

# CONTRACT FOR CONSTRUCTION OF A SMALL PROJECT

This Contract is by and between Rogers Water Utilities (Owner) and \_\_\_\_\_ (Contractor).

Owner and Contractor hereby agree as follows:

## ARTICLE 1 - THE WORK

### 1.01 Work

- A. Work includes all labor, materials, equipment, services, and documentation necessary to construct the Project defined herein. The Work may include related services such as testing, start-up, and commissioning, all as required by the Contract Documents.
- B. The Contractor shall complete all Work as specified or indicated in the Contract Documents. The Project is generally described as follows:
  - 1. **Berry farm and Bent tree lift station decommissioning which includes the installation of approximately 290 LF of 12" sewer, various removals and disposals, and various site improvements.**
  - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located west of Bellview road at or just south of West drive in Rogers, Arkansas.

## ARTICLE 2 - CONTRACT DOCUMENTS

### 2.01 Intent of Contract Documents

- A. It is the intent of the Contract Documents to describe a functionally complete project. The Contract Documents do not indicate or describe all of the Work required to complete the Project. Additional details required for the correct installation of selected products are to be provided by the Contractor and coordinated with the Owner and Engineer. This Contract supersedes prior negotiations, representations, and agreements, whether written or oral. The Contract Documents are complementary; what is required by one part of the Contract Documents is as binding as if required by other parts of the Contract Documents.
- B. During the performance of the Work and until final payment, Contractor and Owner shall submit all matters in question concerning the requirements of the Contract Documents, or relating to the acceptability of the Work under the Contract Documents to the Engineer. Engineer will be the initial interpreter of the requirements of the Contract Documents, and judge of the acceptability of the Work thereunder.
- C. Engineer will render a written clarification, interpretation, or decision on the issue submitted, or initiate a modification to the Contract Documents.
- D. Contractor, and its subcontractors and suppliers, shall not have or acquire any title to or ownership rights to any of the Drawings, Specifications, or other documents (including copies or electronic media editions) prepared by Engineer or its consultants.

## 2.02 Contract Documents Defined

**NOTES TO USER: If any of the items listed are not to be included as Contract Documents, remove such item from the list and renumber the remaining items as necessary.**

- A. The Contract Documents consist of the following documents:
  - 1. This Contract.
  - 2. Performance bond.
  - 3. Payment bond.
  - 4. Drawings as listed on the Drawing Sheet Index.
  - 5. Exhibits to this Contract (enumerated as follows):
    - a. **Exhibit 1 – Unit Price Work Schedule.**
    - b. **Exhibit 2 – EJCDC C-800 MODIFIED Supplementary Conditions.**
    - c. **Exhibit 3 – Technical Specifications.**
  - 6. The following which may be delivered or issued on or after the Effective Date of the Contract:
    - a. Work Change Directives (EJCDC C-940).
    - b. Change Orders (EJCDC C-941).
    - c. Field Orders.

## ARTICLE 3 - ENGINEER

### 3.01 Engineer

- A. The Engineer for this Project is **Rogers Water Utilities, Engineering Division.**

## ARTICLE 4 - CONTRACT TIMES

### 4.01 Contract Times

- A. The Work will be substantially completed within **90** days after the Effective Date of the Contract and completed and ready for final payment within **120** days after the Effective Date of the Contract.

### 4.02 Liquidated Damages

- A. Contractor and Owner recognize that time is of the essence in the performance of the Contract, and that Owner will incur damages if Contractor does not complete the Work according to the requirements of Paragraph 4.01. Because such damages for delay would be difficult and costly to determine, Owner and Contractor agree that as liquidated damages for delay (but not as a penalty) Contractor shall pay Owner **\$200** for each day that expires after the Contract Time for substantial completion.

### 4.03 Delays in Contractor's Progress

- A. If Owner, Engineer, or anyone for whom Owner is responsible, delays, disrupts, or interferes with the performance or progress of the Work, then Contractor shall be entitled to an

equitable adjustment in the Contract Times and Contract Price. Contractor's entitlement to an adjustment of the Contract Times is conditioned on such adjustment being essential to Contractor's ability to complete the Work within the Contract Times.

- B. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for delay, disruption, or interference caused by or within the control of Contractor or their subcontractors or suppliers.
- C. If Contractor's performance or progress is delayed, disrupted, or interfered with by unanticipated causes not the fault of and beyond the control of Owner, Contractor, and those for which they are responsible, then Contractor shall be entitled to an equitable adjustment in Contract Times.
- D. Contractor shall not be entitled to an adjustment in Contract Price or Contract Times for any delay, disruption, or interference if such delay is concurrent with a delay, disruption, or interference caused by or within the control of Contractor or Contractor's subcontractors or suppliers.

#### 4.04 Progress Schedules

- A. Contractor shall develop a progress schedule and submit to the Engineer for review and comment before starting Work on the Site. The Contractor shall modify the schedule in accordance with the comments provided by the Engineer.
- B. The Contractor shall update and submit the progress schedule to the Engineer each month. The Owner may withhold payment if the Contractor fails to submit the schedule.

### ARTICLE 5 - CONTRACT PRICE

#### 5.01 Payment (MODIFIED)

- A. Owner shall pay Contractor for completion of the Work in accordance with the Contract Documents the amounts that follow, subject to adjustment under the Contract:
  - 1. For all Work, at the prices stated in the Unit Price Work Schedule.
    - a. The Unit Price Bid for each item includes such amounts as the Bidder deems proper for a complete installation, including materials, labor, equipment, Contractor's overhead, costs, profit, and other expenses.
    - b. Owner's Reserve Contingency: The owner's reserve contingency, as included on the Unit Price Work Schedule, shall serve as an amount set aside for adjustments to the project's scope beyond that which is depicted in the Contract Documents.
      - 1) The Owner's Reserve Contingency may only be used due to a Change Order with the approval of the Owner.
      - 2) Any unspent funds remaining in the Owner's Reserve Contingency upon the end of the project shall revert to the Owner.

**ARTICLE 6 - BONDS AND INSURANCE**

6.01 Bonds

- A. Before starting Work, Contractor shall furnish a performance bond and a payment bond from surety companies that are duly licensed or authorized to issue bonds in the required amounts in the jurisdiction in which the Project is located. Each bond shall be in an amount equal to the Contract Price, as security for the faithful performance and payment of all of Contractor’s obligations under the Contract. These bonds shall remain in effect until the completion of the correction period specified in Paragraph 7.12 but, in any case, not less than one year after the date when final payment becomes due.

6.02 Insurance

- A. Before starting Work, Contractor shall furnish evidence of insurance from companies that are duly licensed or authorized in the jurisdiction in which the Project is located with a minimum AM Best rating of A-VII or better. Contractor shall provide insurance in accordance with the following:

- 1. Contractor shall provide coverage for not less than the following amounts, or greater where required by Laws and Regulations:

- a. Workers’ Compensation:

State:	Statutory
Employer’s Liability:	
Bodily Injury, each Accident	\$ 500,000
Bodily Injury By Disease, each Employee	\$ 500,000
Bodily Injury/Disease Aggregate	\$ 500,000

- b. Commercial General Liability:

General Aggregate	\$ 2,000,000
Products - Completed Operations Aggregate	\$ 2,000,000
Personal and Advertising Injury	\$ 1,000,000
Each Occurrence (Bodily Injury and Property Damage)	\$ 1,000,000

- c. Automobile Liability herein:

Combined Single Limit of:	\$ 1,000,000
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- d. Excess or Umbrella Liability:

Per Occurrence	\$ 2,000,000
General Aggregate	\$ 2,000,000

- B. All insurance policies required to be purchased and maintained will contain a provision or endorsement that the coverage afforded will not be canceled or materially changed or renewal refused until at least 10 days prior written notice has been given to the insured and additional insured.

