

**AGREEMENT OF MERGER AND PLAN OF TRANSITION
BETWEEN
THE ARKANSAS STATE UNIVERSITY SYSTEM
AND COLLEGE OF THE OUACHITAS**

This Agreement of Merger and Plan of Transition (referred to as Agreement and/or Plan) is made and entered into on the date of full execution, indicated by all required signatures herein, between the Board of Trustees of the Arkansas State University System (ASU System), a state higher education system created pursuant to the laws of Arkansas, and the Board of Trustees of College of the Ouachitas (COTO), a state higher education institution created pursuant to the laws of Arkansas.

WHEREAS, the Board of Trustees of the Arkansas State University System has been vitally concerned with increasing educational opportunities in Arkansas and with providing an appropriate response to the need for expanded higher education opportunities for all citizens of the state; and

WHEREAS, the Board of Trustees of College of the Ouachitas has expressed a similar concern for providing more accessible quality higher education opportunities suitable to the economic and cultural development of its service area; and

WHEREAS, there are cogent reasons for taking measures to increase and improve the efficient delivery of higher education in Arkansas for the benefit of the State of Arkansas, including those increased efforts which will produce the educational, scientific, technical, and cultural contributions required to correspond with the development of the state; and

WHEREAS, this Plan has been agreed upon for the expansion of both entities to more effectively and efficiently serve the increasing needs of the region and of the State of Arkansas as a whole, with additional educational and technical training opportunities for citizens, directly benefiting civic, business, and economic development interests of the region; and

WHEREAS, this Plan will enhance educational opportunities for the citizens in the specified region by providing the benefits of the Arkansas State University System while retaining the community commitment of College of the Ouachitas as well as the loyalty, support, and contribution so

demonstratively evidenced by citizens of the COTO service area in the creation and growth of the college; and

WHEREAS, this Plan will underscore and enhance the work, contributions, and aspirations of all who, with justified pride, are responsible for the fine institution known as College of the Ouachitas and will achieve economy for the region and for the State of Arkansas as it meets increasing enrollments and educational demands without the initial outlay required to start a new institution by incorporating an established institution into the Arkansas State University System of higher education; and

WHEREAS, it has been determined that it is in the best interests of the parties, of the citizens served by College of the Ouachitas, and of the State of Arkansas that the Board of Trustees of College of the Ouachitas transfer to the Board of Trustees of Arkansas State University the assets, liabilities, and responsibilities herein described, so that College of the Ouachitas will become part of the Arkansas State University System, to be managed and controlled by the Board of Trustees of the Arkansas State University System for the benefit of citizens of the State of Arkansas; and

WHEREAS, the Board of Trustees of the Arkansas State University System is willing to accept the transfer of said assets, liabilities, and responsibilities, and the Board of Trustees of College of the Ouachitas is willing to transfer them upon the terms and conditions of this Agreement; and

WHEREAS, A.C.A. §6-60-102 authorizes and encourages the voluntary consolidation and merger of public higher education institutions, including existing systems of public higher education institutions that add two-year institutions to the system;

THEREFORE, the respective Boards of these entities hereby agree as follows:

I. Merger

College of the Ouachitas will become a member campus of the Arkansas State University System and, as a member of the System, will not be a branch campus or satellite campus of any two- or four-year institution in the ASU System at any time, unless required by law or by an accrediting body. The ASU System agrees to maintain and oversee operations of College of the Ouachitas, after merger to be known as Arkansas State University-College of the Ouachitas (ASU-COTO), or a name agreed upon

by the COTO Board of Trustees and Arkansas State University System Board of Trustees, as an institution of higher learning in the state of Arkansas and a campus in the ASU System. This Agreement is entered into so that both parties can provide for sound growth of and sustain ASU-COTO as a first-class two-year college according to a plan of transition calling for specific action by the ASU System and COTO. This Agreement is entered into so that COTO will be fully merged into the Arkansas State University System, which will be the surviving legal institution and which will continue to be governed by the laws of the State of Arkansas with the ASU System receiving and assuming, upon the date of transfer, the assets and liabilities of COTO to the extent provided herein.

II. Educational Programming

ASU-COTO, as a campus in the Arkansas State University System, utilizing the facilities, faculty, staff, and other COTO resources, will continue to offer short-term technical programs, associate degree programs, non-credit business and industry training, workforce education and career opportunity training, remedial and developmental courses, adult education and literacy courses, concurrent enrollment courses, secondary area career center programs, and programming at the Saline County Career and Technical Education Center.

