ROGERS WATER UTILITIES
FACILITIES EXTENSION CONTRACT

This Facilities Extension Contract ("this Contract") is entered into by the Rogers Water Utilities of the City of Rogers, Arkansas, ("Rogers Water Utilities" or "RWU"), and _____, ("Applicant").

Recitals

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

WHEREAS the Rogers Water Utilities operates a municipal water system and a municipal sewer system in the City of Rogers, Arkansas and certain surrounding areas; and

WHEREAS Applicant is a [natural person(s)] or [entity type];
[Example: an Arkansas limited liability company]

as evidenced by the certificate of good standing from the Arkansas Secretary of State attached hereto as Exhibit [1].

[if Applicant is a foreign entity, attach certificate of good standing from home state and Arkansas Secretary of State registration]

WHEREAS Applicant is the Owner of certain real property in Benton County Arkansas as evidenced by that certain deed recorded with the Benton County Circuit Clerk as Instrument No. _____ **or** in the ____[year] Deed Book at Page _____; ("the Property"); and

WHEREAS Applicant requests that the public water system, public sewer system, or both, be extended to the Property in connection with a project or development to be known as [insert name of project/development] and requests installation of certain water mains and appurtenances, sewer mains and appurtenances, or both ("facilities") as shown herein below; and

WHEREAS Applicant is willing to pay for the costs of the facilities and is willing to dedicate the facilities to the Rogers Water Utilities, the Rogers Waterworks and Sewer Commission, and the City of Rogers, Arkansas upon acceptance of the facilities in accordance with the terms of this Contract; and

WHEREAS _____ [insert name of person(s) signing for Applicant] is [are] duly authorized to enter into this Contract on behalf of the Applicant and to bind the Applicant to this Contract as evidenced by the [certificate of authority, corporate resolution, other acceptable document showing authority] attached hereto as Exhibit [2].

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

1. **Recitals Incorporated**. The above recitals are substantive and incorporated herein and made part of this Contract.

2. **Definitions**.

As used herein, the following terms have the meanings listed below.

Development means the construction project to which Applicant requests that facilities be extended.

Excess Capacity means a water main and appurtenances, sewer main and appurtenances (or both) in a size and having a capacity greater than the size and capacity required by the *Standard Specifications* (or other applicable law, regulation, or standard) for the Applicant's Development or project.

Facilities means (a) water mains and appurtenances including the public portion of any water service lines; (b) sewer mains and appurtenances including the public portion of any sewer service lines, and (c) any other infrastructure installed pursuant to this Contract that is intended to become, upon dedication by Applicant, and acceptance by RWU, part of the public water system or public sewer system. The term "facilities" does not include the private portion of any water service lines, the private portion of any sewer service lines, or any other infrastructure installed on the property that is intended to be, or by its nature is, private property.

Property means the real property to which Applicant requests that facilities be extended.

Public Portion (of water service lines) means any portion of water service lines constructed pursuant to this Contract that is intended to become, upon dedication by Applicant and acceptance by RWU, public property and will be part of the "Utility System" as defined in Section 54-82 of the Code of Ordinances of the City of Rogers, Arkansas. The public portion (of water service lines) does not include any portion of the "Customer System" as defined in Section 54-82.

Public Portion (of sewer service lines) means any portion of sewer service lines constructed pursuant to this Contract that is intended to become, upon dedication by Applicant and acceptance by RWU, public property and will be part of the public sewer system. The point of demarcation between the public portion of the sewer system and the customer's system is the sewer wye or the manhole where the sewer service line connects to the public sewer collection system.

Rogers City Code means the most recent edition or revision of the Code of Ordinances of the City of Rogers, Arkansas.

Standard Specifications means the most recent edition or revision of the *Standard Specifications for Construction of Public Water and Sewer Improvements in the City of Rogers and Areas Under the Jurisdiction of the Rogers Waterworks and Sewer Commission* published by the Rogers Water Utilities.

3. **Facilities Requested**. Applicant requests installation of facilities as shown on the plans for water facilities, sewer facilities (or both) which are attached hereto as Exhibit [3] and incorporated into this Contract by reference. The estimated total construction costs of the facilities is $_____.

4. **Applicant Responsible for Cost of Facilities**. Applicant shall furnish all labor and materials and bear the entire cost of constructing the facilities. If RWU has agreed to reimburse Applicant for any costs of *excess capacity*, then such agreement will be contained in a separate *Excess Capacity Addendum* which will be attached to this Contract and made part hereof. **If no Addendum is signed by the parties and attached to this Contract, then RWU has not agreed to make any reimbursement for excess capacity**. Applicant must pay for all costs and complete construction of all facilities prior to receiving water service or any reimbursement for *excess capacity.* Moreover, reimbursement for *excess capacity* will not occur unless and until the facilities are accepted by RWU.