- C. Automobile liability insurance provided by Contractor shall provide coverage against claims for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy shall be written on an occurrence basis.
- D. Contractor's commercial general liability policy shall be written on a 1996 or later ISO commercial general liability occurrence form and include the following coverages and endorsements:
  - 1. Products and completed operations coverage maintained for three years after final payment;
  - 2. Blanket contractual liability coverage to the extent permitted by law;
  - 3. Broad form property damage coverage; and
  - 4. Severability of interest; underground, explosion, and collapse coverage; personal injury coverage.
- E. The Contractor's commercial general liability and automobile liability, umbrella or excess, and pollution liability policies shall include and list Owner and Engineer and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each as additional insureds; and the insurance afforded to these additional insureds shall provide primary coverage for all claims covered thereby (including as applicable those arising from both ongoing and completed operations) on a non-contributory basis.
  - 1. Additional insured endorsements will include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Contractor demonstrates to Owner that the specified ISO endorsements are not commercially available, then Contractor may satisfy this requirement by providing equivalent endorsements.
  - 2. Contractor shall provide ISO Endorsement CG 20 32 07 04, "Additional Insured—Engineers, Architects or Surveyors Not Engaged by the Named Insured" or its equivalent for design professional additional insureds.
- F. Umbrella or excess liability insurance shall be written over the underlying employer's liability, commercial general liability, and automobile liability insurance. Subject to industry-standard exclusions, the coverage afforded shall be procured on a "follow the form" basis as to each of the underlying policies. Contractor may demonstrate to Owner that Contractor has met the combined limits of insurance (underlying policy plus applicable umbrella) specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policies and an umbrella or excess liability policy.
- G. The Contractor shall provide property insurance covering physical loss or damage during construction to structures, materials, fixtures, and equipment, including those materials, fixtures, or equipment in storage or transit.
- H. If Contractor has failed to obtain and maintain required insurance, Owner may exclude the Contractor from the Site, impose an appropriate set-off against payment, and exercise Owner's termination rights under Article 15.

## ARTICLE 7 - CONTRACTOR'S RESPONSIBILITIES

### 7.01 Supervision and Superintendence

- A. Contractor shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. Contractor shall be solely responsible for the means, methods, techniques, sequences, safety, and procedures of construction.
- B. Contractor shall assign a competent resident superintendent who is to be present at all times during the execution of the Work. This resident superintendent shall not be replaced without written notice to and approval by the Owner and Engineer except under extraordinary circumstances.
- C. Contractor shall at all times maintain good discipline and order at the Site.
- D. Except as otherwise required for the safety or protection of persons or the Work or property at the Site or adjacent thereto, and except as otherwise stated in the Contract Documents, all Work at the Site shall be performed during regular working hours, Monday through Friday.

### 7.02 Other Work at the Site

- A. In addition to and apart from the Work of the Contractor, other work may occur at or adjacent to the Site. Contractor shall take reasonable and customary measures to avoid damaging, delaying, disrupting, or interfering with the work of Owner, any other contractor, or any utility owner performing other work at or adjacent to the Site.

### 7.03 Services, Materials, and Equipment

- A. Unless otherwise specified in the Contract Documents, Contractor shall provide and assume full responsibility for all services, materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities, and all other facilities and incidentals necessary for the performance, testing, start up, and completion of the Work, whether or not such items are specifically called for in the Contract Documents.
- B. All materials and equipment incorporated into the Work shall be new, of good quality and shall be stored, applied, installed, connected, erected, protected, used, cleaned, and conditioned in accordance with instructions of the applicable supplier, except as otherwise may be provided in the Contract Documents.

### 7.04 Subcontractors and Suppliers

- A. Contractor may retain subcontractors and suppliers for the performance of parts of the Work. Such subcontractors and suppliers must be acceptable to Owner.

### 7.05 Quality Management

- A. Contractor is fully responsible for the managing quality to ensure Work is completed in accordance with the Contract Documents.

### 7.06 Licenses, Fees and Permits

- A. Contractor shall pay all license fees and royalties and assume all costs incident to performing the Work or the incorporation in the Work of any invention, design, process, product, or device which is the subject of patent rights or copyrights held by others.

- B. Contractor shall obtain and pay for all construction permits and licenses unless otherwise provided in the Contract Documents.

#### 7.07 Laws and Regulations; Taxes

- A. Contractor shall give all notices required by and shall comply with all local, state, and federal Laws and Regulations applicable to the performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither Owner nor Engineer shall be responsible for monitoring Contractor's compliance with any Laws or Regulations.
- B. Contractor shall bear all resulting costs and losses, and shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them from and against all claims, costs, losses, and damages if Contractor performs any Work or takes any other action knowing or having reason to know that it is contrary to Laws or Regulations.
- C. Contractor shall pay all applicable sales, consumer, use, and other similar taxes Contractor is required to pay in accordance with Laws and Regulations.

#### 7.08 Record Documents

- A. Contractor shall maintain one printed record copy of all Drawings, Specifications, Addenda, Change Orders, Work Change Directives, Field Orders, written interpretations and clarifications, and approved shop drawings in a safe place at the Site. Contractor shall annotate them to show changes made during construction. Contractor shall deliver these record documents to Engineer upon completion of the Work.

#### 7.09 Safety and Protection

- A. Contractor shall be solely responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work.
- B. Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury, or loss to:
  - 1. All persons on the Site or who may be affected by the Work;
  - 2. All the Work and materials and equipment to be incorporated therein, whether in storage on or off the Site; and
  - 3. Other property at the Site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, other work in progress, utilities, and underground facilities not designated for removal, relocation, or replacement in the course of construction.
- C. All damage, injury, or loss to any property caused, directly or indirectly, in whole or in part, by Contractor, or anyone for whose acts the Contractor may be liable, shall be remedied by Contractor at its expense (except damage or loss attributable to the fault of Contract Documents or to the acts or omissions of Owner or Engineer and not attributable, directly or indirectly, in whole or in part, to the fault or negligence of Contractor).
- D. Contractor shall be responsible for coordinating any exchange of material safety data sheets or other hazard communication information required to be made available to or exchanged between or among employers at the Site in accordance with Laws or Regulations.

- E. In emergencies affecting the safety or protection of persons or the Work or property at the Site or adjacent thereto, Contractor shall act to prevent threatened damage, injury, or loss. Contractor shall give Engineer prompt written notice if Contractor believes that any significant changes in the Work or variations from the Contract Documents have been caused thereby or are required as a result thereof. If Engineer determines that a change in the Contract Documents is required because of the action taken by Contractor in response to such an emergency, a Work Change Directive or Change Order will be issued.

#### 7.10 Shop Drawings, Samples, and Other Submittals

- A. Contractor shall review and coordinate the shop drawing and samples with the requirements of the Work and the Contract Documents and shall verify all related field measurements, quantities, dimensions, specified performance and design criteria, installation requirements, materials, catalog numbers, and similar information.
- B. Each submittal shall bear a stamp or specific written certification that Contractor has satisfied Contractor's obligations under the Contract Documents with respect to Contractor's review of that submittal, and that Contractor approves the submittal.
- C. With each submittal, Contractor shall give Engineer specific written notice, in a communication separate from the submittal, of any variations that the shop drawing or sample may have from the requirements of the Contract Documents.
- D. Engineer will provide timely review of shop drawings and samples.
- E. Engineer's review and approval will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions or programs.
- F. Engineer's review and approval of a separate item does not indicate approval of the assembly in which the item functions.
- G. Contractor shall make corrections required by Engineer and shall return the required number of corrected copies of shop drawings and submit, as required, new samples for review and approval. Contractor shall direct specific attention in writing to revisions other than the corrections called for by Engineer on previous submittals.
- H. Shop drawings are not Contract Documents.

#### 7.11 Warranties and Guarantees

- A. Contractor warrants and guarantees to Owner that all Work will be in accordance with the Contract Documents and will not be defective. Engineer and its officers, directors, members, partners, employees, agents, consultants, and subcontractors shall be entitled to rely on Contractor's warranty and guarantee.

#### 7.12 Correction Period

- A. If within one year after the date of substantial completion, any Work is found to be defective, or if the repair of any damages to the Site, adjacent areas that Contractor has arranged to use through construction easements or otherwise, and other adjacent areas used by Contractor as permitted by Laws and Regulations, is found to be defective, then Contractor shall promptly and without cost to Owner, correct such defective Work.



### 7.13 Indemnification

- A. To the fullest extent permitted by Laws and Regulations, and in addition to any other obligations of Contractor under the Contract or otherwise, Contractor shall indemnify and hold harmless Owner and Engineer, and the officers, directors, members, partners, employees, agents, consultants and subcontractors of each and any of them from and against all claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals and all court or arbitration or other dispute resolution costs) arising out of or relating to the performance of the Work, provided that any such claim, cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than the Work itself), including the loss of use resulting therefrom but only to the extent caused by any negligent act or omission of Contractor, any subcontractor, any supplier, or any individual or entity directly or indirectly employed by any of them to perform any of the Work or anyone for whose acts they may be liable.