III. Institution Name

The Board of Trustees of the Arkansas State University System and the College of the Ouachitas Board of Trustees will assign a permanent name to the resulting two-year college prior to the date of transfer.

IV. Board of Visitors

A Board of Visitors for ASU-COTO will be constituted, and the persons serving at the effective date as members of the COTO Board of Trustees will be appointed to the ASU-COTO Board of Visitors by the ASU System Board of Trustees. Each appointee will be named for a term equal to the unexpired portion of his or her term as a member of the COTO Board of Trustees. As terms expire, or as vacancies occur for any reason, the Chancellor of ASU-COTO will recommend to the ASU System President an appointment to fill each vacancy. Appointments of new Board of Visitors will be for terms

of seven years or for the remaining portion of the unexpired term. The Board of Visitors will elect from its members a Chairperson, a Vice-Chairperson, and a Secretary and will meet quarterly at least two weeks prior to the meeting of the ASU System Board of Trustees. Regular minutes of ASU-COTO Board of Visitors meetings will be preserved. The general purpose of the Board of Visitors will be to perform a liaison and advisory function between ASU-COTO and residents of its service area, to aid in securing financial support, to advise upon the educational and service needs of the service area, to assist Arkansas State University System endeavors to aid in the orderly transition of ASU-COTO as it becomes an Arkansas State University System campus, and to furnish counsel and guidance for the resulting institution. The ASU System agrees that the Chairperson of the ASU-COTO Board of Visitors or his/her designee will be invited to attend all meetings of the ASU Board of Trustees to support effective representation of the interests of ASU-COTO and so that the ASU-COTO Board of Visitors will have an enhanced understanding of the policies, procedures, and operation of the ASU System Board of Trustees.

All communication, including advice and recommendations, from the ASU-COTO Board of Visitors will be transmitted through the Chancellor of ASU-COTO to the President of the Arkansas State University System, who may then provide that communication to the Arkansas State University System Board of Trustees. The Chancellor of ASU-COTO will be an executive employee of the Arkansas State University System and will report to the President of the ASU System.

The parties recognize that ASU-COTO cannot be an autonomous institution and yet be a part of the ASU System. The legal relationship and the desirable educational direction required by this Agreement and the integration of the resulting institution into the ASU System are understood to include the governance of ASU-COTO by the ASU System Board of Trustees and the President of the Arkansas State University System.

V. Mission, Executive Role, Accreditation, and Intellectual Property

The ASU System accepts and supports the comprehensive two-year college mission and purposes of College of the Ouachitas and its establishment by and for the citizens of its service area and commits to continuation of the same. The ASU System accepts and supports the current mission, goals,

strategic and operational plans, and productivity plan of College of the Ouachitas as well as the state-assigned role and scope of College of the Ouachitas and commits to continuation of the same.

ASU-COTO will be headed by a Chancellor who will be the chief executive officer. On the date of transfer, the President of College of the Ouachitas will become the initial Chancellor of ASU-COTO. The Chancellor of ASU-COTO will be responsible to the President of the Arkansas State University System and, through the President, to the ASU System Board of Trustees. The Chancellor's powers and responsibilities, prescribed by the ASU System President and the ASU System Board of Trustees, will be those usually associated with the chief executive officer of a two-year college campus. The ASU-COTO Board of Visitors, the President of the ASU System, and the ASU Board of Trustees will establish the expectation that and assure that, in any future vacancies of the Chancellor position, all finalists for the position understand, appreciate, and commit to support and continue the unique mission and philosophy of ASU-COTO. When searches for subsequent Chancellors shall occur, the ASU System President will appoint a search committee with representation from the ASU System, the ASU-COTO Board of Visitors, and ASU-COTO employees to interview and recommend candidates to the ASU System President.

ASU-COTO will strive to deliver a broad program of undergraduate educational services, focusing on short-term certificates, associate degree programs, and business and industry training for adults and high school students, as well as remedial and developmental courses, student tutoring and success counseling, and GED/Literacy preparation, which are also primary needs of the service area. ASU-COTO will sustain and/or achieve any required full accreditation for such programs. The ultimate determination by ASU-COTO of the exact programs to be established or maintained, including curricula, scope of educational services, and community service are matters of informed educational judgment in relation to identified needs of business and industry and the service area. The ASU System will, in good faith and taking into full consideration any recommendation of the ASU-COTO Chancellor and Board of Visitors, exercise judgment with a view toward the best welfare of ASU-COTO regarding the educational offerings.

