

**CONTRACT FOR LIQUID POLYMER FOR THE  
ROGERS POLLUTION CONTROL FACILITY**

This Contract For Liquid Polymer for the Rogers Pollution Control Facility (“this Contract”) is entered into by the Rogers Water Utilities of the City of Rogers, Arkansas, the municipal water and sewer utility of the City of Rogers, Arkansas (“RWU”), operating under the supervision and management of the Rogers Waterworks and Sewer Commission of the City of Rogers, Arkansas (“the Commission”) and \_\_\_\_\_, whose address is \_\_\_\_\_ (“Contractor”).

Recitals

**WHEREAS**, RWU operates a waste water treatment plant known as the Rogers Pollution Control Facility (RPCF) and RWU processes biosolids at the RPCF using, in part, a dewatering centrifuge, and RWU uses liquid polymer in the dewatering process; and

**WHEREAS**, the average usage of liquid polymer is currently 32.19 active pounds of polymer per dry ton to achieve an average cake of 20.19%. Annual production of biosolids for 2020 was around 1,936 dry tons; and

**WHEREAS**, RWU issued that certain Invitation for Bid, IFB # RPCF-2021-9-1, Liquid Polymer; and

**WHEREAS**, Contractor responded to the Invitation for Bid (IFB) and demonstrated that it satisfied the requirements for the IFB, and

**WHEREAS**, Contractor was awarded this Contract pursuant to the IFB Process;  
and RWU and Contractor now desire to enter into this Contract;

**NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties Agree as follows:**

1. **Recitals Substantive.** The above recitals are substantive and made part of this Contract.
2. **IFB terms and requirements incorporated.** This Contract results from RWU’s Invitation for Bid, IFB # RPCF-2021-9-1, Liquid Polymer, and Contractor’s response thereto. The

terms and requirements of the IFB are incorporated herein by reference as applicable, except where specifically varied by the terms of this Contract.

3. **Liquid Polymer to be provided.** Contractor shall provide the Liquid Polymer specified below to RWU at the prices specified below in accordance with the terms and conditions of this Contract: Liquid Polymer [product no. /MSDS identifier ] at \$\_\_\_\_\_ per pound. This price includes any fuel surcharge, delivery charge, and any and all other charges associated with the product and delivery. This price is valid for the term of this Contract and any extensions thereof.

4. **Risk of Loss.** Risk of loss in transit shall remain with the Contractor until delivery to RWU. Contractor shall be responsible for all shipping costs. All chemicals provided pursuant to Contract shall be shipped Free on Board (FOB) to the RPCF at 4300 Rainbow Road in Rogers, Arkansas.

5. **Product Requirements.** Contractor shall provide sufficient copies of the product's Material Safety Data Sheet at the request of the RPCF. Polymer shall be delivered in approximately 375-gallon totes with threaded 2-inch connection. Contractor shall deliver at least 3 totes of polymer per order.

6. **Delivery Requirements.**

- A. Delivery vehicles shall be appropriate for the product being hauled and shall carry the proper placard(s) as well as proper equipment for unloading polymer.
- B. The driver shall be trained in chemical safety and the proper loading and unloading procedures for the product.
- C. The driver shall carry the product's MSDS and other essential paper work in the event that an emergency arises.
- D. Contractor must have adequate insurance as required by the Federal Motor Carrier Act and as listed in this Contract. Proof of said insurance must accompany the bid.
- E. All deliveries must be made within 4 business days of verbal order.
- F. Normal delivery hours are Monday thru Friday, 8:00 a.m. until 4:00 p.m.
- G. Deliveries shall be made thru main entrance gate at the RPCF, 4300 Rainbow Rd, Rogers, AR 72758. Driver must check in at operations office

7. **Quantities.** Quantities listed herein above are estimated based on projected use. It is specifically understood and agreed that these quantities are approximate, and any goods purchased, regardless of quantity, shall be paid for at the prices listed above. RWU is not obligated to purchase any specific quantity and may purchase more or less than the estimated quantity. Contractor shall have no claim against RWU for ordering greater or lesser quantities than the estimated amount.