## ARTICLE 8 - OWNER'S RESPONSIBILITIES

### 8.01 Owner's Responsibilities

- A. Except as otherwise provided in the Contract Documents, Owner shall issue all communications to Contractor through Engineer.
- B. Owner shall make payments to Contractor as provided in this Contract.
- C. Owner shall provide Site and easements required to construct the Project.
- D. If Owner intends to contract with others for the performance of other work at or adjacent to the Site, unless stated elsewhere in the Contract Documents, Owner shall have sole authority and responsibility for such coordination.
- E. The Owner shall be responsible for performing inspections and tests required by applicable codes.
- F. The Owner shall not supervise, direct, or have control or authority over, nor be responsible for, Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Owner will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.
- G. While at the Site, Owner's employees and representatives shall comply with the specific applicable requirements of Contractor's safety programs of which Owner has been informed.
- H. Owner shall furnish copies of any applicable Owner safety programs to Contractor.

## ARTICLE 9 - ENGINEER'S STATUS DURING CONSTRUCTION

### 9.01 Engineer's Status

- A. Engineer will be Owner's representative during construction. The duties and responsibilities and the limitations of authority of Engineer as Owner's representative during construction are set forth in this Contract.

- B. Neither Engineer's authority or responsibility under this Article 9 or under any other provision of the Contract, nor any decision made by Engineer in good faith either to exercise or not exercise such authority or responsibility or the undertaking, exercise, or performance of any authority or responsibility by Engineer, shall create, impose, or give rise to any duty in contract, tort, or otherwise owed by Engineer to Contractor, any subcontractor, any supplier, any other individual or entity, or to any surety for or employee or agent of any of them.
- C. Engineer will make visits to the Site at intervals appropriate to the various stages of construction. Engineer will not be required to make exhaustive or continuous inspections on the Site to check the quality or quantity of the Work.
- D. Engineer has the authority to reject Work if Contractor fails to perform Work in accordance with the Contract Documents.
- E. Engineer will render decisions regarding the requirements of the Contract Documents, and judge the acceptability of the Work.
- F. Engineer will not supervise, direct, control, or have authority over or be responsible for Contractor's means, methods, techniques, sequences, or procedures of construction, or the safety precautions and programs, or for any failure of Contractor to comply with Laws and Regulations applicable to the performance of the Work. Engineer will not be responsible for Contractor's failure to perform the Work in accordance with the Contract Documents.

## **ARTICLE 10 - CHANGES IN THE WORK**

### **10.01 Authority to Change the Work**

- A. Without invalidating the Contract and without notice to any surety, Owner may, at any time or from time to time, order additions, deletions, or revisions in the Work.

### **10.02 Change Orders**

- A. Owner and Contractor shall execute appropriate Change Orders covering:
  - 1. Changes in the Contract Price or Contract Times which are agreed to by the parties, including any undisputed sum or amount of time for Work actually performed in accordance with a Work Change Directive;
  - 2. Changes in the Work which are: (a) ordered by Owner or (b) agreed to by the parties or (c) resulting from the Engineer's decision, subject to the need for Engineer's recommendation if the change in the Work involves the design (as set forth in the Drawings, Specifications, or otherwise), or other engineering or technical matters; and
  - 3. Changes in the Contract Price or Contract Times or other changes which embody the substance of any final binding results under Article 12.
- B. If the provisions of any bond require notice to be given to a surety of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Times), the giving of any such notice will be Contractor's responsibility. The amount of each applicable bond will be adjusted to reflect the effect of any such change.

## **ARTICLE 11 - DIFFERING SUBSURFACE OR PHYSICAL CONDITIONS**

### **11.01 Differing Conditions Process**

- A. If Contractor believes that any subsurface or physical condition including but not limited to utilities or other underground facilities that are uncovered or revealed at the Site either differs materially from that shown or indicated in the Contract Documents or is of an unusual nature, and differs materially from conditions ordinarily encountered and generally recognized as inherent in Work of the character provided for in the Contract Documents then Contractor shall, promptly after becoming aware thereof and before further disturbing the subsurface or physical conditions or performing any Work in connection therewith (except in an emergency), notify Owner and Engineer in writing about such condition. Contractor shall not further disturb such condition or perform any Work in connection therewith (except with respect to an emergency) until receipt of a written statement permitting Contractor to do so.
- B. After receipt of written notice, Engineer will promptly:
  - 1. Review the subsurface or physical condition in question;
  - 2. Determine necessity for Owner obtaining additional exploration or tests with respect to the condition;
  - 3. Determine whether the condition falls within the differing site condition as stated herein;
  - 4. Obtain any pertinent cost or schedule information from Contractor;
  - 5. Prepare recommendations to Owner regarding the Contractor's resumption of Work in connection with the subsurface or physical condition in question and the need for any change in the Drawings or Specifications; and
  - 6. Advise Owner in writing of Engineer's findings, conclusions, and recommendations.
- C. After receipt of Engineer's written findings, conclusions, and recommendations, Owner shall issue a written statement to Contractor regarding the subsurface or physical condition in question, addressing the resumption of Work in connection with such condition, indicating whether any change in the Drawings or Specifications will be made, and adopting or rejecting Engineer's written findings, conclusions, and recommendations, in whole or in part.

## **ARTICLE 12 - CLAIMS AND DISPUTE RESOLUTION**

### **12.01 Claims Process**

- A. The party submitting a claim shall deliver it directly to the other party to the Contract and the Engineer promptly (but in no event later than 10 days) after the start of the event giving rise thereto.
- B. The party receiving a claim shall review it thoroughly, giving full consideration to its merits. The two parties shall seek to resolve the claim through the exchange of information and direct negotiations. All actions taken on a claim shall be stated in writing and submitted to the other party.

- C. If efforts to resolve a claim are not successful, the party receiving the claim may deny it by giving written notice of denial to the other party. If the receiving party does not take action on the claim within 45 days, the claim is deemed denied.
- D. If the dispute is not resolved to the satisfaction of the parties, Owner or Contractor shall give written notice to the other party of the intent to submit the dispute to a court of competent jurisdiction unless the Owner and Contractor both agree to an alternative dispute resolution process.

## **ARTICLE 13 - TESTS AND INSPECTIONS; CORRECTION OF DEFECTIVE WORK**

### **13.01 Tests and Inspections**

- A. Owner and Engineer will have access to the Site and the Work at reasonable times for their observation, inspection, and testing. Contractor shall provide them proper and safe conditions for such access.
- B. Contractor shall give Engineer timely notice of readiness of the Work for all required inspections and tests, and shall cooperate with inspection and testing personnel to facilitate required inspections and tests.
- C. If any Work that is to be inspected, tested, or approved is covered by Contractor without written concurrence of Engineer, Contractor shall, if requested by Engineer, uncover such Work for observation. Such uncovering shall be at Contractor's expense.

### **13.02 Defective Work**

- A. Contractor shall ensure that the Work is not defective.
- B. Engineer has the authority to determine whether Work is defective, and to reject defective Work.
- C. Prompt notice of all defective Work of which Owner or Engineer has actual knowledge will be given to Contractor.
- D. The Contractor shall promptly correct all such defective Work.
- E. When correcting defective Work, Contractor shall take no action that would void or otherwise impair Owner's special warranty and guarantee, if any, on said Work.
- F. If the Work is defective or Contractor fails to supply sufficient skilled workers or suitable materials or equipment, or fails to perform the Work in such a way that the completed Work will conform to the Contract Documents, then Owner may order Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated.

## **ARTICLE 14 - PAYMENTS TO CONTRACTOR**

### **14.01 Progress Payments**

- A. The Contractor shall prepare a schedule of values that will serve as the basis for progress payments. The schedule of values will be in a form of application for payment acceptable to Engineer. The unit price breakdown submitted with the bid will be used for unit price work. Break lump sum items into units that will allow for measurement of Work in progress.

#### 14.02 Applications for Payments:

- A. Contractor shall submit an application for payment in a form acceptable to the Engineer, no more frequently than monthly, to Engineer. Applications for payment will be prepared and signed by Contractor. Contractor shall provide supporting documentation required by the Contract Documents. Payment will be paid for Work completed as of the date of the application for payment.

#### 14.03 Retainage

- A. The Owner shall retain 5 % of each progress payment until the Work is substantially complete.

#### 14.04 Review of Applications

- A. Within 10 days after receipt of each application for payment, the Engineer will either indicate in writing a recommendation for payment and present the application for payment to Owner or return the application for payment to Contractor indicating in writing Engineer's reasons for refusing to recommend payment. The Contractor will make the necessary corrections and resubmit the application for payment.
- B. Engineer will recommend reductions in payment (set-offs) which, in the opinion of the Engineer, are necessary to protect Owner from loss because the Work is defective and requires correction or replacement.
- C. The Owner is entitled to impose set-offs against payment based on any claims that have been made against Owner on account of Contractor's conduct in the performance of the Work, incurred costs, losses, or damages on account of Contractor's conduct in the performance of the Work, or liquidated damages that have accrued as a result of Contractor's failure to complete the Work.