The institution that will be ASU-COTO will be responsible for sustaining regional accreditation of ASU-COTO by the Higher Learning Commission of the North Central Association and for

program specific accreditations as well. Any and all costs associated with securing accreditation approval for this merger shall be borne solely by College of the Ouachitas.

Income generated from intellectual property created by employees at ASU-COTO, as well as any created by employees of College of the Ouachitas which is carried forward with the merger, will be distributed to the Originator and to ASU-COTO with any/all realized institutional revenues remaining on the ASU-COTO campus.

VI. Policies, Operating Procedures, Internal Governance, Budget, and Personnel

As specified in this Agreement and its attachments, the ASU Board of Trustees will accept ASU-COTO's current operating procedures, internal governance, and established traditions, which may differ from those specified for other ASU System campuses such as, but not limited to, COTO employee benefit packages for eligible individuals employed on the date of this merger. Retirement plans/providers for current employees will be continued for existing COTO employees; however, any employees hired after the official merger date will be enrolled in ASU System retirement plans. Both the ASU System and ASU-COTO will work in good faith to align policies and procedures of ASU-COTO with the ASU System in a timely manner.

The ASU-COTO Board of Visitors will have advisory responsibility to the ASU-COTO Chancellor for the college's operating budget, including the establishment of tuition and fees and organizational model changes. The ASU-COTO Chancellor will present recommendations to the ASU System President, who will be responsible for making recommendations to the ASU System Board of Trustees for final consideration and approval. The ASU System will accommodate in good faith the employment contracts of the administration, faculty, and staff of College of the Ouachitas entered into prior to the merger. In the same manner as other ASU chancellors, under delegated authority by the ASU System President, the Chancellor of ASU-COTO will retain all rights and responsibilities pertaining to the employment of qualified faculty and staff to operate ASU-COTO and to deliver quality educational programming and workforce training in support of the unique mission, purposes, and goals of the institution. The ASU System recognizes that ASU-COTO will continue in its role and scope as officially designated by the Arkansas Higher Education Coordinating Board. As such, ASU-COTO will require faculty

credentials that are appropriate only for the certificate and associate degree levels, in accordance with Arkansas Higher Education Coordinating Board requirements, and the ASU System will not require any expectations or credentialing requirements that would not be consistent with that role and scope. Should the ASU-COTO role and scope expand, the ASU-COTO Chancellor will review and recommend, if necessary, faculty credential changes, in accordance with Arkansas Higher Education Coordinating Board requirements, which the Chancellor of ASU-COTO will subsequently provide to the President of the Arkansas State University System, who, if in agreement, will communicate with the ASU System Board of Trustees. College of the Ouachitas represents and affirms that its current and future faculty will possess the appropriate credentials for that institution.

ASU-COTO will continue its policies of equal employment opportunity for all qualified applications and will further seek to employ future faculty, staff, and administrators from and representative of the ASU-COTO local community and surrounding areas, provided that they meet the standards and qualifications mandated by the Arkansas Higher Education Coordinating Board and the State Office of Personnel Management for such positions in Arkansas.

VII. Transferability of Credit within the ASU System

Credit will be freely transferrable between ASU-COTO and other ASU System campuses. The specific application of credits to the various degree programs of ASU System campuses will be determined by the respective colleges of the receiving campuses, which will make diligent efforts to assure that ASU-COTO students will be advised of the extent to which credits will apply to various degree programs.

The ASU System will consider ASU-COTO students to be students of the ASU System; and, as such, they will enroll with the same full faith, credit, and opportunity for success that they would have at any other ASU System campus, including access to scholarships, if they meet the academic criteria.

VIII. Equality of Treatment within the ASU System

The ASU System declares its intent that the System policies and procedures applied in operating the ASU-COTO campus will be the same as those applied to other campuses and divisions of the ASU

System with the purpose that there will be no unwarranted distinctions which might operate to discriminate against ASU-COTO. This equality of treatment between campuses and divisions of the ASU System will, as a principle, be observed by the ASU System Board of Trustees; and any distinctions in policy and procedure germane to ASU-COTO now or in the future will be made only when there is a considered, rational foundation supporting the difference in classification or related changes in this Agreement.