5. **Special Conditions**. This Contract is subject to and incorporates the following special conditions: [Describe Special Conditions]

[Example: See Horizontal Property Regime Development Agreement attached hereto and incorporated herein by reference as Exhibit [3]

6. **Plans and Specifications.** Applicant shall cause to be prepared detailed plans and specifications for the facilities, which incorporate the material requirements, installation requirements, and all other requirements of the *Standard Specifications*. No work may be commenced until the plans and specifications are approved by RWU in writing. After approval, the plans and specifications become a part of this Contract and applicant agrees to perform the work in strict adherence therewith. RWU will not accept any facilities that do not comply with the plans and specifications, *Standard Specifications*, or which do not otherwise comply with the requirements of this Contract.

7. **Engineer**. All plans and specifications shall be prepared under the direct supervision of an Engineer licensed to practice in the State of Arkansas (hereinafter called Engineer). The construction work shall be continuously supervised or inspected by the Engineer or by individuals who are under the Engineer's direct supervision and who are competent to supervise or inspect the work being performed. The Engineer shall submit written inspection reports to RWU and the Applicant during the process of the construction of the Facilities. Applicant shall hire the Engineer and bear all engineering costs and the costs of all other professional services required for construction of the facilities. Nothing herein shall preclude RWU, at its discretion, from inspecting the work periodically.

8. **Applicant's Engineer**. Applicant designates [name of firm, address] as Engineer, who will provide the engineering services described herein above.

9. **Planning Agency Review**. Applicant shall give notice of Applicant's proposed facilities by submitting the plans for facilities which have been approved by RWU to the appropriate planning agency for review as follows: (1) the City of Rogers Planning Commission if any part of the project is located within the territorial jurisdiction of said Planning Commission; (2) the Benton County Planning Commission if any part of the facilities are to be located outside of the territorial jurisdictions of the Rogers Planning Commission or any other municipality's planning commission; (3) the Rogers City Council if facilities are to be located outside of the Rogers city limits. Applicant shall not commence construction of the facilities prior to review and approval by any and all planning agencies having jurisdiction.

10. **Government Agency Review**. In addition to conformance to RWU's requirements, all plans and specifications for the facilities shall conform to the requirements of the Arkansas Department of Health and any other federal, state, county, or local government agencies having jurisdiction over any part of the work covered herein, including those agencies having jurisdiction over construction within the right-of-way of public roads, streets and highways. Applicant is responsible for complying with the requirements of all such government agencies and for the submittal of plans and specifications to all such agencies for review, and paying the cost of all fees and other expenses in connection therewith. Applicant shall not commence construction of facilities prior to approval of the plans and specifications by the aforesaid agencies and furnishing RWU with written evidence of such approval. Applicant shall construct the facilities in such a manner that will not interfere with any proposed future street, highway or drainage improvements.

11. **Permitting**. Applicant shall obtain or cause to be obtained all permits required in connection with the construction of facilities except those permits specifically requiring that RWU be designated as permittee, in which case the Applicant shall prepare and submit to RWU all documents necessary for such permits. Applicant shall pay the cost of all fees, bonds and other expenses in connection with obtaining permits, shall be responsible for conforming with all provisions thereof, and shall coordinate all post-construction inspections required by the issuer of permits.

12**. Grading Prior to Trenching and Facilities Installation.** Prior to construction of the facilities, streets and easements where the facilities are to be constructed shall be graded by Applicant to within 6" of final grade. Property lines adjacent to the location for the facilities shall be staked by Applicant prior to commencing construction of the facilities.

13. **Rights of Way and Easements Required**. If rights-of-way or easements not now in existence are required for the facilities, dedication documents thereof, in a form acceptable to RWU, shall be acquired by the Applicant and conveyed to RWU, the Commission, and the City of Rogers, Arkansas for the use and benefit of RWU. Permanent water service will not be established until Applicant has constructed paved streets, drives and/or parking areas adjacent to the facilities.

14. **Development Impact Fees Required**. **Water Development impact fees will be required in accordance with Section 54-112 of the Code of Ordinances of the City of Rogers. Sewer Development impact fees will be required in accordance with Section 54-211 of the Code of Ordinances of the City of Rogers. These fees are based on the size of the meter, which is dependent upon the peak demand of the system. Development impact fees will be collected at the time each water service and/or sewer service is requested.**

The development impact fees do not include the cost of constructing the water service meters. Cost for constructing the meter set will be estimated based on the site conditions and must be paid to RWU before the service meter will be constructed.