8. **Contractor's Obligations.** Contractor shall and will, in good and workmanlike manner, perform all work and furnish all supplies and materials, machinery, equipment, facilities and means, necessary or proper to provide the goods and perform and complete all the work required by this Contract, in accordance with the provisions of this Contract and said specifications. The apparent silence of these specifications as to any detail or to the apparent omission from it of a detailed description concerning any point shall be regarded as meaning that the best commercial practices are to prevail. While the purpose of the specifications is to indicate minimum requirements in the way of capability, performance, construction, and other details, its use is not intended to deprive RWU the option of selecting goods which may be considered more suitable for the purpose involved. The terms of this contract and the IFB shall control over any verbal statements.

9. **Care of Work.** Contractor shall be responsible for all damages to persons or property that occur as a result of its fault or negligence in connection with the work performed and shall indemnify and hold RWU harmless as stated in the Indemnity and Hold Harmless Provision below.

10. **Releases and Receipts.** RWU, before making payments, may require the Contractor to furnish releases or receipts for any or all persons performing work and supplying material or services to the Contractor, or any sub-contractors for work under this contract, if this is deemed necessary to protect RWU's interests.

11. **Payment to Contractor.** Contractor shall promptly submit its invoice for products provided to RWU. Contractor shall submit its invoices to RWU at the RPCF, 4300 Rainbow Rd, Rogers, AR 72758. RWU shall review the invoice for accuracy, etc., and if approved, payment shall be made within 30 days of receipt of Contractor's invoice.

12. **Insurance.** Contractor states it has, and will maintain at its sole expense, during the term of this Contract insurance in the following types and amounts, and pursuant to the following terms and conditions:

All insurance must be written by an insurer licensed to conduct business in the State of Arkansas, unless otherwise permitted by Owner. The Contractor shall, at its own expense, purchase, maintain and keep in force insurance of the following types and limits that will protect against injury and/or damages which may arise out of or result from operations under the contract,

whether the operations be by itself or by any subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable:

1. Standard Worker's Compensation Insurance as required by law;
2. Commercial General Liability occurrence type insurance (The Commission and RWU their officers, agents, and employees must be named as additional insureds)
  - a. Bodily injury \$1,000,000 single limit per occurrence or \$500,000 each person /\$1,000,000 per occurrence; and,
  - b. Property Damage \$1,000,000 per occurrence; and,
  - c. Minimum aggregate policy year limit of \$2,000,000.
3. Commercial Automobile Liability Insurance (including owned, non-owned and hired vehicles coverage's):
  - a. Minimum combined single limit of \$1,000,000 per occurrence, for bodily injury and property damage;
  - b. If individual limits are provided, minimum limits are \$300,000 per person, \$500,000 per occurrence for bodily injury and \$100,000 per occurrence for property damage.
4. Umbrella/Excess Liability (Each occurrence and aggregate) \$5,000,000

The Commission and RWU their officers, agents, and employees must be named as additional insureds.

Contractor shall cause Contractor's insurance company or insurance agent to fill in all information required (including names of insurance agency, contractor and insurance companies, and policy numbers, effective dates and expiration dates) and to date and sign and do all other things necessary to complete and make into valid certificates of insurance and pertaining to the above listed items, and before commencing any of the work and within the time otherwise specified, Contractor shall file completed certificates of insurance with the Owner.

None of the provisions in said certificate of insurance shall be altered or modified in any respect except as herein expressly authorized. Said CERTIFICATE OF INSURANCE Form shall contain a provision that coverage afforded under the policies will not be altered, modified or canceled unless at least thirty (30) days prior written notice has been given to RWU. Contractor shall also file with RWU a valid CERTIFICATE OF INSURANCE on like form from or for all Subcontractors and showing the Subcontractor (s) as the Insured. Said completed CERTIFICATE

OF INSURANCE Form (s) shall in any event be filed with RWU not more than ten (10) days after execution of this Contract.

