

PROJECT MANUAL

(Issued for Bidding)

FOR

5th & WALNUT WATER & SEWER REPLACEMENT

Rogers, Arkansas

June 23rd, 2024



Rogers Water Utilities
Engineering Division
601 S. 2nd St.
Rogers, AR 72756

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NOTICE TO BIDDERS

Notice is hereby given that **Rogers Water Utilities** is soliciting bids for furnishing all tools, materials and labor necessary to complete the work required for **5th & Walnut Water & Sewer Replacement** as part of the City of Rogers Downtown Bicycle/Pedestrian Improvements. The project consists of the replacement of a total of approximately 236 LF of 8" DIP water main and 110 LF of 8" PVC sewer main with associated manholes, fire hydrants, steel casing, aggregate backfill and other appurtenances.

All necessary work, materials and every item of construction shall be in accordance with the plans and contract documents developed by Rogers Water Utilities. Bid documents will be available for download on or before Wednesday, March 8th online at: <https://www.rwu.org/developers-and-contractors/bids-contracts> or at <https://www.centralbidding.com>. Contact the Utility office at (479) 936-5426 or email briansartain@rwu.org with any questions. The contractors shall make such inspection and studies of the work site necessary to familiarize themselves with all conditions to be encountered.

Bids will be publicly opened and read aloud in the Utility Office at 601 South 2nd Street, Rogers, Arkansas, at 2:00 p.m. local time on Wednesday, July 10th, 2024.

Bidders shall make such inspection and studies of the work site necessary to familiarize themselves with all conditions to be encountered. Bidding security in the form of a bid bond, cash, a cashier's check, or certified check payable to the Rogers Water Utilities, in an amount not less than five (5) percent of the total bid shall be furnished by each bidder. The amount of such deposit will be forfeited immediately to the Owner as an agreed amount of liquidated damages if the bidder to whom the contract is awarded fails to enter into contract and to furnish a performance and a payment bond within ten (10) days from and after the date the award is made.

Bids must be made upon the official proposal sheets contained in the specifications. All bids shall be sealed and the envelopes addressed to the attention of: Engineering Department, Rogers Water Utilities, P. O. Box 338, Rogers, AR 72757. All bids shall be plainly marked on the outside of the envelope specifying that it is a Bid for 5th & Walnut Intersection, the date for opening of bids, and the name and address of the bidder, and the contractor's license number. The Bidder must have a municipal and utility construction license in the State of Arkansas at the time of bid.

The attention of all bidders is called to the fact that they must be licensed under the terms of Act 150 of the 1965 Acts of the Arkansas Legislature, subject to any subsequent amendments. Pursuant to Arkansas Code Annotated Sec. 22-9-203, the State encourages all small, minority and women business enterprises to submit bids for capital improvements. Encouragement is also made to all general contractors that in the event they subcontract portions of their work, consideration be given to identified groups.

Rogers Water Utilities reserves the right to reject any and all bids and to waive any informalities in the proposal deemed to be in the best interests of the Utility. The Utility further reserves the right to withhold the awarding of the contracts for a period not to exceed 60 days after the receipt of bids. Dated this 2nd day of March, 2023.

This publication was paid for by Rogers Water Utilities, Engineering Office. Amount paid: \$486.70

SECTION 200

INSTRUCTIONS TO BIDDERS

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ARTICLE 1 – DEFINED TERMS

- 1.01 Terms used in these Instructions to Bidders have the meanings indicated in the Contract and Supplementary Conditions. Additional terms used in these Instructions to Bidders have the meanings indicated below:
- A. Owner - Rogers Water Utilities of the City of Rogers, AR
 - B. *Issuing Office* – Rogers Water Utilities, Engineering Department
Contact: Aaron Short (479) 659-9163
 - C. Engineer - CEI Engineering Associates, Inc.
Contact: Andrew Slyter (479) 273-9472
 - D. *Contract* – “Contract for Construction of a Small Project” pertaining to water and sewer utility work located at the intersection of 5th & Walnut St., attached herein.

ARTICLE 2 – COPIES OF BIDDING DOCUMENTS

- 2.01 Complete sets of the Bidding Documents may be obtained from the Issuing Office in the number and format stated in the advertisement or invitation to bid. The deposit will ***NOT*** be refunded.
- 2.02 Complete sets of Bidding Documents shall be used in preparing Bids; neither Owner nor Engineer assumes any responsibility for errors or misinterpretations resulting from the use of incomplete sets of Bidding Documents.
- A. If electronic files are supplied, either CAD, PDF or other format, the Owner nor the Engineer assumes any responsibility for errors or misinterpretations resulting from their use. These files are supplied solely to aid the Bidder and the hardcopy Bidding Documents shall have precedence.
- 2.03 Owner and Engineer, in making copies of Bidding Documents available on the above terms, do so only for the purpose of obtaining Bids for the Work and do not authorize or confer a license for any other use.