#### 14.05 Contractor's Warranty of Title

- A. Contractor warrants and guarantees that title to all Work, materials, and equipment furnished under the Contract will pass to Owner free and clear of (1) all liens and other title defects, and (2) all patent, licensing, copyright, or royalty obligations, no later than seven days after the time of payment by Owner.

#### 14.06 Substantial Completion

- A. The Contractor shall notify Owner and Engineer in writing that the Work is substantially complete and request the Engineer issue a certificate of substantial completion when Contractor considers the Work ready for its intended use. Contractor shall at the same time submit to Owner and Engineer an initial draft of punch list items to be completed or corrected before final payment.
- B. Engineer will make an inspection of the Work with the Owner and Contractor to determine the status of completion. If Engineer does not consider the Work substantially complete, Engineer will notify Contractor and Owner in writing giving the reasons therefor.
- C. If Engineer considers the Work substantially complete or upon resolution of all reasons for non-issuance of a certificate identified in 14.06.B, Engineer will deliver to Owner a certificate of substantial completion which shall fix the date of substantial completion and include a punch list of items to be completed or corrected before final payment.

#### 14.07 Final Inspection

- A. Upon written notice from Contractor that the entire Work is complete, Engineer will promptly make a final inspection with Owner and Contractor and will notify Contractor in writing of all particulars in which this inspection reveals that the Work, or agreed portion thereof, is incomplete or defective. Contractor shall immediately take such measures as are necessary to complete such Work or remedy such deficiencies.

#### 14.08 Final Payment

- A. Contractor may make application for final payment after Contractor has satisfactorily completed all Work defined in the Contract, including providing all maintenance and operating instructions, schedules, guarantees, bonds, certificates or other evidence of insurance, certificates of inspection, annotated record documents and other documents.
- B. The final application for payment shall be accompanied (except as previously delivered) by:
  - 1. All documentation called for in the Contract Documents;
  - 2. Consent of the surety to final payment;
  - 3. Satisfactory evidence that all title issues have been resolved such that title to all Work, materials, and equipment has passed to Owner free and clear of any liens or other title defects, or will so pass upon final payment;
  - 4. A list of all disputes that Contractor believes are unsettled; and
  - 5. Complete and legally effective releases or waivers (satisfactory to Owner) of all lien rights arising out of the Work, and of liens filed in connection with the Work.
- C. The Work is complete (subject to surviving obligations) when it is ready for final payment as established by the Engineer's written recommendation of final payment.

#### 14.09 Waiver of Claims

- A. The making of final payment will not constitute a waiver by Owner of claims or rights against Contractor.
- B. The acceptance of final payment by Contractor will constitute a waiver by Contractor of all claims and rights against Owner other than those pending matters that have been duly submitted.

### **ARTICLE 15 - SUSPENSION OF WORK AND TERMINATION**

#### 15.01 Owner May Suspend Work

- A. At any time and without cause, Owner may suspend the Work or any portion thereof for a period of not more than 60 consecutive days by written notice to Contractor and Engineer. Such notice will fix the date on which Work will be resumed. Contractor shall resume the Work on the date so fixed. Contractor shall be entitled to an adjustment in the Contract Price or an extension of the Contract Times, or both, directly attributable to any such suspension.

#### 15.02 Owner May Terminate for Cause

- A. Contractor's failure to perform the Work in accordance with the Contract Documents or other failure to comply with a material term of the Contract Documents will constitute a default by Contractor and justify termination for cause.

- B. If Contractor defaults in its obligations, then after giving Contractor and any surety ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the Contract, Owner may proceed to:
  - 1. Declare Contractor to be in default, and give Contractor and any surety notice that the Contract is terminated; and
  - 2. Enforce the rights available to Owner under any applicable performance bond.
- C. Owner may not proceed with termination of the Contract under Paragraph 15.02.B if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.
- D. Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.
- E. In the case of a termination for cause, if the cost to complete the Work, including related claims, costs, losses, and damages, exceeds the unpaid contract balance, Contractor shall pay the difference to Owner.

#### 15.03 Owner May Terminate for Convenience

- A. Upon seven days written notice to Contractor, Owner may, without cause and without prejudice to any other right or remedy of Owner, terminate the Contract. In such case, Contractor shall be paid for, without duplication of any items:
  - 1. Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
  - 2. Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses; and
  - 3. Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal.
- B. Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

#### 15.04 Contractor May Stop Work or Terminate

- A. If, through no act or fault of Contractor, (1) the Work is suspended for more than 90 consecutive days by Owner or under an order of court or other public authority, or (2) Owner fails for 30 days to pay Contractor any sum finally determined to be due, then Contractor may, upon seven days written notice to Owner, and provided Owner does not remedy such suspension or failure within that time, either stop the Work until payment is received, or terminate the Contract and recover payment from the Owner.

## **ARTICLE 16 - CONTRACTOR'S REPRESENTATIONS**

### **16.01 Contractor Representations**

- A. Contractor makes the following representations when entering into this Contract:
1. Contractor has examined and carefully studied the Contract Documents, and any data and reference items identified in the Contract Documents.
  2. Contractor has visited the Site, conducted a thorough visual examination of the Site and adjacent areas, and become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
  3. Contractor is familiar with and is satisfied as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
  4. Contractor has considered the information known to Contractor itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Contract Documents; and the Site-related reports and drawings identified in the Contract Documents, with respect to the effect of such information, observations, and documents on:
    - a. The cost, progress, and performance of the Work;
    - b. The means, methods, techniques, sequences, and procedures of construction to be employed by Contractor; and
    - c. Contractor's safety precautions and programs.
  5. Based on the information and observations referred to in the preceding paragraph, Contractor agrees that no further examinations, investigations, explorations, tests, studies, or data are necessary for the performance of the Work at the Contract Price, within the Contract Times, and in accordance with the other terms and conditions of the Contract.
  6. Contractor is aware of the general nature of work to be performed by Owner and others at the Site that relates to the Work as indicated in the Contract Documents.
  7. Contractor has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents, and the written resolution thereof by Engineer is acceptable to Contractor.
  8. The Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.
  9. Contractor's entry into this Contract constitutes an incontrovertible representation by Contractor that, without exception, all prices in the Contract are premised upon performing and furnishing the Work required by the Contract Documents.

## **ARTICLE 17 - MISCELLANEOUS**

### **17.01 Cumulative Remedies**

- A. The duties and obligations imposed by this Contract and the rights and remedies available hereunder to the parties hereto are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise



imposed or available by Laws or Regulations, by special warranty or guarantee, or by other provisions of the Contract. The provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right, and remedy to which they apply.

17.02 Limitation of Damages

- A. Neither Owner, Engineer, nor any of their officers, directors, members, partners, employees, agents, consultants, or subcontractors, shall be liable to Contractor for any claims, costs, losses, or damages sustained by Contractor on or in connection with any other project or anticipated project.

17.03 No Waiver

- A. A party's non-enforcement of any provision shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Contract.

17.04 Survival of Obligations

- A. All representations, indemnifications, warranties, and guarantees made in, required by, or given in accordance with the Contract, as well as all continuing obligations indicated in the Contract, will survive final payment, completion, and acceptance of the Work or termination or completion of the Contract or termination of the services of Contractor.

17.05 Contractor's Certifications

- A. Contractor certifies that it has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for or in executing the Contract.

17.06 Controlling Law

- A. This Contract is to be governed by the law of the state in which the Project is located.

IN WITNESS WHEREOF, Owner and Contractor have signed this Contract.

This Contract will be effective on \_\_\_\_\_ (which is the Effective Date of the Contract).

OWNER:

CONTRACTOR:

Rogers Water Utilities

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

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

Title: Brian Sartain, Utility Engineer

Title: \_\_\_\_\_

*(If Contractor is a corporation, a partnership, or a joint venture, attach evidence of authority to sign.)*

Attest: \_\_\_\_\_

Attest: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Address for giving notices:

Address for giving notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

License No.: \_\_\_\_\_

(where applicable)

## PERFORMANCE BOND

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER : Rogers Water Utilities  
P O Box 338  
Rogers, AR 72757

### CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location):* BERRY FARM AND BENT TREE LIFT STATION DECOMMISSIONING

### BOND

Bond Number:

Date *(not earlier than the Effective Date of the Agreement of the Construction Contract):*

Amount:

Modifications to this Bond Form:  None  See Paragraph 16

Surety and Contractor, intending to be legally bound hereby, subject to the terms set forth below, do each cause this Performance Bond to be duly executed by an authorized officer, agent, or representative.