IX. Transfer of Assets and Liabilities

COTO will transfer and assign to the ASU System, and the ASU System will accept and assume, all assets and liabilities of COTO on the date of transfer. COTO represents and warrants to the ASU System that, as of the date of execution of this Agreement, there are no undisclosed liabilities which are material and the existence of which would materially affect the performance of this Agreement by the ASU System and COTO. The ASU System assumes liabilities of COTO on outstanding bonded indebtedness not as a general obligation of the ASU System but as solely secured by a pledge of the revenues of COTO set forth in the respective resolutions, agreements, and other documents and instruments in connection with such bond issues. In the event that COTO becomes aware of a previously undisclosed liability which is material, or a new liability which is material, COTO shall promptly notify the President of the ASU System in writing. A new liability, or a previously undisclosed material liability, shall be a sufficient justification for the ASU System not to proceed with this merger.

COTO accepts that the college will be assessed an annual ASU System membership fee. ASU-COTO will be assessed based on a formula utilized by the ASU System to assess all member campuses. The initial assessment for ASU-COTO will be approximately \$20,000.00, based on the current formula made payable on or before June 1, 2020, unless a different date is requested by the President of the ASU System. The ASU System agrees that all current and future property and funds conveyed or transferred to it by COTO, under the terms of this Agreement or the proceeds thereof, will be used after the date of transfer by the ASU System only for the programs, purposes, and obligations of ASU-COTO and its current and future students, and not for any other campus of the ASU System or System operations, to assure the continued high quality and excellence of ASU-COTO.

X. Service of Process

The ASU System, as the institution of which ASU-COTO will be a constituent institution, agrees that it may be served with process in the State of Arkansas in any proceeding for enforcement of any obligation of College of the Ouachitas assumed pursuant to this Agreement, as well as for enforcement of any obligation arising from this Agreement of Merger and Plan of Transition. The Board of Trustees of the Arkansas State University System appoints the President of the Arkansas State University System as agent to accept service of process at the following address: President, Arkansas State University System, 501 Woodlane, Suite 600, Little Rock, AR 72201. The President of the Arkansas State University System will inform the Chancellor of ASU-COTO of any service of process and the nature of the proceedings. Nothing within this Agreement will be deemed to waive the sovereign immunity of College of the Ouachitas, the Arkansas State University System, or the State of Arkansas.

XI. Transfer of Assets Documents

To facilitate the transfer of assets from College of the Ouachitas to the Arkansas State University System, COTO will furnish the following:

- A) Acceptable abstracts of title or policies of title insurance to all tracts of real property owned by or under COTO control, showing marketable title, and the originals or true copies of all instruments under which COTO holds endowment, trust, pledge, bequest, or gift funds;
- B) Documents showing unpaid accounts to contractors, laborers, and materialmen for which mechanics, laborers, or materialmen liens may be established against COTO and/or its property and evidence showing bond or other protection thereon;
- C) Minute books of the Board of Trustees of College of the Ouachitas for review and determination that all proceedings have been duly, legally, and properly held or taken;
- D) Documentation of all patents, trademarks, trade names, copyrights, policies of insurance, contracts, and commitments of College of the Ouachitas which have not been completely performed; a current list of all employees and the rate of compensation of each; and the name of each bank or other institution in which there are accounts or safety deposit boxes and the names of all authorized signers with respect thereto;

- E) A Phase I environmental assessment acceptable to the ASU System for all real property to be transferred to the ASU System pursuant to this Agreement;
- F) Any other data or information needed by ASU in order to plan an orderly transition and merger including, but not limited to, financial data, enrollment data, and budgets; and
- G) Copies of all audits for the past three (3) years performed by the State Office of Legislative Audit or by any outside auditor together with balance sheets, income statements, and other financial books and records of COTO including those showing all securities held by COTO.

XII. Certification of Funds and Assets

On the date of transfer, COTO will certify that all funds and assets shown in the certificate of State Office of Legislative Audit described above are intact and on hand less and except expenditures for normal operations since the date of examination and said expenditures will be accounted for in full to the ASU System.

XIII. Transfer of Title

COTO will transfer title to all real, personal, tangible, and intangible assets, held in its name, whether of record or not, on the date of transfer to the ASU System which will receive and use such properties and their proceeds for the sole use and benefit of ASU-COTO, including all books, papers, records, and files under custody or control for the use of COTO together with all funds, bank accounts, accounts receivable, bequests, trusts, endowments, investments, securities, grants, pledges, contracts, and other entitlements of COTO. Said transfers are to be executed by appropriate instruments of transfer made by COTO and accepted by the ASU System, provided that any assets originally received by bequest, pledge, devise, gift or trust, containing conditions and restrictions, if assignable to COTO without incurring liability thereby, will, if accepted by the ASU System, be accepted and held upon the same conditions and restrictions as imposed by the donor or donors. COTO will furnish a complete inventory of all the assets prior to the date of transfer.