ARTICLE 3 – QUALIFICATIONS OF BIDDERS

- 3.01 To demonstrate Bidder’s qualifications to perform the Work, bidder shall submit with the bid (a) completed “Statement of Bidder’s Qualifications”, see Section 450 of this document (b) the following additional information:
- A. Bidder’s State Contractor’s license.
 - B. The winning Bidder is required to have or obtain a business license in the City of Rogers, Arkansas prior to the start of construction. This license may be obtained from the City Clerk’s office.
 - C. Subcontractor and Supplier qualification information may be requested at the Owner’s discretion.
- 3.02 Prospective bidders who have previously filed a Statement of Qualifications with Rogers Water Utilities may obtain a waiver from this requirement. Bidders shall contact the utility to obtain verification of prior approval. Rogers Water Utilities reserves the right to require an updated form be submitted.

- 3.03 In determining the qualification of the Prospective Bidder, the following elements may be considered: Whether the Prospective Bidder involved (a) maintains a permanent place of business; (b) has adequate equipment to do the work properly and expeditiously; (c) has suitable financial status to meet obligations incident to the work; (d) has appropriate technical experience; (e) has material available; (f) has competent subcontractors and material/equipment suppliers and manufacturers; (g) previous unsatisfactory completion of contract or failure to complete contract.
- 3.04 The Prospective Bidder is required to show that former work performed by him has been handled in such manner that there are no just or proper claims pending against such work. No Prospective Bidder will be acceptable if he is engaged on any other work that impairs his ability to finance this Contract or provide equipment for the proper execution of same. The Prospective Bidder shall demonstrate his ability by meeting all requirements herein stipulated. The bid will not be considered if qualifications appear to be unacceptable.
- 3.05 It is the policy of the City of Rogers that the participation of small, minority and women's business enterprises shall be encouraged for all contracts estimated to exceed \$75,000. The Bidder agrees to carry out this policy in the awarding of contracts or subcontracts to the fullest extent consistent with efficient contract performance. The Bidder further agrees to cooperate in any studies or surveys as may be necessary to determine the extent of the Bidder's compliance with this clause.
- 3.06 A Bidder's failure to submit required qualification information may disqualify Bidder from receiving an award of the Contract.
- 3.07 No requirement in this Article 3 to submit information will prejudice the right of Owner to seek additional pertinent information regarding Bidder's qualifications.
- 3.08 Bidder is advised to carefully review those portions of the Bid Form requiring Bidder's representations and certifications.

ARTICLE 4 – SITE AND OTHER AREAS; EXISTING SITE CONDITIONS; EXAMINATION OF SITE; OWNER'S SAFETY PROGRAM; OTHER WORK AT THE SITE

4.01 *Site and Other Areas*

- A. The Site is identified in the Bidding Documents. By definition, the Site includes rights-of-way, easements, and other lands furnished by Owner for the use of the Contractor. Any additional lands required for temporary construction facilities, construction equipment, or storage of materials and equipment, and any access needed for such additional lands, are to be obtained and paid for by Contractor.

4.02 *Existing Site Conditions*

- A. Subsurface and Physical Conditions; Hazardous Environmental Conditions
1. The following subsurface investigations have been conducted as part of this project:
 - a. **RWU Crews have exposed and verified elevations of the telecommunications ducts at utility crossing locations. These elevations are reflected on the utility plan and profile sheets.**
- B. Underground Facilities: Information and data shown or indicated in the Bidding Documents with respect to existing Underground Facilities at or contiguous to the Site are set forth in the Contract Documents and are based upon information and data furnished to Owner and Engineer by owners of such Underground Facilities, including Owner, or others.

- C. Adequacy of Data: Provisions concerning responsibilities for the adequacy of data furnished to prospective Bidders with respect to subsurface conditions, other physical conditions, and Underground Facilities, and possible changes in the Bidding Documents due to differing or unanticipated subsurface or physical conditions appear in **Article 11 of the Contract**.

4.03 *Site Visit and Testing by Bidders*

- A. Bidder shall conduct the required Site visit during normal working hours, and shall not disturb any ongoing operations at the Site.
- B. Bidder is not required to conduct any subsurface testing, or exhaustive investigations of Site conditions.
- C. On request, and to the extent Owner has control over the Site, and schedule permitting, the Owner will provide Bidder access to the Site to conduct such additional examinations, investigations, explorations, tests, and studies as Bidder deems necessary for preparing and submitting a successful Bid. Owner will not have any obligation to grant such access if doing so is not practical because of existing operations, security or safety concerns, or restraints on Owner's authority regarding the Site.
- D. Bidder shall comply with all applicable Laws and Regulations regarding excavation and location of utilities, obtain all permits, and comply with all terms and conditions established by Owner or by property owners or other entities controlling the Site with respect to schedule, access, existing operations, security, liability insurance, and applicable safety programs.
- E. Bidder shall fill all holes and clean up and restore the Site to its former condition upon completion of such explorations, investigations, tests, and studies.

4.04 *Owner's Safety Program*

- A. Site visits and work at the Site may be governed by an Owner safety program. As the General Conditions indicate, if an Owner safety program exists, it will be noted in the Supplementary Conditions.