### CONTRACTOR AS PRINCIPAL

### SURETY

\_\_\_\_\_  
Contractor's Name and Corporate Seal *(seal)*

\_\_\_\_\_  
Surety's Name and Corporate Seal *(seal)*

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

By: \_\_\_\_\_  
Signature *(attach power of attorney)*

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**Notes: (1) Provide supplemental execution by any additional parties, such as joint venturers. (2) Any singular reference to Contractor, Surety, Owner, or other party shall be considered plural where applicable.**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner for the performance of the Construction Contract, which is incorporated herein by reference.

2. If the Contractor performs the Construction Contract, the Surety and the Contractor shall have no obligation under this Bond, except when applicable to participate in a conference as provided in Paragraph 3.

3. If there is no Owner Default under the Construction Contract, the Surety's obligation under this Bond shall arise after:

3.1 The Owner first provides notice to the Contractor and the Surety that the Owner is considering declaring a Contractor Default. Such notice shall indicate whether the Owner is requesting a conference among the Owner, Contractor, and Surety to discuss the Contractor's performance. If the Owner does not request a conference, the Surety may, within five (5) business days after receipt of the Owner's notice, request such a conference. If the Surety timely requests a conference, the Owner shall attend. Unless the Owner agrees otherwise, any conference requested under this Paragraph 3.1 shall be held within ten (10) business days of the Surety's receipt of the Owner's notice. If the Owner, the Contractor, and the Surety agree, the Contractor shall be allowed a reasonable time to perform the Construction Contract, but such an agreement shall not waive the Owner's right, if any, subsequently to declare a Contractor Default;

3.2 The Owner declares a Contractor Default, terminates the Construction Contract and notifies the Surety; and

3.3 The Owner has agreed to pay the Balance of the Contract Price in accordance with the terms of the Construction Contract to the Surety or to a contractor selected to perform the Construction Contract.

4. Failure on the part of the Owner to comply with the notice requirement in Paragraph 3.1 shall not constitute a failure to comply with a condition precedent to the Surety's obligations, or release the Surety from its obligations, except to the extent the Surety demonstrates actual prejudice.

5. When the Owner has satisfied the conditions of Paragraph 3, the Surety shall promptly and at the Surety's expense take one of the following actions:

5.1 Arrange for the Contractor, with the consent of the Owner, to perform and complete the Construction Contract;

5.2 Undertake to perform and complete the Construction Contract itself, through its agents or independent contractors;

5.3 Obtain bids or negotiated proposals from qualified contractors acceptable to the Owner for a contract for performance and completion of the Construction Contract, arrange for a contract to be prepared for execution by the Owner and a contractor selected with the Owners concurrence, to be secured with performance and payment bonds executed by a

qualified surety equivalent to the bonds issued on the Construction Contract, and pay to the Owner the amount of damages as described in Paragraph 7 in excess of the Balance of the Contract Price incurred by the Owner as a result of the Contractor Default; or

5.4 Waive its right to perform and complete, arrange for completion, or obtain a new contractor, and with reasonable promptness under the circumstances:

5.4.1 After investigation, determine the amount for which it may be liable to the Owner and, as soon as practicable after the amount is determined, make payment to the Owner; or

5.4.2 Deny liability in whole or in part and notify the Owner, citing the reasons for denial.

6. If the Surety does not proceed as provided in Paragraph 5 with reasonable promptness, the Surety shall be deemed to be in default on this Bond seven days after receipt of an additional written notice from the Owner to the Surety demanding that the Surety perform its obligations under this Bond, and the Owner shall be entitled to enforce any remedy available to the Owner. If the Surety proceeds as provided in Paragraph 5.4, and the Owner refuses the payment or the Surety has denied liability, in whole or in part, without further notice the Owner shall be entitled to enforce any remedy available to the Owner.

7. If the Surety elects to act under Paragraph 5.1, 5.2, or 5.3, then the responsibilities of the Surety to the Owner shall not be greater than those of the Contractor under the Construction Contract, and the responsibilities of the Owner to the Surety shall not be greater than those of the Owner under the Construction Contract. Subject to the commitment by the Owner to pay the Balance of the Contract Price, the Surety is obligated, without duplication for:

7.1 the responsibilities of the Contractor for correction of defective work and completion of the Construction Contract;

7.2 additional legal, design professional, and delay costs resulting from the Contractor's Default, and resulting from the actions or failure to act of the Surety under Paragraph 5; and

7.3 liquidated damages, or if no liquidated damages are specified in the Construction Contract, actual damages caused by delayed performance or non-performance of the Contractor.

8. If the Surety elects to act under Paragraph 5.1, 5.3, or 5.4, the Surety's liability is limited to the amount of this Bond.

9. The Surety shall not be liable to the Owner or others for obligations of the Contractor that are unrelated to the Construction Contract, and the Balance of the Contract Price shall not be reduced or set off on account of any such unrelated obligations. No right of action shall accrue on this Bond to any person or entity other than the Owner or its heirs, executors, administrators, successors, and assigns.

10. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.

11. Any proceeding, legal or equitable, under this Bond may be instituted in any court of competent jurisdiction in the location in which the work or part of the work is located and shall be instituted within two years after a declaration of Contractor Default or within two years after the Contractor ceased working or within two years after the Surety refuses or fails to perform its obligations under this Bond, whichever occurs first. If the provisions of this paragraph are void or prohibited by law, the minimum periods of limitations available to sureties as a defense in the jurisdiction of the suit shall be applicable.

12. Notice to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears.

13. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.

#### 14. Definitions

14.1 Balance of the Contract Price: The total amount payable by the Owner to the Contractor under the Construction Contract after all proper adjustments have been made including allowance for the Contractor for any amounts received or to be received by the Owner in settlement of insurance or other claims for damages to which the Contractor is entitled, reduced by all valid and proper payments made to or on behalf of the Contractor under the Construction Contract.

14.2 Construction Contract: The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and changes made to the agreement and the Contract Documents.

14.3 Contractor Default: Failure of the Contractor, which has not been remedied or waived, to perform or otherwise to comply with a material term of the Construction Contract.

14.4 Owner Default: Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

14.5 Contract Documents: All the documents that comprise the agreement between the Owner and Contractor.

15. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

16. Modifications to this Bond are as follows:

**PAYMENT BOND**

CONTRACTOR *(name and address):*

SURETY *(name and address of principal place of business):*

OWNER : *Rogers Water Utilities, P O Box 338, Rogers, AR  
 72757*

Signature  
 Signature *(attach power of attorney)*

**CONSTRUCTION CONTRACT**

Effective Date of the Agreement:  
 Amount:  
 Description *(name and location):* BERRY FARM AND  
 BENT TREE LIFT STATION DECOMMISSIONING

\_\_\_\_\_  
 \_\_\_\_\_  
 Print Name  
 Print Name

**BOND**

Bond Number:  
 Date *(not earlier than the Effective Date of the Agreement  
 of the Construction Contract):*  
 Amount:  
 Modifications to this Bond Form:  None   
 See Paragraph 18

\_\_\_\_\_  
 \_\_\_\_\_  
 Title  
 Title

**Attest:** \_\_\_\_\_  
**Attest:** \_\_\_\_\_

Surety and Contractor, intending to be legally  
 bound hereby, subject to the terms set forth below,  
 do each cause this Payment Bond to be duly  
 executed by an authorized officer, agent, or  
 representative.

