

REAL ESTATE CONTRACT

OFFER AND ACCEPTANCE with SPECIAL CONDITIONS

This Real Estate Contract ("this Contract") is entered into by _____[name of entity] a _____[type of entity] organized under the laws of the State of _____, hereinafter referred to as "Buyer" on the one hand, and the City of Rogers, Arkansas on the other hand ("Seller").

Recitals

WHEREAS Seller owns a municipal water system and operates the system through the Rogers Waterworks and Sewer Commission ("the Commission") and the Rogers Water Utilities, the municipal water and sewer utility of the City of Rogers, Arkansas ("RWU"); and

WHEREAS RWU, with the authorization of the Commission and the Rogers City Council, published that certain Invitation for Bid, IFB # RWU-RP-2024-1, Persimmon Street Tower Elevated Storage Tank Site ("IFB"); and

WHEREAS Buyer responded to the IFB and demonstrated that it satisfied the requirements for the IFB; and

WHEREAS Buyer was awarded this Contract pursuant to the IFB Process; and

WHEREAS Seller and Buyer now desire to enter into this Contract.

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

1. Offer. Buyer offers to purchase, and Seller offers to sell, subject to the terms and conditions set forth herein, the following described real estate situated in Benton County, Arkansas, to-wit:

Benton County Arkansas Parcel No. 02-07723-00

Legal Description:

The South Half (S ½) of Lot Thirteen (13) and all of Lots Sixteen (16) and Seventeen (17) in Block six (6) of the Smith & Hayes Addition to Rogers.

2. Purchase Price. The Buyer shall pay as purchase price for the property to the Seller, the sum of _____(\$ _____) in cash at closing.

3. Earnest Money. Buyer shall provide earnest money of _____ (\$ _____) (25% of purchase price listed in paragraph 2 above) to either the Seller or its Title Company within 15 days of the execution of this Agreement.

4. Conveyance with Special Conditions. Unless otherwise specified, conveyance shall be made to Buyer, by Warranty Deed with Special Conditions, said deed shall be subject to recorded restrictions and easements, if any, which do not materially affect the value of the property, shall be subject to any existing leases, and shall contain Special Conditions listed below which shall be incorporated by reference into the Deed, said Special Conditions shall run with and bind the land and be binding on any subsequent purchaser. If Buyer fails to perform to comply with the Special Conditions and the post-closing obligations (as defined herein below) within the time specified, then title to the Property shall revert to the City. Unless expressly reserved herein, such conveyance shall include all mineral rights owned by Seller.

5. Title. The Seller shall furnish, at Buyer's expense, a policy of title insurance in the amount of the purchase price issued by a title insurance company selected by Buyer ("Title Company"). If objections are made to title, Seller shall have a reasonable time to cure the objections.

6. Survey. If Buyer desires a survey or if a survey is required by Buyer's lending institution, it is agreed and understood between the parties that Buyer shall pay the cost of said survey.

7. Inspection and repairs. Buyer shall purchase the property "As Is." Buyer represents and warrants that it is familiar with Property of this kind, has inspected the Property, and is aware of conditions, including environmental hazards on the property. Buyer shall assume full responsibility for the property after conveyance.

8. Buyers' Disclaimer of Reliance: Buyer certifies that Buyer has personally inspected the property as fully as Buyer desires and is not relying and shall not hereafter rely upon any warranties, representations, or statements of Seller and agree to accept the property "As Is."

9. Closing. Closing is the date and time at which the Seller delivers to Buyer an executed and acknowledged Deed. The closing date is designated as on or before the _____ [insert date], provided there are no unforeseen delays such as clearing title. The closing date may be extended by written agreement of the parties. Closing shall occur at the offices of a Title Company. All closing costs or escrow fees associated with the Closing and the conveyance of the property shall be paid by Buyer.

10. Possession. Possession of the property shall be delivered to Buyer at closing.

11. Special Conditions. The following special conditions apply to this Contract.

11.1. IFB Terms and Conditions Incorporated. The terms and conditions of that certain Invitation for Bid (IFB RWU-RP-2024-1) (“the IFB”) and Buyer’s response thereto (“Buyer’s Response”) are incorporated herein by reference except as may be otherwise explicitly amended or varied by the terms of this Contract.

11.2. Disassembly, removal, and disposal of EST. The property contains a decommissioned water tower/elevated water storage tank (EST) and appurtenances. In accordance with Buyer’s Response, **Buyer shall, at its own cost and expense, disassemble remove, and dispose of the EST and all appurtenances within _____ months of the Closing.**

Buyer shall furnish, at its own costs and expense, all supervision, labor, equipment, tools, materials, machinery, vehicles, transportation, subcontracted items, supplies, personnel and facilities necessary to properly, legally, and safely disassemble, remove, and dispose of the EST and all appurtenances. Buyer shall keep the property and surrounding areas free from accumulation of debris, waste materials or rubbish caused by the work. If Buyer uses contractors to accomplish the work, Buyer shall use only capable and qualified contractors and subcontractors to accomplish disassembly, removal, and disposal of the EST and appurtenances.

11.3 Remedies. If Buyer does not complete disassembly, removal, and disposal of the EST and appurtenances within the time specified in the preceding paragraph, then title to the Property shall revert to Seller, and Seller at its option may:

(a) retain the purchase price paid by Buyer, as liquidated damages and not as a penalty (the parties agreeing that in the event Buyer fails to perform its obligation to complete disassembly, removal, and disposal of the EST within the time specified that Seller’s damages will be difficult to calculate); or

(b) bring an action against Buyer for actual damages caused by Buyer’s failure to perform its obligation to complete disassembly, removal and disposal of the EST and appurtenances within the time specified; and

(c) assert any other legal and equitable remedies available to it.