4.05 *Other Work at the Site*

- A. Reference is made to **Paragraph 7.02 of the Contract (also see supplementary conditions)** for the identification of the general nature of other work of which Owner is aware (if any) that is to be performed at the Site by Owner or others (such as utilities and other prime contractors) and relates to the Work contemplated by these Bidding Documents. If Owner is party to a written contract for such other work, then on request, Owner will provide to each Bidder access to examine such contracts (other than portions thereof related to price and other confidential matters), if any.

ARTICLE 5 – BIDDER'S REPRESENTATIONS

5.01 It is the responsibility of each Bidder before submitting a Bid to:

- A. examine and carefully study the Bidding Documents, and any data and reference items identified in the Bidding Documents;
- B. visit the Site, conduct a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfy itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work;

- C. become familiar with and satisfy itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work;
- D. consider the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and the Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs;
- E. agree, based on the information and observations referred to in the preceding paragraph, that at the time of submitting its Bid no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of its Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents;
- F. become aware of the general nature of the work to be performed by Owner and others at the Site that relates to the Work as indicated in the Bidding Documents;
- G. promptly give Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder discovers in the Bidding Documents and confirm that the written resolution thereof by Engineer is acceptable to Bidder;
- H. determine that the Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work; and
- I. agree that the submission of a Bid will constitute an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 6 – PRE-BID CONFERENCE

6.01 A pre-Bid conference will not be held for this project.

ARTICLE 7 – INTERPRETATIONS AND ADDENDA

7.01 All questions about the meaning or intent of the Bidding Documents are to be submitted to Engineer in writing. Interpretations or clarifications considered necessary by Engineer in response to such questions will be issued by Addenda delivered to all parties recorded as having received the Bidding Documents. Questions received less than four days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral and other interpretations or clarifications will be without legal effect.

7.02 Addenda may be issued to clarify, correct, supplement, or change the Bidding Documents.

ARTICLE 8 – BID SECURITY

8.01 A Bid must be accompanied by Bid security made payable to Owner in an amount of 5 percent of Bidder's maximum Bid price (determined by adding the base bid and all alternates) and in the form of a certified check, bank money order, or a Bid bond (on the form included in the Bidding Documents) issued by a surety meeting the requirements of Paragraphs 6.01 and 6.02 of the General Conditions.

- 8.02 The Bid security of the apparent Successful Bidder will be retained until Owner awards the contract to such Bidder, and such Bidder has executed the Contract Documents, furnished the required contract security, and met the other conditions of the Notice of Award, whereupon the Bid security will be released. If the Successful Bidder fails to execute and deliver the Contract Documents and furnish the required contract security within 15 days after the Notice of Award, Owner may consider Bidder to be in default, annul the Notice of Award, and the Bid security of that Bidder will be forfeited. Such forfeiture shall be Owner's exclusive remedy if Bidder defaults.
- 8.03 The Bid security of other Bidders that Owner believes to have a reasonable chance of receiving the award may be retained by Owner until the earlier of seven days after the Effective Date of the Contract or 61 days after the Bid opening, whereupon Bid security furnished by such Bidders will be released.
- 8.04 Bid security of other Bidders that Owner believes do not have a reasonable chance of receiving the award will be released within seven days after the Bid opening.

ARTICLE 9 – CONTRACT TIMES

- 9.01 The number of days within which, or the dates by which, the Work is to be substantially completed and ready for final payment are set forth in the Agreement.

ARTICLE 10 – LIQUIDATED DAMAGES

- 10.01 Provisions for liquidated damages, if any, for failure to timely attain a Milestone, Substantial Completion, or completion of the Work in readiness for final payment, are set forth in the Contract.

ARTICLE 11 – SUBSTITUTE AND “OR-EQUAL” ITEMS

- 11.01 The Contract for the Work, as awarded, will be on the basis of materials and equipment specified or described in the Bidding Documents without consideration during the bidding and Contract award process of possible substitute or “or-equal” items. In cases in which the Contract allows the Contractor to request that Engineer authorize the use of a substitute or “or-equal” item of material or equipment, application for such acceptance may not be made to and will not be considered by Engineer until after the Effective Date of the Contract.
- 11.02 All prices that Bidder sets forth in its Bid shall be based on the presumption that the Contractor will furnish the materials and equipment specified or described in the Bidding Documents, as supplemented by Addenda. Any assumptions regarding the possibility of post-Bid approvals of “or-equal” or substitution requests are made at Bidder's sole risk.

ARTICLE 12 – SUBCONTRACTORS, SUPPLIERS, AND OTHERS

- 12.01 A Bidder shall be prepared to retain specific Subcontractors, Suppliers, or other individuals or entities for the performance of the Work if required by the Bidding Documents (most commonly in the Specifications) to do so. If a prospective Bidder objects to retaining any such Subcontractor, Supplier, or other individual or entity, and the concern is not relieved by an Addendum, then the prospective Bidder should refrain from submitting a Bid.
- 12.02 Subsequent to the submittal of the Bid, Owner may not require the Successful Bidder or Contractor to retain any Subcontractor, Supplier, or other individual or entity against which Contractor has reasonable objection.