\_\_\_\_\_  
 Signature  
 Signature

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_ *(seal)*

\_\_\_\_\_ *(seal)*

Contractor's Name and Corporate Seal  
 Surety's Name and Corporate Seal

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

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

\_\_\_\_\_  
 Title  
 Title

**Notes: (1) Provide supplemental execution by any  
 additional parties, such as joint venturers. (2) Any  
 singular reference to Contractor, Surety, Owner, or  
 other party shall be considered plural where applicable.**

1. The Contractor and Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors, and assigns to the Owner to pay for labor, materials, and equipment furnished for use in the performance of the Construction Contract, which is incorporated herein by reference, subject to the following terms.
2. If the Contractor promptly makes payment of all sums due to Claimants, and defends, indemnifies, and holds harmless the Owner from claims, demands, liens, or suits by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, then the Surety and the Contractor shall have no obligation under this Bond.
3. If there is no Owner Default under the Construction Contract, the Surety's obligation to the Owner under this Bond shall arise after the Owner has promptly notified the Contractor and the Surety (at the address described in Paragraph 13) of claims, demands, liens, or suits against the Owner or the Owner's property by any person or entity seeking payment for labor, materials, or equipment furnished for use in the performance of the Construction Contract, and tendered defense of such claims, demands, liens, or suits to the Contractor and the Surety.
4. When the Owner has satisfied the conditions in Paragraph 3, the Surety shall promptly and at the Surety's expense defend, indemnify, and hold harmless the Owner against a duly tendered claim, demand, lien, or suit.
5. The Surety's obligations to a Claimant under this Bond shall arise after the following:
  - 5.1 Claimants who do not have a direct contract with the Contractor,
    - 5.1.1 have furnished a written notice of non-payment to the Contractor, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were, or equipment was, furnished or supplied or for whom the labor was done or performed, within ninety (90) days after having last performed labor or last furnished materials or equipment included in the Claim; and
    - 5.1.2 have sent a Claim to the Surety (at the address described in Paragraph 13).
  - 5.2 Claimants who are employed by or have a direct contract with the Contractor have sent a Claim to the Surety (at the address described in Paragraph 13).
6. If a notice of non-payment required by Paragraph 5.1.1 is given by the Owner to the Contractor, that is sufficient to satisfy a Claimant's obligation to furnish a written notice of non-payment under Paragraph 5.1.1.
7. When a Claimant has satisfied the conditions of Paragraph 5.1 or 5.2, whichever is applicable, the Surety shall promptly and at the Surety's expense take the following actions:
  - 7.1 Send an answer to the Claimant, with a copy to the Owner, within sixty (60) days after receipt of the Claim, stating the amounts that are undisputed and the basis for challenging any amounts that are disputed; and
  - 7.2 Pay or arrange for payment of any undisputed amounts.
  - 7.3 The Surety's failure to discharge its obligations under Paragraph 7.1 or 7.2 shall not be deemed to constitute a waiver of defenses the Surety or Contractor may have or acquire as to a Claim, except as to undisputed amounts for which the Surety and Claimant have reached agreement. If, however, the Surety fails to discharge its obligations under Paragraph 7.1 or 7.2, the Surety shall indemnify the Claimant for the reasonable attorney's fees the Claimant incurs thereafter to recover any sums found to be due and owing to the Claimant.
8. The Surety's total obligation shall not exceed the amount of this Bond, plus the amount of reasonable attorney's fees provided under Paragraph 7.3, and the amount of this Bond shall be credited for any payments made in good faith by the Surety.
9. Amounts owed by the Owner to the Contractor under the Construction Contract shall be used for the performance of the Construction Contract and to satisfy claims, if any, under any construction performance bond. By the Contractor furnishing and the Owner accepting this Bond, they agree that all funds earned by the Contractor in the performance of the Construction Contract are dedicated to satisfy obligations of the Contractor and Surety under this Bond, subject to the Owner's priority to use the funds for the completion of the work.
10. The Surety shall not be liable to the Owner, Claimants, or others for obligations of the Contractor that are unrelated to the Construction Contract. The Owner shall not be liable for the payment of any costs or expenses of any Claimant under this Bond, and shall have under this Bond no obligation to make payments to or give notice on behalf of Claimants, or otherwise have any obligations to Claimants under this Bond.
11. The Surety hereby waives notice of any change, including changes of time, to the Construction Contract or to related subcontracts, purchase orders, and other obligations.
12. No suit or action shall be commenced by a Claimant under this Bond other than in a court of competent jurisdiction in the state in which the project that is the subject of the Construction Contract is located or after the expiration of one year from the date (1) on which the Claimant sent a Claim to the Surety pursuant to Paragraph 5.1.2 or 5.2, or

(2) on which the last labor or service was performed by anyone or the last materials or equipment were furnished by anyone under the Construction Contract, whichever of (1) or (2) first occurs. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

13. Notice and Claims to the Surety, the Owner, or the Contractor shall be mailed or delivered to the address shown on the page on which their signature appears. Actual receipt of notice or Claims, however accomplished, shall be sufficient compliance as of the date received.
14. When this Bond has been furnished to comply with a statutory or other legal requirement in the location where the construction was to be performed, any provision in this Bond conflicting with said statutory or legal requirement shall be deemed deleted herefrom and provisions conforming to such statutory or other legal requirement shall be deemed incorporated herein. When so furnished, the intent is that this Bond shall be construed as a statutory bond and not as a common law bond.
15. Upon requests by any person or entity appearing to be a potential beneficiary of this Bond, the Contractor and Owner shall promptly furnish a copy of this Bond or shall permit a copy to be made.

## 16. Definitions

16.1 **Claim:** A written statement by the Claimant including at a minimum:

1. The name of the Claimant;
2. The name of the person for whom the labor was done, or materials or equipment furnished;
3. A copy of the agreement or purchase order pursuant to which labor, materials, or equipment was furnished for use in the performance of the Construction Contract;
4. A brief description of the labor, materials, or equipment furnished;
5. The date on which the Claimant last performed labor or last furnished materials or equipment for use in the performance of the Construction Contract;
6. The total amount earned by the Claimant for labor, materials, or equipment furnished as of the date of the Claim;
7. The total amount of previous payments received by the Claimant; and
8. The total amount due and unpaid to the Claimant for labor, materials, or equipment furnished as of the date of the Claim.

16.2 **Claimant:** An individual or entity having a direct contract with the Contractor or with a subcontractor of the Contractor to furnish labor, materials, or equipment for use in the performance

of the Construction Contract. The term Claimant also includes any individual or entity that has rightfully asserted a claim under an applicable mechanic's lien or similar statute against the real property upon which the Project is located. The intent of this Bond shall be to include without limitation in the terms of "labor, materials, or equipment" that part of the water, gas, power, light, heat, oil, gasoline, telephone service, or rental equipment used in the Construction Contract, architectural and engineering services required for performance of the work of the Contractor and the Contractor's subcontractors, and all other items for which a mechanic's lien may be asserted in the jurisdiction where the labor, materials, or equipment were furnished.

16.3 **Construction Contract:** The agreement between the Owner and Contractor identified on the cover page, including all Contract Documents and all changes made to the agreement and the Contract Documents.

16.4 **Owner Default:** Failure of the Owner, which has not been remedied or waived, to pay the Contractor as required under the Construction Contract or to perform and complete or comply with the other material terms of the Construction Contract.

16.5 **Contract Documents:** All the documents that comprise the agreement between the Owner and Contractor.

17. If this Bond is issued for an agreement between a contractor and subcontractor, the term Contractor in this Bond shall be deemed to be Subcontractor and the term Owner shall be deemed to be Contractor.

18. Modifications to this Bond are as follows:



Bid Tab  
 Berry Farm and Bent Tree Lift Station Decommissioning  
 Rogers Water Utilities  
 Rogers, Benton County, Arkansas

Item No.	Description	Unit	Quantity	Unit Cost	Total Cost
<b><u>Berry Farm Lift Station Decommissioning</u></b>					
1	Mobilization	LS	1		
2	Trench and Excavation Safety Systems	LS	1		
3	Erosion Control (Inclusive of all items in SWPPP)	LS	1		
4	Remove and Dispose Existing Concrete Drive	SY	88		
5	Remove and Dispose Existing 12" Sanitary Sewer	LF	212		
6	Remove and Dispose Existing Sanitary Sewer Manhole	EA	1		
7	Remove and Dispose Chain Link Fence and Gates	LF	173		
8	Remove and Dispose Existing Gravel Surface	SY	680		
9	Remove and Dispose Existing Electric Meter	EA	1		
10	Remove and Dispose Existing Eletrical Transformer and Concrete Pad	EA	1		
11	Remove and Replace Concrete Curb and Gutter	LF	20		
12	Remove and Replace Concrete Sidewalk (4" Thickness)	SY	6		
13	Remove Existing Building and Appurtenances (Includes Delivery to RWU)	LS	1		
14	Demo/Fill/Cap/Abandon In Place Existing Lift Station and Valve Vault	LS	1		
15	12" PVC Sanitary Sewer (SDR-26) w/ Bedding (Includes Trenching, Backfilling)	LF	231		
16	Core Existing Manhole	EA	2		
17	Grout and Plug Manhole	EA	2		
18	Topsoil (4" Thickness)	SY	777		
19	Seeding	SY	777		
20	Solid Sodding (Detention Pond)	SY	830		
<b>Berry Farm Lift Station Decommissioning Sub-Total =</b>					
<b><u>Bent Tree Lift Station Decommissioning</u></b>					
21	Traffic Control	LS	1		
22	Trench and Excavation Safety Systems	LS	1		
23	Erosion Control (Inclusive of all items in SWPPP)	LS	1		
24	Remove and Dispose Existing 8" Sanitary Sewer	LF	53		
25	Remove and Dispose Existing Gravel Surface	SY	253		
26	Remove and Return Modular Block Retaining Wall (Coordinate w/ RWU)	LS	1		
27	Remove and Dispose Existing Electric Meter	EA	1		
28	Remove and Dispose Existing Electrical Transformer and Concrete Pad	EA	2		
29	Remove and Replace Concrete Sidewalk (4" Thickness)	SY	5		
30	Remove and Replace Concrete Curb and Gutter	LF	10		
31	Remove and Replace Asphalt Pavement (6" Thickness)	SY	34		
32	Remove Existing Building and Appurtenances (Includes Delivery to RWU)	LS	1		
33	Demo/Fill/Cap/Abandon In Place Existing Lift Station and Valve Vault	LS	1		
34	12" PVC Sanitary Sewer (SDR-26) w/ Bedding (Includes Trenching, Backfilling)	LF	56		