15. **Inspection Fee**. All extensions of water mains and sewer mains, and the public portion of any water service lines or sewer service lines, proposed to become part of the public water system or public sewer system, require inspection by RWU to ensure conformance with the *Standard Specifications*. RWU does not assess service fees for regular inspection services. However should Applicant, Applicant's Engineer, or Applicant's utility contractor cause the need for additional inspections or unreasonable amounts of time to be expended by RWU's personnel due to nonconforming work, cancelled appointments, or lack of performance by the Engineer, RWU reserves the right to assess fees for re-inspection and/or re-mobilization in accordance with RWU's standard Schedule of Fees, Costs, and Deposits. Inspections are for the sole benefit of RWU, and no services are provided for the Applicant, either directly or implied. Inspections by RWU shall not relieve the Applicant of the duty to provide inspection as specified in paragraphs 6 and 7 herein above. Applicant shall pay to RWU all other costs for services rendered by RWU, including, but not limited to, disinfection, collecting and testing samples, performance testing and connections to mains if any of these functions are performed by RWU personnel or if RWU personnel assist the Applicant or its agent.

16. **Record Drawings**. After completion of the construction of facilities, Applicant shall file with RWU a PDF copy, Shp files and an AutoCAD version of the Record Drawings prepared by the Engineer which depict the facilities as finally constructed, including point table files referencing valves, hydrants, meters, and other appurtenances in accordance with the *Standard Specifications*. Applicant shall also provide a certificate showing the total construction costs of the facilities, and if requested by RWU, a copy of invoices for materials used in the construction of the facilities. Facilities shall not be accepted by RWU until such plans, certificates and documents are submitted and approved.

17. **Certification of No Encumbrances; Bond Requirements.** RWU cannot accept dedication of any facilities that are subject to purported claims and encumbrances such as materialmen's liens or laborer's liens. Prior to dedication, Applicant must certify that all contractors, subcontractors, materialmen, laborers, etc. have been paid in full and that no purported liens or encumbrances are asserted against the Property.

If the estimated cost of the facilities exceeds Fifty Thousand Dollars ($50,000), then Applicant will provide performance bonds and payment bonds as described hereinbelow. The amount of such bonds shall be in an amount no less than the costs of the facilities and the bonds shall be in effect throughout the construction period. Bonds shall be in a form and from such sources as are acceptable to RWU. RWU may require performance bonds and payment bonds from

any person or entity that is performing work on the facilities. Bonds are not required for fire lines or other portions of the private water system and private sewer system.

(a) *General Contractor Constructing Facilities*. If the general contractor is constructing the facilities, a written construction contract must exist between the general contractor and the Applicant. The general contractor shall provide a performance bond and a payment bond (or bonds) in favor of the Applicant. RWU may require that RWU and the Commission be listed as additional obligees on the bonds.

(b) *Subcontractor Constructing Facilities*. If a subcontractor will be constructing the facilities, a written contract must exist between the subcontractor and the general contractor for construction of the facilities. A written construction contract must also exist between the general contractor and the Applicant. The subcontractor shall provide a performance bond and a payment bond (or bonds) in favor of the general contractor and the Applicant. RWU may require that RWU and the Commission be listed as additional obligees on the bonds.

(c) *Applicant Constructing Facilities*. If the Applicant is serving as its own contractor for construction of the facilities, the Applicant shall provide a performance bond and a payment bond (or bonds) in favor of RWU and the Commission. If the project is organized in such a way that the Applicant is using a subsidiary, or related company, as the contractor, a contract must exist between the parent and subsidiary/related company. RWU will specify how the project will be bonded and may require bonds from the parent company, subsidiary/related company, or both.

18. **Dedication of Facilities**. Upon completion of the construction of the facilities and acceptance by RWU, ownership of the facilities shall vest by this Contract in RWU, the Commission, and the City of Rogers, Arkansas, for the use of RWU without the necessity of any other conveyance or formality, the acceptance of the facilities constituting acceptance of the dedication. The facilities shall become a part of the City of Rogers municipal water system, sewer system, (or both), as applicable. RWU shall have the right to connect to and to make extensions from the facilities without payment to or permission from Applicant.

