

**Rogers Water Utilities
Contractor Non-Disclosure Agreement**

This Contractor Non-Disclosure Agreement (NDA) is entered into by and between the Rogers Water Utilities of the City of Rogers, Arkansas, on the one hand and _____, [name of entity] a _____ [description of entity type] operating under the registered fictitious name of _____ whose corporate address is _____ (“Contractor”) on the other hand.

Whereas, the Rogers Water Utilities of the City of Rogers, Arkansas (“RWU”) is the municipal water and sewer utility of the City of Rogers, Arkansas, consisting of the Water Department and the Sewer Department, operated under common management, and being supervised by the Rogers Waterworks and Sewer Commission of the City of Rogers, Arkansas (“the Commission”), a combined waterworks and sewer commission established by City of Rogers Ordinance No. 86-10, codified at Section 54-1, *et. seq.* of the Code of Ordinances of the City of Rogers, Arkansas, and;

Whereas, RWU operates a public water system and municipally owned utility system, as those terms are used in Ark. Code. Ann. § 25-19-105(b)(20); and

Whereas, Contractor desires to perform certain professional services for RWU, namely services pursuant to that certain “Contract for Printing and Mailing Services for the Rogers Water Utilities ” dated _____, 2021, between RWU on the one hand, and Contractor, on the other hand (“the services”); and

Whereas, in performing the services, Contractor may be privy to certain confidential information of RWU and RWU’s customers, including, without limitation, “personal information of current and former public water system customers and municipally owned utility system customers” as those terms are used in Ark. Code. Ann. § 25-19-105(b)(20) and other information about RWU and its customers as further described herein below (collectively “confidential information”).

Now therefore, in consideration of the mutual obligations and covenants undertaken herein, the parties hereby agree as follows:

(1) RWU will disclose to Contractor such confidential information as is necessary to perform the services, in accordance with the terms and conditions of this Agreement. However, RWU is obligated to disclose only so much confidential information as is necessary for Contractor to perform the services.

(2) Contractor will not disclose the confidential information to any other person or entity. Contractor will not use any confidential information for any purpose other than provision of the services. Contractor will not use the confidential information for any purpose inconsistent with this Agreement. Contractor will safeguard and keep confidential all information about RWU and RWU’s customers, including, without limitation the personal information of RWU’s customers, including without limitation, home and mobile telephone numbers; personal email addresses; home and business addresses, customer usage data; charges and payment history; account numbers; credit card and debit card numbers, bank account numbers, social security numbers; and other Personally Identifiable Information (PII) as defined in RWU’s Identity Theft Prevention Program pursuant to 16 C.F.R. § 681.1. Contractor states and warrants that it maintains its own identity theft prevention program and takes other measures to maintain confidentiality of information of RWU and RWU’s customers and will provide information relating to said programs and of said security measures to RWU upon RWU’s request to enable RWU to evaluate the sufficiency of the programs and measures. In the event Contractor is served with any subpoena, federal, state, or otherwise, that purports to require production of any information concerning RWU or RWU’s Customers, prior to producing any records, testifying, or otherwise providing any information in response to the subpoena, Contractor, will promptly notify RWU by telephone, and will promptly notify RWU in writing, by electronic mail with a copy by U.S. Mail, of the subpoena so that RWU may seek court protection of such records. Notification to RWU shall be made to RWU as follows:

Superintendent
Rogers Water Utilities
601 South 2nd Street
Rogers, AR 72756
Brentdobler@Rogersar.gov
Phone: 479-621-1142

with copies to

Shared Services Manager
Rogers Water Utilities
601 South 2nd Street
Rogers, AR 72756
JeneHuffmanGilreath@rogersar.gov
Phone: 479-621-1142

or such other person or contact information as may be specified from time to time by RWU.

(3) At all times while performing the services or while otherwise having access to confidential information, Contractor will comply with all applicable federal, state, and local laws, regulations, and rules pertaining to handling, storage, and distribution of confidential information. If any confidential information is inadvertently disclosed, stolen, or otherwise compromised, Contractor shall promptly notify RWU and cooperate with RWU to take such remedial action as may be appropriate or required by law.

(4) Nothing in this Agreement shall be construed as requiring RWU to make any disclosure in violation of the Arkansas Freedom of Information Act (FOIA), or any other applicable federal, state, and local laws, regulations, and rules pertaining to handling, storage, and distribution of confidential information. RWU, in its sole discretion, and in consultation with its legal counsel, shall determine what information RWU may disclose in accordance with applicable law. Neither RWU nor its legal counsel shall have any liability to Contractor for any decision of RWU to refuse to disclose any information in compliance with FOIA or other applicable law, or to make any public disclosure in accordance with FOIA or other applicable law.

(5) At all times while performing the services or while otherwise having access to confidential information, Contractor will comply with all reasonable requests of RWU concerning handling, storage, and distribution of confidential information.

(6) In the event RWU determines that Contractor has violated this Agreement, Contractor's access to the confidential information will cease and Contractor will return all confidential information to RWU.

(7) Contractor agrees that in the event Contractor breaches this Agreement, RWU's damages will be irreparable and/or difficult to calculate and Contractor agrees that RWU may, in addition to all other legal and equitable remedies available to it, seek injunctive relief against Contractor to enjoin violations of this Agreement.

(8) Contractor will indemnify and hold harmless, RWU, the Commission, and the City of Rogers and their officers, officials, employees, and representatives, individually and collectively, against all costs, losses, claims, demands, suits, actions, payments or judgments, including attorneys' fees and costs arising from Contractor's violation of this Agreement. 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 and arising from Contractor's violation of this

Agreement.

(9) Contractor agrees that provision of access to the confidential information for purposes of performing the services is good, valuable, and adequate consideration for this Agreement. Contractor disclaims any contention, claim, or defense that this Agreement is not supported by adequate consideration.

(10) Contractor shall have access to confidential information only while performing the services. In the event the above-referenced contract terminates, or the Contractor is otherwise no longer performing the services, Contractor will return all confidential information and records to RWU. Contractor's obligations pursuant to this Agreement survive and continue after termination of the above-referenced contract or after Contractor is otherwise no longer performing the services.

(11) Nothing in this Agreement 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.

(12) This Agreement will be binding on Contractor, its constituent entities, affiliates, successors, assigns, and each of their respective officers, employees, and agents.

(13) This Agreement is made at arm's length between independent parties. Nothing in this Agreement 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 agreements between the parties.

(14) This Agreement shall be construed in accordance with the laws of the State of Arkansas without regard to its conflict of law principles.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates shown below.

[signature page follows]