XIV. Relinquishment of Control, Responsibility, and Supervision

From and after the date of transfer, the COTO Board of Trustees will relinquish all control, responsibility and supervision vested by law, or exercised in fact, over and to the institution and assets

now known as College of the Ouachitas which will thereafter be both owned and operated by the ASU System as provided for in this Agreement. ASU System personnel understand that ASU-COTO institutional funds should be invested and deposited locally when local opportunities are reflective of/equivalent to best investment options.

XV. Conditions

The obligation of the ASU System and COTO to effect the agreed merger will be subject to the following conditions:

- 1) The representations herein contained will be substantially accurate in all material respects, and each institution will have performed or complied with them prior to the applicable date.
- 2) No material adverse change in financial conditions will have occurred, nor any material loss or damage to property or assets, whether or not covered by insurance, which change, loss or damage would materially affect or impair the ability of the other institution on the date of transfer.
- 3) The execution of the terms of this Agreement will not conflict with, or result in a breach of, or constitute a default under, any agreement or instrument to which the other institution is a party except to the extent that the same will have been cured by written waiver, written consent of the other institution, or otherwise.

XVI. Amendments

The President of the ASU System and the President of College of the Ouachitas both understand and agree that further refinement of this Agreement may be desirable as policies and procedures affected by the merger are explored over the next few months. Therefore, both parties pledge themselves to finalize any additional clarifications or modifications, including appropriate Board approvals, prior to the date of transfer. Upon mutual acceptance of any subsequent amendments by the President of the ASU System and the President of College of the Ouachitas, a revised document shall be executed in writing and signed by both parties, thereto reflecting the final agreement.

Notwithstanding any terms of this Agreement, or subsequent modifications executed over the next few months, the Agreement of Merger and Plan of Transition may be terminated and abandoned by the parties hereto at any time prior to the date of transfer by their mutual consent and thereafter neither party will have any further rights, obligations, or liabilities under this Agreement.

XVII. Obligation of Execution

Upon mutual agreement, the Chair of the College of the Ouachitas Board of Trustees and the President of the ASU System each obligate themselves, prior to January 1, 2020, the effective date of the merger, to execute all necessary papers, documents, legal conveyances, and other instruments required to effectuate the purposes and intents of this Agreement. This merger is contingent upon approval by the Board of Trustees of the Higher Learning Commission.

XVIII. Disclosure

This Agreement, together with agreed upon modifications, once accepted by both parties, and ratified by both Boards, will embody the entire agreement between the ASU System and COTO with respect to this merger, and there have been and there are currently no agreements, representations, or warranties relating thereto between the parties other than those set forth herein or herein provided.

XIX. Communication

All notices, requests, demands, and other communication regarding this Agreement will be made in writing and will be directed to President, Arkansas State University System, 501 Woodlane, Suite 600, Little Rock, AR 72201 and, if to COTO, to President, College of the Ouachitas, One College Circle, Malvern, AR 72104. With respect to this Agreement, the ASU System and COTO agree that each member of the ASU Board of Trustees and the COTO Board of Trustees are acting in his or her official and representative capacity and not as an individual.

XX. Collaborative Effort

The parties are deeply sensitive to the reality that the success of the merger depends upon the good faith and integrity of the respective Boards and their executive officers, and to the end that opportunities for quality higher education in Arkansas be made available to the citizens of the College of the Ouachitas service area and the State of Arkansas, the parties hereto will work closely together for the accomplishment of the aims of this Agreement.

IN WITNESS WHEREOF, the parties hereto, pursuant to authority given to their respective Boards, have caused this Agreement of Merger and Plan of Transition to be entered into and signed by their respective officers in their corporate names, and to be attested by the respective Secretaries, all in accordance with their respective resolutions, of which copies are attached, which authorize this action and designate the officers so executing to act in that capacity, all as of the day and date set forth.

COLLEGE OF THE OUACHITAS

ATTEST:

Bill Fowler, Chair
Board of Trustees
College of the Ouachitas

Rodney Allen, Secretary
Board of Trustees
College of the Ouachitas

ARKANSAS STATE UNIVERSITY SYSTEM

ATTEST:

Niel Crowson, Chair
Board of Trustees
ASU System

Price Gardner, Secretary
Board of Trustees
ASU System