13. **Term.** The term of this Contract begins when it is signed by both parties hereto (“Effective Date”) and, unless terminated sooner, shall continue for a period of one (1) year from the Effective Date. This Contract may be extended or renewed for two additional one (1) year periods upon mutual agreement by the Parties, provided that the requirements of Ark. Code. Ann. §19-11-238 are met. In the event of nonappropriation or nonavailability of funds to support RWU’s performance in any year of the Contract, this Contract shall automatically terminate. In the event of termination for any reason, all services provided by Contractor under this Contract shall cease, any unused commodities shall be returned to Contractor, and any accrued equity shall be repaid to RWU.

14. **Termination of Contract for Cause.** This Contract may be terminated by RWU in the event Contractor fails to perform its obligations under this Contract. Prior to termination for cause, RWU shall give Contractor written notice describing the Contractor’s breaches. Contractor shall then have fifteen (15) days to cure all breaches. If Contractor’s breaches are not cured within this time limit, then RWU may proceed to terminate this Contract by giving written notice of termination to Contractor. Termination is not RWU’s exclusive remedy and RWU may further seek all other legal and equitable remedies available to it arising from Contractor’s breach.

15. **Termination of Contract for Convenience.** This Contract may be terminated by RWU at any time by giving Contractor at least thirty (30) days’ notice in writing to Contractor. If the Contract is terminated by RWU as provided herein, the Contractor will be paid for the goods and services it has provided up to the termination date. If this contract is terminated due to fault of the Contractor, the previous paragraph hereof relative to termination shall apply.

16. **Termination of Contract to Comply with Law or Obligations.** This contract may be terminated by RWU at any time in the event RWU determines, in its sole discretion, that this Contract will violate any applicable law or constitute or cause a condition of default or breach on the part of RWU, the Commission, or the City of Rogers, Arkansas under any other contracts or agreements.

17. **Record Retention.** Contractor shall maintain all pertinent financial and accounting records and evidence pertaining to this Contract in accordance with generally accepted principles of accounting and as specified by Arkansas Law. Contractor shall make financial and accounting records available, upon request, to RWU or RWU’s designee(s) at any time during this Contract period and any extension thereof, and for five (5) years from expiration date and final payment on this Contract or extension or renewal thereof.

18. **Cancellation.** In the event RWU no longer needs the commodities or services specified for any reason, (e.g., program changes; changes in laws, rules or regulations; relocation of offices; lack of appropriated funding, etc.), RWU **shall** have the right to cancel this Contract by giving the Contractor written notice of such cancellation thirty (30) days prior to the date of cancellation. Any delivered but unpaid for goods will be returned in normal condition to the Contractor by RWU.

19. **Non-discrimination:** In order to comply with applicable law relating to unfair employment practices, Contractor agrees that: (a) the Contractor will not discriminate against any employee or applicant for employment because of race, sex, color, age, religion, handicap, national origin, genetic information, sexual orientation, gender identity, transgender status; or any other protected status recognized by state or federal law; (b) in all solicitations or advertisements for employees, the Contractor will state that all qualified applicants will receive consideration without regard the categories listed in subsection (a); (c) the Contractor will furnish such relevant information and reports as requested by RWU for the purpose of determining compliance with any applicable law or regulation; (d) failure of the Contractor to comply with applicable law or regulations concerning nondiscrimination and this nondiscrimination clause shall be deemed a breach of contract and it may be cancelled, terminated or suspended in whole or in part; (e) the Contractor will include the provisions of items (a) through (d) in every subcontract so that such provisions will be binding upon such subcontractor or prospective subcontractor.

20. **No Contingent Fee.** Contractor guarantees that it has not retained a person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, except for retention of bona fide employees or bona fide established commercial selling agencies maintained by the bidder for the purpose of securing business.

21. **Antitrust Assignment.** As part of the consideration for entering into this, Contractor hereby assigns, sells and transfers to RWU and the Commission all rights, title and interest in and to all causes of action it may have under the antitrust laws of the United States or Arkansas for price fixing, which causes of action have accrued prior to the date of this assignment and which relate solely to the particular goods or services purchased or procured by RWU pursuant to this Contract.