Seller’s remedies herein are cumulative and may be asserted by the Seller itself, the Commission, or RWU, or any or all of them.

11.4. Insurance. Buyer (and Buyer's contractors and subcontractors if contractors are used) must have adequate insurance for undertaking disassembly, removal, and disposal of the EST and appurtenances in at least the following types and amounts: including:

- a. Worker's Compensation: Statutory
- b. Employer's liability: bodily injury, each accident, \$2,000,000; bodily injury by disease, each employee, \$2,000,000; Bodily injury/disease, aggregate, \$2,000,000;
- c. General Liability: Each occurrence (bodily injury or property damage), \$2,000,000; General Aggregate \$2,000,000;
- d. Excess or Umbrella Liability: per occurrence \$10,000,000; General Aggregate \$10,000,000
- e. Automobile Liability: Combined single limit (bodily injury and property damage): \$2,000,000; general aggregate \$2,000,000.
- f. Professional liability (for professionals, such as Engineers, employed by Buyer in disassembly and removal of the EST): each claim made \$2,000,000; annual aggregate \$2,000,000.

Buyer shall retain such insurance coverage beyond completion of the disassembly, removal and disposal of the EST and appurtenances until expiration of any applicable statute of limitations. At Seller's request, Buyer shall make the City, the Commission, and RWU additional insureds as to any insurance policy (except for worker's compensation and professional liability).

11.5 Indemnity and Hold Harmless Provision: Buyer shall be responsible for any and all liabilities arising from Buyer's disassembly, removal, and disposal of the EST and appurtenances. Buyer shall indemnify and hold Seller, the Commission, and RWU harmless for all causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, including but not limited to, bodily injury (including death), personal injury, property damage, environmental contamination, expenses, and reasonable attorneys' fees, of whatever nature, (i) due to any negligent or intentional act or omission on the part of Buyer, its officers, employees, agents, contractors, professionals or others working at the direction of Buyer or on its behalf (and any officer, employee, or agent thereof), (ii) due to Buyer's breach of any agreement with any third-party, (iii) due to Buyer's violation of any pertinent federal, state, or local law, rule, or regulation, (iv) due to violation of any pertinent federal, state, or local law, rule, or regulation by any of Buyer's contractors, subcontractors, or any other person or entity with whom Buyer employs or engages for disassembly, removal, and disposal of the EST and appurtenances (and their officers, employees, agents, contractors, and professionals etc.) and (v) any other act or omission in connection with disassembly, removal, and disposal of the EST and appurtenances. This Indemnity and Hold Harmless provision shall survive until the expiration of any applicable statutes of limitation and/or statutes of repose.

11.6 No Obligation of Indemnity by RWU; Tort Immunity Not Waived. The parties hereto agree that Seller, the Commission, and RWU have no obligation of indemnity of any type (whether contractual, equitable, or otherwise denominated) to Buyer under this Contract or to any of Buyer's employees, officers, agents, owners, contractors, agents, employees, professionals, or to any third party. Nothing in the Contract shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities granted to Seller, the Commission, and RWU pursuant to Ark. Code. Ann. §21-9-301 and other applicable law.

11.7 No Joint Venture; No Third-Party Beneficiaries. This Contract is made at arm's length between 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 transactions between the parties. The parties further agree that there are no third-party beneficiaries of this Contract and that no person or entity, other than the parties hereto (and in the case of Seller, the Commission and RWU) shall have standing to enforce the terms of this Contract.

12. Post Closing Obligations: Survival Beyond Closing. Those provisions of this Contract which are intended by their nature to survive beyond the Closing referenced above ("post-closing obligations and provisions") shall survive beyond Closing. These provisions, include, without limitation the obligations and provisions contained in Paragraph 11 (11.1, through 11.7) All such post-closing obligations and provisions shall survive the Closing referenced herein and the doctrine of merger shall not apply to extinguish such obligations and provisions regardless of whether such obligations or provisions are contained in the Deed of conveyance. **Buyer specifically disclaims and waives any benefit of the doctrine of merger or any similar doctrine, however styled, labeled, or described that might be asserted to avoid Buyer's post-closing obligations or void the post-closing provisions.**

13. Termite Control. None required.

14. Risk of Loss. Risk of loss or damage to the property by fire or other casualty occurring prior to Closing is retained by Seller. Risk of Loss or damage to property and responsibility for the property passes to the Buyer on Closing.

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

16. 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.

17. Approval by Governmental Bodies. This contract shall be contingent upon the approval of the Rogers Waterworks and Sewer Commission and the Rogers City Council.

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

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

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

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

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

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

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

25. Certification of Compliance with Antiboycott Laws. Pursuant to Ark. Code. Ann. § 25-1-503, Buyer hereto certifies that it is not currently engaged in a boycott of Israel. Buyer further agrees for the duration of the Contract not to engage in a boycott of Israel. Pursuant to Arkansas Code Annotated § 25-1-1002, Buyer certifies that it is not currently engaged in, and agrees for the duration of the Contract not to engage in, a boycott of energy, fossil fuel, firearms, and ammunition industries.

SIGNATURE PAGE FOLLOWS

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

The above offer is executed on _____.

SELER:
City of Rogers, Arkansas

C. GREG HINES, Mayor

Attest:

JESSICA RUSH, City Clerk

The above offer is accepted on _____.

BUYER:

By:

Name:

Title:
