include all of the following:
 - a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
 - b. The objector's full name, address, telephone number, and e-mail address;
 - c. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
 - d. The identity of all counsel representing the objector;
 - e. The identity of all counsel representing the objector who will appear at the Fairness Hearing;
 - f. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation); and
 - g. Disclosure of all other objections filed by the objector and/or objector's counsel to any other class action settlement.

3. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to any aspect of the Settlement or the Settlement Agreement must file with the Court and serve on Class Counsel and Defendant's counsel, no later than ten (10) days prior to the Fairness Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

4. At least ten (10) days before the Fairness Hearing, Class Counsel will file and serve on Defendant's counsel all supporting papers seeking the Court's final approval of the Settlement Agreement.

D. Approval of Attorneys' Fee Awards, Expense Reimbursements, and Incentive Awards

1. The Court will also at the Fairness Hearing consider any request that may be made by Class Counsel for an award of attorneys' fees and costs to Class Counsel and for a service award to Plaintiffs, all in accord with the Settlement Agreement.

2. Any award of attorneys' fees shall be paid from the Settlement Fund. Defendant shall not be responsible for the payment of attorneys' fees in any circumstances, other than as awarded by the Court to be paid from the Settlement Fund.

3. Class Counsel will have up to and including July 15, 2019 to file their motion for approval of fees and expenses and a service award to Plaintiffs, with any brief in support.

4. All objections to Class Counsel's Request for fee and service awards, and reimbursement of expenses, shall be made in writing and, no later than August 15, 2019, filed with this Court and mailed to Class Counsel and Defendant's counsel, by first-class United States Mail, at the addresses listed in the Settlement Notice.

5. Any written objection filed pursuant to the preceding paragraph must include all of the following:

- a. The name of this lawsuit, *Richard Shumate, Jr. and Damon Reed, on behalf of themselves and all other similarly situated persons and entities v. City of Conway, an Arkansas municipality*, Case No. CV 2012-855;
- b. The objector's full name, address, telephone number, and e-mail address;
- c. A written statement of all grounds for the objection, accompanied by any legal support for the objection;
- d. The identity of all counsel representing the objector;

- e. The identity of all counsel representing the objector who will appear at the Fairness Hearing;
- f. The objector's signature or the signature of the objector's duly authorized attorney or other duly authorized representative (along with documentation setting forth such representation) and
- g. Disclosure of all other objections filed by the objector and/or objector's counsel to any other class action settlement.

6. All persons wishing to appear at the Fairness Hearing, either in person or by counsel, for the purpose of objecting to Class Counsel's request for fee and service awards and reimbursement of expenses must file with the Court and serve on Class Counsel and Defendant's counsel, no later than ten (10) days prior to the date of the Fairness Hearing, a notice of their intention to appear. The notice shall set forth the basis of their objections, summarize the nature and source of any evidence they intend to present at the Fairness Hearing, and identify the name, position, address, and telephone number of each person who intends to appear at the Fairness Hearing on behalf of the objector.

IV. ABSENCE OF ANY ADMISSION OF LIABILITY; DENIAL OF ANY WRONGFUL ACT OR OMISSION AND OF ANY LIABILITY

The Parties entered into the Settlement Agreement solely for the purpose of compromising and settling disputed claims. Nothing contained in this Order, the Settlement Agreement, the settlement contained therein, nor any act performed or document executed pursuant to or in furtherance of the Stipulation and Agreement of Settlement or the settlement (i) is or may be deemed to be or may be used as an admission of, or evidence of, the validity of any Released Claim, or of any wrongdoing or liability of the Released Persons, or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any fault or omission of any of the Released Persons in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. In entering this Order with this provision and other limiting provisions, this Court

specifically refers to and invoked the Full Faith and Credit Clause of the United States Constitution and the doctrine of comity, and requests that any court in any other jurisdiction reviewing, construing, or applying this Order implement and enforce such limiting provision.

IT IS SO ORDERED.

DATED:

HONORABLE TROY BRASWELL
FAULKNER COUNTY CIRCUIT JUDGE