22. **Contractor's Obligation of Indemnity.** Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless RWU, the Commission, and the City of Rogers, Arkansas and their officers, officials, employees, and representatives, individually and collectively, for all causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, including but not limited to, bodily injury (including death), personal injury, environmental contamination (including, without limitation, contamination to RWU's property), property damage (including, without limitation, damages to RWU's property), expenses, and reasonable attorneys' fees, of whatever nature, including, without limitation, any damages or

losses resulting from claims asserted by third parties; (i) due to any negligent or intentional act or omission on the part of Contractor, its agents, employees, or others working at the direction of Contractor or on its behalf, (ii) due to Contractor's breach of any Contract with any third-party, or (iii) due to Contractor's violation of any pertinent federal, State, or local law, rule, or regulation, and (iv) any other act or omission in connection with services performed pursuant to this Contract. Contractor will promptly reimburse RWU, the Commission or the City of Rogers (as applicable) within thirty (30) days of being provided documentation supporting any costs incurred by RWU, the Commission, or the City of Rogers for the costs of their respective defense, including attorneys' fees and costs, incurred in defense of any claims asserted by third parties. This indemnity and hold harmless provision shall survive termination of this Contract until the expiration of any applicable statutes of limitation.

This indemnity and hold harmless provision shall not be construed to limit the application of any of Contractor's insurance policies which would provide coverage for causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, listed above. To the extent this indemnity and hold harmless provision implicates any exclusion or other provision of any of Contractor's insurance policies that would exclude coverage for liability assumed by contract, or any like exclusion, then this indemnity and hold harmless provision shall not apply to the causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, for which coverage would otherwise be excluded, it being the intent of the parties that RWU have the maximum benefit of any insurance held by Contractor.

**23. RWU Not Responsible for Contractor Owned Items.** RWU will demonstrate reasonable care but will not be liable in the event of loss, destruction or theft of Contractor-owned equipment or software and technical and business or operations literature to be delivered or to be used in the installation of deliverables and services. The Contractor will retain total liability for equipment, software and technical and business or operations literature. RWU will not at any time be responsible for or accept liability for any Contractor-owned items.

**24. No Joint Venture. No Third-Party Beneficiaries.** This Contract is made at arm's length between two independent contracting parties. Nothing in this Contract shall be deemed to create a joint venture, partnership, tenancy in common, joint tenancy, or any similar relationship between the parties or require either party to engage in further business relationships between the parties. The parties further agree that there are no third-party beneficiaries of this Contract and that no person or entity, other than the parties hereto (and in the case of RWU, the Commission and the City of Rogers) shall have standing to enforce the terms of this Contract.

**25. Compliance with Law.** Each of the parties hereto is responsible for securing whatever permits, licenses, permissions, certificates, etc. required for the activities undertaken by that party pursuant to this Contract. Each of the parties hereto states that it will at all times operate in compliance with all applicable, local, state and federal laws and/or regulations and will not act under this Contract to cause the other party to violate any applicable local, state or federal laws

and/or regulations. Any provision of law required to be inserted into this Contract shall be deemed to be incorporated herein.

26. **RWU Property.** Any specifications, drawings, technical information, dies, cuts, negatives, positives, data or any other commodity furnished to the contractor hereunder or in contemplation hereof or developed by the contractor for use hereunder shall remain property of RWU, be kept confidential, be used only as expressly authorized and returned at the contractor's expense to the F.O.B. point properly identifying what is being returned.

27. **Licenses, Patents, and Copyrights.** Contractor agrees to indemnify and hold RWU, the Commission, and the City of Rogers, Arkansas harmless from all causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, arising from infringement of licenses, patents or copyrights.

This indemnity and hold harmless provision shall not be construed to limit the application of any of Contractor's insurance policies which would provide coverage for causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, listed above. To the extent this indemnity and hold harmless provision implicates any exclusion or other provision of any of Contractor's insurance policies that would exclude coverage for liability assumed by contract, or any like exclusion, then this indemnity and hold harmless provision shall not apply to the causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, for which coverage would otherwise be excluded, it being the intent of the parties that RWU have the maximum benefit of any insurance held by Contractor.

28. **Certification of Compliance with Ark. Code. Ann. § 25-1-503.** Pursuant to Ark. Code. Ann. § 25-1-503, Contractor hereto certifies that it is not currently engaged in a boycott of Israel. Contractor further agrees for the duration of the Contract not to engage in a boycott of Israel.