Bid Tab  
 Berry Farm and Bent Tree Lift Station Decommissioning  
 Rogers Water Utilities  
 Rogers, Benton County, Arkansas

Item No.	Description	Unit	Quantity	Unit Cost	Total Cost
35	Core Existing Manhole	EA	4	_____	_____
36	Sanitary Sewer Pump Around System	LS	1	_____	_____
37	Topsoil (4" Thickness)	SY	253	_____	_____
38	Seeding	SY	253	_____	_____
<b>Bent Tree Lift Station Decommissioning Sub-Total =</b>				_____	_____
				<b>Total Amount Bid =</b>	_____

# Exhibit 2: Supplementary Conditions

These Supplementary Conditions amend or supplement the Contract for Construction of a Small Project, EJCDC® C-522 (2016 Edition). All provisions that are not so amended or supplemented remain in full force and effect.

The terms used in these Supplementary Conditions have the meanings stated in the Contract. Additional terms used in these Supplementary Conditions have the meanings stated below, which are applicable to both the singular and plural thereof.

The address system used in these Supplementary Conditions is the same as the address system used in the Contract, with the prefix "SC" added thereto.

## ARTICLE 6 – BONDS AND INSURANCE

### SC-6.02 Insurance

**SC 6.02** Delete the words “Automobile Liability” from Paragraphs 6.02.A.1.c, 6.02.C, 6.02.E, and 6.02.F and substitute the following in its place:

“Business Auto Coverage”

**SC 6.02.A.1** Insert the following after Paragraph 6.02.A.1.d:

e. Railroad Protective Insurance (if applicable):

§

As directed by  
AR & MO  
Railroad

f. Additional Insureds and Waiver of Subrogation: Policies shall include Owner and Engineer as additional insureds and include a waiver of subrogation against the Owner and Engineer for Work performed under Contract.

**SC 6.02.D.2** Delete the word “Blanket” from Paragraph 6.02.D.2.

**SC 6.02.D.4** Add the following sentence to the end of Paragraph 6.02.D.4:

Cross liability is specifically not excluded.

**SC 6.02.E.1** Delete Paragraph 6.02.E.1 in its entirety and insert the following in its place:

Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together); or CG 20 10 07 04 and CG 20 37 07 04 (together); or ISO Endorsement CG 20 38 (Additional Insured – Automatic).

## ARTICLE 7 – CONTRACTOR’S RESPONSIBILITIES

### SC-7.06 License, Fees, and Permits

#### SC-7.06.B. Add the following new subparagraph immediately after Paragraph 7.06.B:

1. All contractors and subcontractors are required to obtain a license from the city clerk and the State of Arkansas Contractors Licensing prior to commencing, engaging or carrying on any of the businesses, occupations or professions described in the Rogers Arkansas Municipal Code of Ordinances Section 48-24 within the city. All out-of-town contractors doing work within the city limits must have a license. Contractors and subcontractors are also required to obtain a license from the state of Arkansas Contractors Licensing Board prior to commencing, engaging or carrying on work within the city.

### SC-7.09 Safety and Protection

#### SC-7.09.C Insert the following after Paragraph 7.09.C:

It is understood that all measures for protection of the Site, the Work, materials stored, Contractor's equipment, and existing facilities against vandalism and theft is solely the Contractor's responsibility and that no claim shall be brought against the Owner and Engineer for such damage or loss.

#### SC-7.09 Insert the following after Paragraph 7.09.E:

- F. In order to protect persons from injury and to avoid property damage, the Contractor shall provide adequate barricades, construction signs, lights, guards, flagging, and watchmen during the course of the construction work until it is safe for traffic or the public to use the roadway or other area freely and safely. All open trenches or other excavations shall have such protection. Trenches left open shall be fenced, plated and/or barricaded at all times when construction is not taking place.

Materials stored upon or alongside public property, streets, roads, and highways shall be so placed, and the Work at all times shall be so conducted, as to cause the minimum obstruction and inconvenience to the public. Execution of all safety provisions is the sole responsibility of the Contractor.

The Contractor shall obtain permission from the City and notify the fire department, police department, ambulance service, etc., prior to closing any street. Permission shall be requested by 5:00 pm three (3) business days prior to the start of the work per Rogers Municipal Code Section 52-4. The Contractor shall provide suitable signs, barricades, flagmen and detour signs necessary for the closing of streets and proper maintenance of traffic per the Manual on Uniform Traffic Control Devices (MUTCD), most current edition.

## ARTICLE 12 – CLAIMS AND DISPUTE RESOLUTION

### SC-12.01 Claims Process

#### SC 12.01.A Delete the words “but in no event later than 10 days” from Paragraphs 12.01.A and substitute the following in its place:

“but in no event later than 30 days”

**SC 12.01.E Add the following paragraph immediately following Paragraph 12.01.D:**

- E. Either party may bring an action in a court of competent jurisdiction at any time, and without proceeding through the claims process described herein, if necessary to toll or meet any applicable statute of limitations, statute of repose, or other deadline.

**ARTICLE 14 – PAYMENTS TO CONTRACTOR**

*SC-14.03 Retainage*

**SC 14.03.A Delete Paragraph 14.03.A and substitute the following in its place:**

- A. In accordance with Ark. Code. Ann. § 22-9-604, the Owner shall retain 5 % of each progress payment until final payment.

*SC-14.08 Final Payment*

**SC 14.08.A Add the following new subparagraph to Paragraph 14.08.A:**

- 1. A one (1) year maintenance bond is required to be provided with the final application for payment that is equal to 50% of the final contract amount.

**SC 14.08.B Add the following sentence to Subparagraph 14.08.B.5:**

- 1. The parties acknowledge that under Arkansas law, liens cannot be placed on Owner's property, which is publicly owned property.

**ARTICLE 15 – SUSPENSION OF WORK AND TERMINATION**

*SC-15.02 Owner May Terminate for Cause*

**SC 15.02.B Add the following new subparagraph to Paragraph 15.02.B:**

- 3. Pursue any other legal or equitable remedies available to Owner.

**SC 15.02.C Add the following sentence to Paragraph 15.02.C:**

“However, Owner may bring an action in a court of competent jurisdiction, or with any regulatory agency, or other body having jurisdiction, at any time, if necessary to toll or meet any applicable statute of limitations, statute of repose, or other deadline.”

**ARTICLE 17 – MISCELLANEOUS**

*SC-17 Miscellaneous*

**SC 17.06 Delete Paragraph 17.06.A in its entirety and substitute the following in its place:**

“This Contract is to be governed by the laws of the State of Arkansas without regard to its conflict of law principles. Venue for any action concerning this Contract or the Work, shall lie in the Federal or State Courts embracing Benton County, Arkansas.”

**SC-17.07 – SC 17.13 Add the following new paragraphs immediately after Paragraph 17.06:**

*17.07 Tort Immunity*

Nothing in this 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.

17.08 *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 agree that there are no third-party beneficiaries of this Agreement and that no person or entity, other than the parties hereto (and in the case of Owner, the Commission and the City of Rogers) shall have standing to enforce the terms of this agreement.

17.09 *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. In the event any provision of this Contract is not in compliance with law, then the parties shall cooperate to replace such noncompliant provision with a provision that complies with the law and that meets or most nearly meets the intent of the parties hereto.

17.10 Rogers Water Utilities defined

Rogers Water Utilities is defined as the municipal water and sewer utility of the City of Rogers, AR being governed by the Rogers Waterworks and Sewer Commission of the City of Rogers, AR.