- 12.03 If requested by the Owner, the apparent Successful Bidder, and any other Bidder, shall within five days after Bid opening, submit to Owner a list of the Subcontractors or Suppliers proposed for any or all portions of the Work.

If requested by Owner, such list shall be accompanied by an experience statement with pertinent information regarding similar projects and other evidence of qualification for each such Subcontractor, Supplier, or other individual or entity. If Owner or Engineer, after due investigation, has reasonable objection to any proposed Subcontractor, Supplier, individual, or entity, Owner may, before the Notice of Award is given, request apparent Successful Bidder to submit an acceptable substitute, in which case apparent Successful Bidder shall submit a substitute, without an increase in Bid price.

- 12.04 If apparent Successful Bidder declines to make any such substitution, Owner may award the Contract to the next lowest Bidder that proposes to use acceptable Subcontractors, Suppliers, or other individuals or entities. Declining to make requested substitutions will constitute grounds for forfeiture of the Bid security of any Bidder.

ARTICLE 13 – PREPARATION OF BID

- 13.01 The Bid Form is included with the Bidding Documents.

- A. All blanks on the Bid Form shall be completed in ink and the Bid Form signed in ink. Erasures or alterations shall be initialed in ink by the person signing the Bid Form. A Bid price shall be indicated for each section, Bid item, alternate, adjustment unit price item, and unit price item listed therein.
- B. If the Bid Form expressly indicates that submitting pricing on a specific alternate item is optional, and Bidder elects to not furnish pricing for such optional alternate item, then Bidder may enter the words “No Bid” or “Not Applicable.”

- 13.02 A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.

- 13.03 A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.

- 13.04 A Bid by an individual shall show the Bidder’s name and official address.

- 13.05 A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The official address of the joint venture shall be shown.

- 13.06 All names shall be printed in ink below the signatures.

- 13.07 The Bid shall contain an acknowledgment of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

- 13.08 Postal and e-mail addresses and telephone number for communications regarding the Bid shall be shown.

- 13.09 The Bid shall contain evidence of Bidder’s authority and qualification to do business in the state where the Project is located, or Bidder shall covenant in writing to obtain such authority and qualification prior to award of the Contract and attach such covenant to the Bid. Bidder’s state contractor license number, if any, shall also be shown on the Bid Form. Refer to Paragraph 3.01.

ARTICLE 14 – BASIS OF BID

14.01 *Unit Price*

- A. Bidders shall submit a Bid on a unit price basis for each item of Work listed in the unit price section of the Bid Form.
- B. The “Bid Price” (sometimes referred to as the extended price) for each unit price Bid item will be the product of the “Estimated Quantity” (which Owner or its representative has set forth in the Bid Form) for the item and the corresponding “Bid Unit Price” offered by the Bidder. The total of all unit price Bid items will be the sum of these “Bid Prices”; such total will be used by Owner for Bid comparison purposes.
- C. Discrepancies between the multiplication of units of Work and unit prices will be resolved in favor of the unit prices. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

14.02 *Allowances*

- A. **For cash allowances the Bid price shall include such pre-determined amounts as the Owner deems proper as a contingency for unforeseen costs.**

ARTICLE 15 – SUBMITTAL OF BID

15.01 With each copy of the Bidding Documents and if required, the Bid Bond Form. The unbound copy of the Bid Form is to be completed and submitted with the Bid security and the other documents required to be submitted under the terms of Article 7 of the Bid Form.

15.02 A Bid shall be received no later than the date and time prescribed and at the place indicated in the advertisement or invitation to bid and shall be enclosed in a plainly marked package with the Project title (and, if applicable, the designated portion of the Project for which the Bid is submitted), the name and address of Bidder, and shall be accompanied by the Bid security and other required documents. If a Bid is sent by mail or other delivery system, the sealed envelope containing the Bid shall be enclosed in a separate package plainly marked on the outside with the notation “5th & WALNUT BID ENCLOSED.” A mailed Bid shall be addressed to:

Rogers Water Utilities
Engineering Department
P O Box 338
Rogers, AR 72757

If the bid cannot be shipped to a PO Box (or for hand deliveries), the bid shall be addressed to:

Rogers Water Utilities
Engineering Department
601 S. 2nd St.
Rogers, AR 72756

Alternatively, online bids may be accepted through <https://www.centralbidding.com> no later than the date and time prescribed and at the place indicated in the advertisement.

15.03 Bids received after the date and time prescribed for the opening of bids, or not submitted at the correct location or in the designated manner, will not be accepted and will be returned to the Bidder unopened.

ARTICLE 16 – MODIFICATION AND WITHDRAWAL OF BID

- 16.01 A Bid may be withdrawn by an appropriate document duly executed in the same manner that a Bid must be executed and delivered to the place where Bids are to be submitted prior to the date and time for the opening of Bids. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.
- 16.02 If a Bidder wishes to modify its Bid prior to Bid opening, Bidder must withdraw its initial Bid in the manner specified in Paragraph 16.01 and submit a new Bid prior to the date and time for the opening of Bids.
- 16.03 If within 24 hours after Bids are opened any Bidder files a duly signed written notice with Owner and promptly thereafter demonstrates to the reasonable satisfaction of Owner that there was a material and substantial mistake in the preparation of its Bid, that Bidder may withdraw its Bid, and the Bid security will be returned.

