

**ORDINANCE NO. 2016-\_\_\_\_\_**

**CITY OF TONTITOWN, WASHINGTON COUNTY, ARKANSAS**

**AN ORDINANCE PERMITTING THE CONTRACT FOR INFORMATION TECHNOLOGY SERVICES FOR THE CITY OF TONTITOWN WITH ALDERMAN GENE MCCARTNEY; DECLARING AN EMERGENCY; AND FOR OTHER PURPOSES.**

**WHEREAS**, A.C.A. §14-42-107(b)(1) provides no alderman, council member, official, or municipal employee shall be interested directly or indirectly, in the profits of any contract for furnishing supplies, equipment, or services to the municipality unless the governing body of the city has enacted an ordinance specifically permitting alderman, council members, officials, or municipal employees to conduct business with the city and prescribing the extent of this authority;

**WHEREAS**, Gene McCartney of Computer Consultants of NWA, Inc., has been providing information technology services for the City of Tontitown and has unique and important experience with regard to the upkeep of city computing and information services which would be difficult to replace;

**WHEREAS**, Gene McCartney was elected to the office of Alderman to the City of Tontitown and took effect on January 1, 2016; and

**WHEREAS**, the City of Tontitown desires to enter into contract for services as to the municipality with Alderman Gene McCartney of Computer Consultants of NWA, Inc.

**NOW, THEREFORE, BE IT ORDAINED** by the City Council of the City of Tontitown, Arkansas:

**SECTION 1.** That Gene McCartney, of Computer Consultants of NWA, Inc., shall be allowed to enter into contract for the furnishing of information technology services to the City of Tontitown.

**SECTION 2.** The Alderman will fully disclose his direct or indirect financial interest in the contracts or service agreements to the City Council and such services are approved by the City Council.

**SECTION 3.** No favoritism shall be shown to the Alderman over other possible service providers.



Computer Consultants of NWA, Inc.  
479.751.7171

## Service Contract Agreement

The general purpose of Computer Consultants of NWA, Inc. is to provide a network engineer to your staff for maintenance and emergency needs. This Agreement should provide City of Tontitown, called "customer" with a maintenance plan that is cost effective and beneficial. Either party may propose changes to the contract. Proposed changes must be submitted in writing for review with a ninety-day notice and must be signed by both parties for approval (i.e. more/less hours). The term of this contract is 1 year(s) and is paid on a monthly basis. If necessary, this contract can be cancelled at any time by the customer provided that the request is made in writing and a notice of ninety days given. Contracts are automatically renewed every twelve months unless cancelled in writing. Under this agreement, service contract labor is provided at a contracted rate. Use of this time is at the customer's request or for general maintenance needs.

*Service Contract* rates are \$120.00 per hour. Additional charges may apply for unscheduled, additional hours or after hour's service. Remote service will be billed at contracted rates. A one hour minimum is charged on all service needs. Drive times to customer sites are to be billed at one way travel time, at the contracted rate.

The following are provided under the service agreement:

Phone support 9AM-5PM/ Monday thru Friday

Same day, next day, or scheduled response to service needs according to available technician time and priority needs of customers.

Contract time is used 9AM-5PM Monday through Friday. This allows a customer to use their time as needed. Other arrangements can be made if support is available.

Time needed is 10 hours per month.

(Please fill in requested hours)

**HOLIDAYS**

Holidays on which support may be limited are as follows:

- |                  |                           |
|------------------|---------------------------|
| New Year’s Eve   | Thanksgiving Day          |
| New Year’s Day   | Friday after Thanksgiving |
| Memorial Day     | Christmas Eve             |
| Independence Day | Christmas Day             |
| Labor Day        |                           |

Three weeks vacation (support from cell phone, other technicians or vendors may be necessary). Days preceding these noted dates may have limited support if support is not scheduled.

**PAYMENT and PLANS**

**Monthly** plans are paid prior to the month used and will be billed the first of every month. Payment should be received by the 10th of the month to ensure services provided. Payments received after the 15<sup>th</sup> of the previous month will be considered late. Late Fees may be added to the customer for payments not received or received late. Service may not be available for Service Contracts that are delinquent in any payments.

Customer agrees to pay for any and all collections, fees, attorney cost, and or late fees including equipment and or software used or ordered. Customer agrees to pay for all software or hardware ordered verbally or written. Customers agree to pay for all services provided. Signatures are not required for service due to remote services provided or service when customer is not available.

**Disclaimer**

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS CAREFULLY. You, our customer, have chosen to have your computer serviced through us, By ordering the Services and signing below, you agree to these Terms.

**Terms of Use**

We reserve the right to refuse to provide the Services to anyone at any time without notice and for any reason. You represent and warrant to us that you have the right, capacity and authorization necessary to legally bind yourself to these Terms.

**Authorization to Access your Computer**

You acknowledge and agree that by purchasing and scheduling the Services you are authorizing us to have full access and control of your computer, including hardware and software, for the purposes of providing the Services. You further acknowledge and agree that, in connection with delivering the Services, we may download and use various software, gather system data, have and access remote control of your computer and access or modify your computer settings and profiles as we deem necessary. We may need access to some of your passwords and may require access through your defined security protocols (such as fingerprint readers) to perform the required Services. By accepting these Terms, you hereby grant us the right and authority to connect to and access your computers, download and use the software on your computer to gather system data, make any recommended repairs to your

computer, have and access remote control of your computer and change the settings and profiles on your computer while performing the Services as we deem necessary. You agree that we have no responsibility or liability whatsoever under any circumstance at any time for any loss, damage, destruction, harm or corruption that may arise from or be related to the Services or your computer, including, without limitation, customer data, software or hardware. The customer releases Computer Consultants of NWA, Inc. from all damages and or consequential damages.