17.11 *Public Convenience*

During the progress of the Work the convenience of the local public, businesses and residents along the Work shall be considered and, where possible, their rights of access shall be preserved. Temporary driveways, approaches, and crossings shall be provided where practical and maintained in good and safe condition. Access shall be maintained to businesses at all times during their hours of operation. Construction materials shall be stored or stockpiled as to cause as little obstruction as possible and still be readily accessible for use or inspection. No material shall be stored within 5 feet of any tree or building nor within 10 feet of any fire hydrant; fire hydrants shall always remain accessible and ready for immediate use by the fire department.

17.12 *Dust, Mud, Drainage, and Erosion Control*

Dust, Mud, Drainage, and Erosion Control: For all sites one (1) acre and larger, minimum erosion control measures shall be conducted per Chapter 8 Construction Site Stormwater Management of the Rogers Drainage Manual as adopted by Ordinance Number 13-52. For all sites less than one (1) acre, the following provisions shall apply:

1. The Contractor shall make all necessary precautions and measures necessary to prevent generation of unnecessary dust or mud and the accumulation of dust or mud on vegetation, structures, streets, parking lots or other areas which may be affected. Earth surfaces shall be kept moist with water or by application of a safe chemical dust suppressant.
2. The Contractor shall provide for the drainage of storm water and such water as may be applicable or discharged on the site during performance of the Contract. All existing drainage channels or conduits shall be cleaned, enlarged, or supplemented as necessary to carry all increased run-off attributed to the Contractor's operations.
3. The Contractor shall prevent erosion of soil on the site and adjacent property resulting from his construction activities. Effective measures shall be initiated prior to the commencement of clearing, grading, excavation, or other operations.
4. The site shall be kept clean and orderly, all debris cleaned up at least once at the end of the day and any the road shall be kept clean of any mud or debris.

*17.13 Tree and Plant Protection*

The Contractor shall prevent the destruction of all trees and other vegetation along the course of the work to be performed under this Contract. No trees or cultured plants shall be removed unless their removal is directed by Owner, Engineer, or the Engineer's representative. Furthermore, all trimming and repair of trees and plants shall be performed by qualified nurserymen or horticulturists. No trimming shall be performed with anything other than approved implements; no earth-moving equipment shall be used.

**Section 7.C**

**Supplemental Specifications**

The following specifications are intended to supplement the Rogers Water Utilities Standard Specifications.

Section I - METHODS OF MEASUREMENT AND PAYMENT FOR SEWER MAIN

The methods of measurement and payment for work completed as set out in the specifications covering various items of construction are hereby clarified and are superseded as set out herein.

Payment for each bid item shall be made at the unit and lump sum prices as set forth in the Proposal under the various items of the Bid as hereinafter set out.

1 MOBILIZATION

Payment for Mobilization shall be made at a time when all necessary equipment has been transported on the construction site and the site ingress/egress has been established.

2 GRAVITY SEWER MAIN CONSTRUCTION - OPEN TRENCH

Payment for gravity sewer main by open trench shall be made at the unit price bid per linear foot per diameter as indicated in the Proposal, complete in place. The unit price bid shall be in full compensation for all sewer pipe in the size and type indicated, pipe bedding and protection material, concrete anchorage (as shown on the plans), furnishing and laying various sizes and types of gravity sewers as shown on the plans, back fill, cleanup, seeding, fertilizing and mulching, testing, utility repair, and every item of construction for a complete installation not specifically set out in the Bid.

Measurement shall be based on the total length of sewer main laid per diameter, including pipe required for ties to the existing system, with no deductions made for manholes.

Measurement shall be based on the total length of sewer main laid per diameter, including pipe required for ties to the existing system, with no deductions made for manholes.

Payment for both methods shall be apportioned to the following schedule:

Sewer Main installation	70% of unit bid price
Sewer Main testing	10% of unit bid price
Sewer Main cleanup	20% of unit bid price



Payment for sewer main installation is allowable when pipe is in the trench, bedded and backfilled. Payment for sewer main testing is allowable when acceptable air test and mandrel test. Payment for sewer main cleanup is allowable when cleanup is complete to the satisfaction of the Utility.

### 3 REMOVAL AND DISPOSAL OF SEWER MAINS

Payment for removal and disposal of gravity sewer mains shall be made at the unit price bid per linear foot. This price is for full compensation for every item of work to complete the removal and the disposal of the gravity sewer main.

### 4 SANITARY SEWER MANHOLES

Payment for sanitary sewer manholes shall be made at the unit price bids for each manhole indicated in the Proposal, complete in place for six (6) foot diameter manholes up to the listed depth for the bid item in feet. Payment for approved extra depth in manholes shall be made at the unit price bid per foot of extra depth. These prices shall be full compensation for every item of work required to complete the manholes as shown on the Plans and as specified, including excavation, forming of barrel and cone sections, concrete, back fill, vacuum testing by the Contractor, manhole stub outs in the size and length indicated in the plans, and every other item required for a complete installation not specifically set out as a bid item.

### 5 CONNECTION TO EXISTING MANHOLE/MAIN

Payment for connection to existing manhole or main shall be made at the unit price bid per each connection. The unit price bid shall be in full compensation for all materials and labor necessary to connect new sewer main to existing manhole with water stop around new pipe and watertight repair of manhole wall using non shrink grout or an existing main with water stop around new/existing pipe and the cutout of the existing pipe to invert.

### 6 ABANDON EXISTING MANHOLE

Payment to abandon existing manholes shall be made at the unit price bid per each. The unit price bid shall be in full compensation for all materials and labor necessary to abandon the manhole per RWU specifications.

### 7 LIFT STATION DEMO/FILL/CAP/ABANDON IN PLACE EXISTING LIFT STATION AND VALVE VAULT

Payment for lift station and valve vault d/f/c/a shall be made at the unit price bid lump sum. The lump sum price bid shall be in full compensation for all materials, coordination with any/all franchise utilities, Rogers Water Utilities and the City of Rogers. It shall also include all the labor necessary to complete the work per Rogers Water Utility standards and/or any overriding standards from franchise utilities and the City of Rogers.

## 8 REMOVAL AND DISPOSAL OF EXISTING ELECTRIC METERS

Payment for the removal and disposal of the existing electric meters shall be made at the unit price bid per each. It shall also include the coordination with any/all franchise utilities and shall be full compensation for all labor and materials necessary to complete the work as dictated by the scope.

## 9 REMOVAL AND DISPOSAL OF EXISTING ELECTRICAL TRANSFORMERS AND CONCRETE PADS

Payment for removal and disposal of existing electrical transformers and concrete pads shall be made at the unit price bid per each. It shall include the coordination with any/all franchise utilities and shall be full compensation for all labor and materials necessary to complete the work as dictated by the scope.

## 10 SANITARY SEWER PUMP AROUND SYSTEM

Payment for the sanitary sewer pump around system shall be made at the unit price bid lump sum. It shall include all labor, materials, equipment, and any other necessary items to complete the pump around as needed.

## 11 REMOVAL OF EXISTING BUILDING AND APPURTENANCES

Payment for the removal of the existing building and appurtenances shall be made at the unit price bid lump sum. It shall include all labor, materials, equipment, and any other necessary items to complete the work. It shall also include the delivery of the building and appurtenances back to RWU at the location of our choosing but not to exceed the Rogers city limits.

## 12 REMOVAL AND DELIVERY OF MODULAR BLOCK RETAINING WALL

Payment for the removal of modular block retaining wall shall be made at the unit price bid lump sum. It shall include all labor, materials, equipment, and any other necessary items to complete the work. It shall also include the delivery of the blocks back to RWU at the location of our choosing but not to exceed the Rogers city limits.

## 13 TRENCH SAFETY

The contractor is responsible for the provision of all equipment and actions necessary to meet the requirements of federal and state law pertaining to trench and excavation safety. Payment shall be made at the lump sum bid price upon the completion of construction trenching/backfill and after the contractor submits a statement declaring his compliance with all applicable laws.

#### 14 FINAL INSPECTION

The final estimate will be prepared and approved for final payment upon the completion of the work after a final inspection of the work has been made. The inspection shall be made by the Engineer in the presence of the Contractor. The final acceptance of the job and the issuance of the Date of Final Completion of the Work will be based on the Work performed and material used with respect to meeting all specifications set forth herein. The final acceptance of the job and the payment to the Contractor in full will not reduce the continuing liability of the Contractor as set out in these specifications.

#### 15 GUARANTEE

The Contractor shall guarantee and warranty his work including all materials for a period of one (1) year from the Date of Final Completion of the Work to the extent that he shall repair any defects due to faulty workmanship or materials.