ARTICLE 17 – OPENING OF BIDS

- 17.01 Bids will be opened at the time and place indicated in the advertisement or invitation to bid and, unless obviously non-responsive, read aloud publicly. An abstract of the amounts of the base Bids and major alternates, if any, will be made available to Bidders after the opening of Bids.

ARTICLE 18 – BIDS TO REMAIN SUBJECT TO ACCEPTANCE

- 18.01 All Bids will remain subject to acceptance for the period of time stated in the Bid Form, but Owner may, in its sole discretion, release any Bid and return the Bid security prior to the end of this period.

ARTICLE 19 – EVALUATION OF BIDS AND AWARD OF CONTRACT

- 19.01 Owner reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. Owner may reject the Bid of any Bidder that Owner finds, after reasonable inquiry and evaluation, to not be responsible. If Bidder purports to add terms or conditions to its Bid, takes exception to any provision of the Bidding Documents, or attempts to alter the contents of the Contract Documents for purposes of the Bid, then the Owner may reject the Bid as nonresponsive; provided that Owner also reserves the right to waive all minor informalities of the Bid.
- 19.02 If Owner awards the contract for the Work, such award shall be to the responsible Bidder submitting the lowest responsive Bid.
- 19.03 Evaluation of Bids
- A. In evaluating Bids, Owner will consider whether or not the Bids comply with the prescribed requirements, and such alternates, unit prices, and other data, as may be requested in the Bid Form or prior to the Notice of Award.
 - B. For the determination of the apparent low Bidder when unit price bids are submitted, Bids will be compared on the basis of the total of the products of the estimated quantity of each item and unit price Bid for that item, together with any lump sum items.
- 19.04 In evaluating whether a Bidder is responsible, Owner will consider the qualifications of the Bidder and may consider the qualifications and experience of Subcontractors and Suppliers proposed for those portions of the Work for which the identity of Subcontractors and Suppliers must be submitted as provided in the Bidding Documents.

- 19.05 Owner may conduct such investigations as Owner deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed Subcontractors or Suppliers.

ARTICLE 20 – BONDS AND INSURANCE

- 20.01 Article 6 of the General Conditions, as may be modified by the Supplementary Conditions, sets forth Owner’s requirements as to performance and payment bonds and insurance. When the Successful Bidder delivers the Agreement (executed by Successful Bidder) to Owner, it shall be accompanied by required bonds and insurance documentation.

ARTICLE 21 – SIGNING OF AGREEMENT

- 21.01 When Owner issues a Notice of Award to the Successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with the other Contract Documents as identified in the Agreement. Within 15 days thereafter, Successful Bidder shall execute and deliver the required number of counterparts of the Agreement (and any bonds and insurance documentation required to be delivered by the Contract Documents) to Owner. Within ten days thereafter, Owner shall deliver one fully executed counterpart of the Agreement to Successful Bidder, together with printed and electronic copies of the Contract Documents as stated in Paragraph 2.02 of the General Conditions.

ARTICLE 22 – PREVAILING WAGE RATES

- 22.01 The applicability of Prevailing Wage Rates and Davis-Bacon and Related Acts are discussed in the Supplementary Conditions.

ARTICLE 23 – CONTRACTS TO BE ASSIGNED (NOT USED)

ARTICLE 24 – RETAINAGE

- 24.01 Provisions concerning Contractor’s rights to deposit securities in lieu of retainage are set forth in the Agreement.
- 24.02 Retainage shall be 5% of the earned progress payments per Arkansas Code 22-9-604.

Section 410

BID FORM

5th AND WALNUT WATER & SEWER REPLACEMENT

June 23, 2024

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ARTICLE 1 – BID RECIPIENT

1.01 This Bid is submitted to:

Rogers Water Utilities

Attn: Engineering Dept.

601 S. 2nd St., Rogers, AR 72756 (physical address)

--Or --

P O Box 338, Rogers, AR 72757 (mailing address)

1.02 The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into an Agreement with Owner in the form included in the Bidding Documents to perform all Work as specified or indicated in the Bidding Documents for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Bidding Documents.

ARTICLE 2 – BIDDER’S ACKNOWLEDGEMENTS

2.01 Bidder accepts all of the terms and conditions of the Instructions to Bidders, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for 60 days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of Owner.

ARTICLE 3 – BIDDER’S REPRESENTATIONS

3.01 In submitting this Bid, Bidder represents that:

A. Bidder has examined and carefully studied the Bidding Documents, and any data and reference items identified in the Bidding Documents, and hereby acknowledges receipt of the following Addenda:

<u>Addendum No.</u>	<u>Addendum, Date</u>
_____	_____
_____	_____
_____	_____
_____	_____

- B. Bidder has visited the Site, conducted a thorough, alert visual examination of the Site and adjacent areas, and become familiar with and satisfied itself as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and has satisfied itself as to all Laws and Regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has considered the information known to Bidder itself; information commonly known to contractors doing business in the locality of the Site; information and observations obtained from visits to the Site; the Bidding Documents; and any Site-related reports and drawings identified in the Bidding Documents, with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2)

the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder; and (3) Bidder's safety precautions and programs.

- E. Bidder agrees, based on the information and observations referred to in the preceding paragraph, that no further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price bid and within the times required, and in accordance with the other terms and conditions of the Bidding Documents.
- F. Bidder 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 Bidding Documents.
- G. Bidder has given Engineer written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Bidding Documents, and confirms that the written resolution thereof by Engineer is acceptable to Bidder.
- H. The Bidding Documents are generally sufficient to indicate and convey understanding of all terms and conditions for the performance and furnishing of the Work.
- I. The submission of this Bid constitutes an incontrovertible representation by Bidder that Bidder has complied with every requirement of this Article, and that without exception the Bid and all prices in the Bid are premised upon performing and furnishing the Work required by the Bidding Documents.

ARTICLE 4 – BIDDER'S CERTIFICATION

4.01 Bidder certifies that:

- A. This Bid is genuine and not made in the interest of or on behalf of any undisclosed individual or entity and is not submitted in conformity with any collusive agreement or rules of any group, association, organization, or corporation;
- B. Bidder has not directly or indirectly induced or solicited any other Bidder to submit a false or sham Bid;
- C. Bidder has not solicited or induced any individual or entity to refrain from bidding; and
- D. Bidder has not engaged in corrupt, fraudulent, collusive, or coercive practices in competing for the Contract. For the purposes of this Paragraph 4.01.D:
 - 1. "corrupt practice" means the offering, giving, receiving, or soliciting of any thing of value likely to influence the action of a public official in the bidding process;
 - 2. "fraudulent practice" means an intentional misrepresentation of facts made (a) to influence the bidding process to the detriment of Owner, (b) to establish bid prices at artificial non-competitive levels, or (c) to deprive Owner of the benefits of free and open competition;
 - 3. "collusive practice" means a scheme or arrangement between two or more Bidders, with or without the knowledge of Owner, a purpose of which is to establish bid prices at artificial, non-competitive levels; and
 - 4. "coercive practice" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in the bidding process or affect the execution of the Contract.

ARTICLE 5 – BASIS OF BID

5.01 Bidder will complete the Work in accordance with the Contract Documents for the following price(s):

ENGINEERING DIVISION ROGERS WATER UTILITIES 5th & WALNUT WATER & SEWER REPLACEMENT BID FORM					
				Bid Form	
No.	Item	Bid Quantity	Bid Unit	Unit Price	Extension
1	Staking, Bonding, & insurance	1	LS		
2	Removal and Disposal of Asphalt Pavement	79	SY		
3	Removal and Disposal of Sewer Line	99	LF		
4	Removal and Disposal of Sewer Manhole	1	EA		
5	Removal and Disposal of Water Meter	1	EA		
6	Erosion Control	1	LS		
7	Concrete Washout	1	LS		
Water Line Relocation					
8	Utility Mobilization (Water)	1	LS		
9	Trenching and Excavation Safety Systems	1	LS		
10	4" Ductile Iron Pipe	12	LF		
11	6" Ductile Iron Pipe	40	LF		
12	8" Ductile Iron Pipe	240	LF		
13	16" Pipe Encasement	9	LF		
14	4" Tapping Sleeve & Valve	1	EA		
15	6" Tapping Sleeve & Valve	2	EA		
16	Fire Hydrant Assembly	2	EA		
17	8" Gate Valve	4	EA		
18	4" Cut, Cap and Anchor Collar Block	1	EA		
19	6" Cut, Cap and Anchor Collar Block	1	EA		
20	1" Service Line W/ Single 5/8" Meter Set (Short Side of Street)	1	EA		
21	Ductile Iron MJ Fittings	1,019	LB		
22	Asphalt Pavemetrn Repair	75	SY		
23	Crushed Stone (ARDOT Class 7) Backfill for Water Line	559	TON		
24	Temporary Connection for Water Line	1	LS		
25	Water Line Allowance	1	LS	\$20,000.00	\$20,000.00
Sewer Line Relocation					
26	Utility Mobilization (Sewer)	1	LS		
27	Trenching and Excavation Safety Systems	1	LS		
28	8" SDR26 PVC Sanitary Sewer Pipe	99	LF		
29	16" Split-Steel Pipe Encasement	36	LF		
30	4' Dia. Cast-in-Place Manhole, 6' Depth	1	EA		
31	Non-Shear FERNCO Repair Coupling	1	EA		
32	Asphalt Pavemetrn Repair	4	SY		
33	Crushed Stone (ARDOT Class 7) Backfill for Sewer Line	161	TON		
34	Bypass Pumping (As Directed)	5	DAY		
35	Temporary Connection for Sewer Line	1	LS		
36	Sewer Line Allowance	1	LS	\$7,000.00	\$7,000.00
37	Maintenance of Traffic	1	LS		
				Total:	

Bidder acknowledges that:

- (1) each Bid Unit Price includes an amount considered by Bidder to be adequate to cover Contractor's overhead and profit for each separately identified item,
- (2) estimated quantities are not guaranteed, and are solely for the purpose of comparison of Bids, and final payment for all unit price Bid items will be based on actual quantities, determined as provided in the Contract Documents,
- (3) any item required to complete the work that does not have a specific unit price shall be included into another bid item.
- (4) Bid items shown as "allowance" are listed with corresponding unit prices that have been pre-determined by the Owner and shall not be altered as part of the bid, but must be included in the total bid amount. These allowances are intended to

ARTICLE 6 – TIME OF COMPLETION

- 6.01 Bidder agrees that the Work will be substantially complete and will be completed and ready for final payment in accordance with Article 4 of the Contract on or before the dates or within the number of calendar days indicated in the Agreement.
- 6.02 Bidder accepts the provisions of the Agreement as to liquidated damages.

ARTICLE 7 – ATTACHMENTS TO THIS BID

- 7.01 The following documents are submitted with and made a condition of this Bid:
 - A. Completed Bid Form (pages 410-1 to 400-5)
 - B. Required Bid security;
 - C. List of Proposed Subcontractors;
 - D. List of Proposed Suppliers;
 - E. Contractor's License No.: [REDACTED] [or] Evidence of Bidder's ability to obtain a State Contractor's License and a covenant by Bidder to obtain said license within the time for acceptance of Bids;
 - F. Required Bidder Qualification Statement with supporting data [or] written confirmation of prior approval of qualifications from Rogers Water Utilities.

ARTICLE 8 – DEFINED TERMS

- 8.01 The terms used in this Bid with initial capital letters have the meanings stated in the Instructions to Bidders, the Contract, and the Supplementary Conditions.

ARTICLE 9 – BID SUBMITTAL

BIDDER: *[Indicate correct name of bidding entity]*

By:
[Signature] _____

[Printed name] _____
(If Bidder is a corporation, a limited liability company, a partnership, or a joint venture, attach evidence of authority to sign.)

Attest:
[Signature] _____

[Printed name] _____

Title: _____

Submittal Date: _____

Address for giving notices:

Telephone Number: _____

Fax Number: _____

Contact Name and e-mail address: _____

Bidder's License No.: _____
(where applicable)

Section 450

STATEMENT OF BIDDER'S QUALIFICATIONS

ROGERS WATER UTILITIES

In compliance with the Instructions to Bidders and other Contract Documents, the undersigned submits the following Statement of Bidder's Qualifications for the 5th & WALNUT WATER & SEWER REPLACEMENT.

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information that the bidder desires.

1. Name of Bidder:
2. Permanent main office address:
3. When organized:
4. If a corporation, where incorporated:
5. How many years have been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand: (Schedule these, showing amount of each contract and the appropriate anticipated dates of completion).
7. General character of work performed by your company:
8. Have you ever failed to complete any work awarded to you?
9. Have you ever defaulted on a Contract?
if so, where and why?

10. Have you ever been fined or had your license suspended by a Contractor's Licensing Board?

If so, where and why?

11. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed.

12. List your major equipment available for this Contract.

13. Experience in construction work similar in importance to this project.

14. Background and experience of the principal members of your organization, including the officers.

15. Credit available: \$_____.

16. Give Bank reference: _____.

17. Total maximum bonding capacity: \$_____

18. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the utility? _____

19. Experience in this type of work (years): _____

Attach a copy of the firms current Arkansas State Contractors License

Signed at _____ this _____ day of _____, 2016

Name of Organization: _____

By: _____

Title: _____

State of _____

County of _____

Now comes _____ being duly sworn, deposes and says that
(name)

_____ is the _____ of _____,
(he or she) (title) (company name)

and that answers to the foregoing questions and all statements therein contained are true and correct.

Subscribed and sworn before me this _____ day of _____, 2016.

Notary Public

My commission expires _____.

NOTICE OF AWARD

Date of Issuance:

Owner: Rogers Water Utilities
Engineer: RWU Engineering Dept.
Project: 5th & WALNUT WATER & SEWER
REPLACEMENT

Bidder:

Bidder's Address:

TO BIDDER:

You are notified that Owner has accepted your Bid dated _____ for the above Contract, and that you are the Successful Bidder and are awarded a Contract for:

2024 5th WALNUT

The Contract Price of the awarded Contract is: *[subject to unit prices]*

unexecuted counterparts of the Agreement accompany this Notice of Award, and one copy of the Contract Documents accompanies this Notice of Award, or has been transmitted or made available to Bidder electronically.

a set of the Drawings will be delivered separately from the other Contract Documents.

You must comply with the following conditions precedent within 15 days of the date of receipt of this Notice of Award:

1. Deliver to Owner counterparts of the Agreement, fully executed by Bidder.
2. Deliver with the executed Agreement(s) the Contract security *[e.g., performance and payment bonds]* and insurance documentation as specified in the Instructions to Bidders and General Conditions, Articles 2 and 6.
3. Other conditions precedent (if any):

Failure to comply with these conditions within the time specified will entitle Owner to consider you in default, annul this Notice of Award, and declare your Bid security forfeited.