#### **Data Backup/ Software Installation**

You acknowledge and agree that you are solely responsible for maintaining and performing a complete and comprehensive backup of all information, data, programs, files, text, and other materials (collectively "Customer Data") and software stored on your computer before providing access to and transferring possession of your computer to us. You further acknowledge and agree that we have no responsibility or liability whatsoever under any circumstance at any time for any loss, damage, destruction, harm or corruption that may arise from or be related to the services, or to your computer, including without limitation customer data, software or hardware. We will not provide backup copies or support installation of unlicensed software to customers. You represent and warrant to us that any software and other data installed or accessible on your computer is properly licensed to, or owned by you.

#### **Scope of Services**

We will use commercially reasonable efforts to answer your technology questions and to resolve your technology problems for a fee. We may have certain limits to the technology we support and provide to you, and certain Services we provide may have minimum system requirements.

#### **Disclaimer of Warranties**

You understand all software and hardware sold or used has no warranty from Computer Consultants of NWA, Inc. Manufacturers warranty only will apply to the software and or hardware. No other warranty is implied.

#### **Use of Software and Tools**

We may need to download and/or run several types of software on your personal computer to help diagnose and resolve your personal technology problem(s). You acknowledge and agree that use of all software and third party software and tools accessed, downloaded or otherwise provided or made available with the Services (collectively "Software") are subject to the license agreements that may appear or be referenced when you access or download the Software. You may not access, download or use any Software without agreeing to the terms and conditions, without modification, of the license agreements. You agree that we may download and utilize Software from third party web sites and accept any applicable license agreements on your behalf. You acknowledge and agree that we may download and install trial versions of Software that will expire and cease to function after a certain period of time (usually thirty days) unless you separately purchase a license to continue using such Software and you have the sole responsibility to purchase any necessary licenses. You may use the Software only in connection with the Services and for no other purpose. You agree that we may, but are not obligated to, remove any Software downloaded to your computer during the Services after we have completed or terminated the Services.

#### **Customer Responsibilities**

As a condition to providing the Services, you must cooperate with us and promptly respond to our requests for information and comply with our requests to take actions to resolve your personal technology problem(s). You may be required to consent to the downloading and use of Software on your personal computer and accept all applicable license agreements for the Software in order for us to provide the Services and, in the event you do not consent and we are unable to provide the Services, we will not be required to refund any portion of the fees paid by you to the extent of our costs, including the costs of our subcontractors.

#### **Registration, Passwords and Security**

In order to use certain Services, we may require that you register as may be required. During the registration process, you may be asked to designate, or we may designate for you, a user name and password. You are responsible for maintaining the confidentiality of any password or account information you receive from us, and are responsible for all activities that occur using that password or other account information. You must notify us immediately upon learning of any unauthorized disclosure or use of your password or other account information. We have no liability for any unauthorized use of the Services under your account or on your computer.

#### **Use of the Services**

Your use of the Services is only for the intended scope of your personal or professional technology needs, and not for resale or transfer to others. You may not sell, lease or rent access to or use of the Services.

**Security**

While we use reasonable security measures to deliver the Services, you acknowledge and agree that no data transmission over the Internet can be guaranteed to be 100% secure and in any event we cannot guarantee that your personal information will be free from unauthorized intrusion.

**Proprietary Rights**

We respect the proprietary rights of software and hardware manufacturers and will not install or support unlicensed materials.

**Modifications or Terminations of Services**

We reserve the right, for any reason in our sole discretion and without notice to modify, terminate, change, suspend or discontinue any and all aspects of the services completed. As your sole and exclusive remedy, we may refund the fees prepaid for the applicable services not performed for the time period, if any, after termination of the services. However, if you are in breach of the terms, no refund will be provided. Other than providing a refund when we terminate for our convenience, we will not be liable to you or any third party for termination of the services for any reason.

**Limitation of Liability**

In no event shall we, our directors, officers, employees, agents, subcontractors and affiliates be liable for any indirect, special, incidental, consequential, exemplary or punitive damages of any kind or nature, whether from contract, tort(excluding negligence), misrepresentation, strict liability or any other legal or equitable theory related to the use of, or the inability to use the services, software, content or your personal computer and other technology including but not limited to lost sales, lost revenue, lost profits or other loss of business, loss of/damage to data or cost of substitute services. Some jurisdictions do not allow the limitation or exclusion of liability for incidental or consequential damages. So, to the extent applicable, the above limitations or exclusions may not apply to you. In no event shall the total liability of us to you in the aggregate for any and all damages, losses, and causes of action, whether in contract or tort, excluding negligence, arising from the terms or your use of the services, software or content exceed the greater of the amount paid by you for the services at issue. Nothing in this section of liability limitations should be construed to mean that any of these named parties could not be held liable for any or all willful misconduct or criminal acts perpetrated against the customer or his property.

**EULA's**

For any and all software installations, CCNWA, Inc may accept the end user license agreements on your behalf.

Approved by:  
City of Tontitown  
Company Name

Accepted by:  
Computer Consultants of NWA, Inc.

\_\_\_\_\_  
Signature 1

\_\_\_\_\_  
Harold E. McCartney, Jr.  
President

\_\_\_\_\_  
Signature 2

Effective this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Rev.05182012