29. **Prohibition on Employment of Illegal Immigrants.** Contractor agrees and certifies that it does not employ or contract with illegal immigrants and will not employ or contract with illegal immigrants during the aggregate term of a contract.

30. **No Assignment of Rights or Delegation of Duties.** Contractor shall not assign its rights under this Contract without the express written permission of RWU. Nor shall Contractor delegate its duties under this Contract without the express written permission of RWU. Contractor may not employ subcontractors to perform services under this Agreement without the expression written permission of RWU.

31. **Choice of Law and Venue.** This Contract shall be governed by the laws of the State of Arkansas without regard to its principles of conflict of laws. Venue for any litigation



concerning this Contract shall lie exclusively in the state or federal courts embracing Benton County, Arkansas, unless another venue is specified by law.

32. **No Obligation of Indemnity by RWU; Tort Immunity Not Waived.** The parties hereto agree that RWU has no obligation of indemnity of any type (whether contractual, equitable, or otherwise denominated) to Contractor under this Contract. Nothing in the Contract shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities granted to RWU, the Rogers Waterworks and Sewer Commission, and the City of Rogers, Arkansas pursuant to Ark. Code. Ann. §21-9-301 and other applicable law.

33. **Notices.** Any notice or communication required or permitted (other than communications regarding services rendered under this Agreement which may be sent by electronic mail or requested by telephone) to be given shall be in writing and shall be deemed to have been given (i) when received if personally delivered; (ii) when received if sent by certified mail, return receipt requested, postage prepaid; or (iii) when received if sent by express courier (e.g. FedEx), if receipt is confirmed by the delivery agent, at the following addresses (or such other address as may be designated).

If given to RWU, notice shall be sent to:

Plant Manager  
Rogers Pollution Control Facility  
4300 Rainbow Road  
Rogers, AR 72758

with a copy to

Shared Services Manager  
Rogers Water Utilities  
601 South 2nd Street  
Rogers, AR 72756.

with copies to:

If given to Contractor, notice shall be sent to:

[insert name and address of Contractor]

34. **Choice of Law and Venue.** This Contract shall be governed by the laws of the State of Arkansas without regard to its principles of conflict of laws. Venue for any action concerning this Contract shall be the state and/or federal courts embracing Benton County, Arkansas.

35. **Waiver.** Failure of either party hereto to exercise any options herein contained upon breach by the other shall not constitute a waiver of that party's right to exercise such options upon future breach.

36. **Complete Agreement.** This Contract constitutes the entire agreement between the parties and it shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto. It is further agreed that all earlier agreements of the parties are hereby rescinded.

37. **Severability.** If any phrase, clause, sentence or paragraph of this Contract shall be declared invalid by the judgment or decree of a court of competent jurisdiction such invalidity shall not affect any of the remaining sentences, paragraphs or clauses of this Contract.

38. **Each Party Relying on its Own Counsel.** Each party hereby represents and warrants that it has received the advice of its own legal counsel in connection with the negotiation and preparation of this Contract (or that it has had the opportunity to do so) and that it is not relying upon the other party or the other party's counsel in reaching its decision to enter into this Contract.

39. **Each Party Deemed a Drafter of the Contract.** RWU and Contractor hereby represent that they have cooperated in drafting and preparing this Contract, and/or have had the opportunity to do so. Hence, no party will construe against any other party any ambiguity in this Contract. Each party to this Contract represents to the other that it has not relied upon any statement of any other party in executing this Contract, except as expressly stated in this Contract.

40. **Multiple Counterparts.** This Contract may be executed in two counterparts, each of which shall be an original and which together constitute one and the same instrument.

[signature pages follow]

IN WITNESS WHEREOF, the parties have executed this Contract by their respective authorized representatives.

**ROGERS WATER UTILITIES OF THE CITY OF ROGERS, ARKANSAS**

By: \_\_\_\_\_  
Brent Dobler, Superintendent

\_\_\_\_\_ date

**NAME OF FIRM. ("Contractor")**

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

\_\_\_\_\_ date