Within ten days after you comply with the above conditions, Owner will return to you one fully executed counterpart of the Agreement, together with any additional copies of the Contract Documents as indicated in Paragraph 2.02 of the General Conditions.

Owner: Rogers Water Utilities

By: Aaron Short
Title: Design Engineer

Copy: File

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. **5th & WALNUT WATER & SEWER REPLACEMENT** which the replacement of a total of approximately 236 LF of 8" DIP water main and 110 LF of 8" PVC sewer main with associated manholes, fire hydrants, steel casing, aggregate backfill and other appurtenances.
 - 2. The Site of the Work includes property, easements, and designated work areas described in greater detail in the Contract Documents but generally located **at the intersection of 5th Street and Walnut St. in Rogers, AR.**

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

- A. The Contract Documents consist of the following documents:
1. This Contract.
 2. Performance bond.
 3. Payment bond.
 4. Specifications listed in the Table of Contents.
 5. Drawings as listed on the Drawing Sheet Index.
 6. Addenda.
 7. Exhibits to this Contract (enumerated as follows):
 - a. **Exhibit 1 – Bid Form (pages 1-5)**
 - b. **Exhibit 2 – EJCDC C-800 MODIFIED Supplementary Conditions.**
 - c. **Exhibit 3 – Technical Specifications (as referenced in Section 1000.10)**
 - d. **Exhibit 4 – Plan Set – 5th St. Water & Sewer Plan & Profile, RWU Standard Details (6 sheets).**
 8. 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 **CEI Engineering Associates, Inc..**

ARTICLE 4 - CONTRACT TIMES

4.01 Contract Times

- A. The Work will be substantially completed within **60** days after the Effective Date of the Contract and completed and ready for final payment within **90** 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.
- B. Beginning with the second application for payment, each application shall include an affidavit of Contractor stating that all previous progress payments received on account of the Work have been applied on account to discharge Contractor's legitimate obligations associated with prior applications 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)

NOTICE TO PROCEED

Owner: Rogers Water Utilities

Contractor: Contractor's Project No.:

Engineer: RWU Engineering Dept.

Project: 5th & WALNUT WATER & SEWER
REPLACEMENT

Effective Date of Contract:

TO CONTRACTOR:

Owner hereby notifies Contractor that the Contract Times under the above Contract will commence to run on [REDACTED], 2024. *[see Article 4 of the Contract]*

On that date, Contractor shall start performing its obligations under the Contract Documents. No Work shall be done at the Site prior to such date. In accordance with the Agreement, the number of days to achieve Substantial Completion is 90, and the number of days to achieve readiness for final payment is 120.

Before starting any Work at the Site, Contractor must comply with the following:

Submit material spec sheets for all materials to be incorporated in the project.

Coordinate with RWU Engineering Dept. inspectors to schedule proposed work.

Owner: Rogers Water Utilities

By: Authorized Signature
Aaron Short

Title: Design Engineer

Date Issued:

Copy: File

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):* 5th & WALNUT WATER & SEWER REPLACEMENT

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*

CONSTRUCTION CONTRACT

Effective Date of the Agreement:

Amount:

Description *(name and location)*: 5th & WALNUT WATER & SEWER REPLACEMENT

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

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.

CONTRACTOR AS PRINCIPAL

SURETY

(seal)
Contractor's Name and Corporate Seal

(seal)
Surety's Name and Corporate 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 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:

Exhibit 2: Supplementary Conditions

Form C-522, "Contract for Construction of a Small Project" shall be amended and modified as follows:

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:

- 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-7.02 *Other work at the Site:*

SC-7.02.B. Add the following new subparagraph immediately after Paragraph 7.02.A:

- B. The City of Rogers, under separate contract, will be replacing storm sewer and associated curb inlets, grading, installing aggregate base, paving, sidewalks, and associated signage and striping. The contractor shall coordinate the schedule of all proposed utility work with the City of Rogers.

SC-7.03 *Services, Materials, and Equipment:*

SC-7.03.C. Add the following new subparagraph immediately after Paragraph 7.03.B:

- C. The Contractor shall not be responsible for repair of pavement, storm sewer, curb/gutter, or sidewalks under this contract, provided that disturbance to these items are deemed necessary for the progression of the work included in this contract.

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 1000.10

Reference of Standard Specifications for Site Work

The City of Rogers and Rogers Water Utilities standard specifications are incorporated by reference and are a binding part of this Contract and Specifications. It is the responsibility of the Contractor to obtain and review the Standard Specifications as necessary for this work. Standard specifications and details are published and available for electronic download on the following websites:

Rogers Water Utilities (water & sanitary sewer improvements):

<https://www.rwu.org/developers-and-contractors/development-standards-and-guidelines/>

City of Rogers (street & drainage improvements):

<http://www.rogersar.gov/395/Standard-Construction-Details>

Unless specifically noted otherwise on the design drawings or herein, all earthwork, erosion control, pavement, drainage, fencing, utility improvements and other ancillary work shall adhere to the above referenced Specifications.