19. **One Year Post-Acceptance Period**. If within one year after acceptance of facilities by RWU, any part of the facilities is found to be damaged, defective, becomes unserviceable, or otherwise fails to meet the requirements of the *Standard Specifications*; or if within one year, any part of the facilities requires relocation, in the opinion of RWU, due to construction of street, road, highway or drainage improvements, or other structures, Applicant shall, after written notice from RWU, within 60 days, remedy the defects or relocate the facilities to the satisfaction of RWU. Upon Applicant's failure to perform said work in a timely manner, RWU shall have the option of performing said work at Applicant's expense.

20. **Not a Contract for Services**. This is a Contract for extension of water facilities and sewer facilities and is not a contract for water service or sewer service. Applicant acknowledges that (1) the furnishing of water and collection of sewer by RWU are governmental functions and that RWU does not agree to furnish any specific amount of water or water pressure; (2) water will be delivered only to customers who enter into separate service contracts with RWU, but the right to contract, and the type of service to be rendered, shall always be subject to such rules, regulations and policies of RWU as may be in effect from time to time; and (3) water furnished under such separate service contracts will be supplied to such customers at whatever pressure and quantity available from time to time without liability for damages due to high or low pressure or stoppage of flow. Applicant will enter into all applicable customary and standard agreements for provision of water service and/or sewer service, including, without limitation, RWU's standard Customer Service Agreement, (as may be modified for Applicant's particular Development) in accordance with all applicable Ordinances of the City of Rogers, the rules, regulations, procedures, and specifications of the Commission and the Rogers Water Utilities, and any other applicable law, as they now exist or as they may be hereafter amended.

21. **Compliance**. Applicant acknowledges that providing water service from the facilities, or connections thereto, will not be commenced by RWU prior to Applicant fulfilling all its obligations in strict accordance with the terms of this Contract including the payment of all amounts due to RWU. Applicant will pay all applicable, customary, and standard deposits, service charges and fees, rates, meter connection charges, tapping fees, impact fees, sales taxes, fees for Federal Safe Drinking Water Act compliance, and any other applicable charges and fees in accordance with all applicable Ordinances of the City of Rogers, the rules, regulations, procedures, and specifications of the Commission and the Rogers Water Utilities, and any other applicable law, as they now exist or as they may be hereafter amended.

Applicant will comply with all applicable Ordinances of the City of Rogers, the rules, regulations, procedures, and specifications of the Commission and the Rogers Water Utilities, and any other applicable law, as they now exist or as they may be hereafter amended, said ordinances, rules, regulations, procedures, specifications, and applicable laws, being incorporated herein and made part of this Contract.

22. **Certification of Construction Cost.** Applicant understands and agrees after construction is completed that it must certify to RWU the total costs of the facilities by completing RWU's standard Cost Certification Form with Acknowledgement and delivering the same to RWU before any water and /or sewer service will be established.

23**.** **No Joint Venture.** This Contract is made at arm's length between independent contracting parties. Nothing in this Contract shall be deemed to create a joint venture, partnership, tenancy in common, joint tenancy, or any similar relationship between the parties.

24. **Risk of Loss**. Applicant is not a "contractor" of RWU as that term is used in Ark. Code. Ann. §22-9-203. Until the facilities are completed, dedicated, and accepted in accordance with this Contract, all such facilities remain the property of and responsibility of Applicant. Applicant bears the risk of loss for the facilities prior to dedication and acceptance and neither RWU, nor the Commission, nor the City of Rogers shall have any liability for any such loss.

25. **No Assignment of Rights or Delegation of Duties**. Applicant shall not assign its rights under this Contract without the express written permission of RWU. Nor shall Applicant delegate its duties under this Contract without the express written permission of RWU. Any Assignment or Delegation of this Contract made without RWU's consent is void and of no effect. RWU may require information and assurances that any proposed assignee or delegate shall perform Applicant's obligations under this Agreement.

26. **Choice of Law and Venue**. This Contract shall be governed by the laws of the State of Arkansas without regard to its principles of conflict of laws. Venue for any litigation concerning this Contract shall lie exclusively in the state or federal courts embracing Benton County, Arkansas, unless another venue is specified by law.

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

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

If given to RWU, notice shall be sent to:

Utility Engineer
Rogers Water Utilities
601 South 2nd Street
Rogers, AR 72756

with copies to:

Superintendent
Rogers Water Utilities
601 South 2nd Street
Rogers, AR 72756.

If given to Applicant, notice shall be sent to:

[Insert Notice Address]

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

30. **Complete Agreement**. All prior negotiations are merged into this Contract, the written addenda hereto, other written contracts signed by Applicant concerning the subject Development and all written addenda thereto; said written documents shall constitute the entire agreement between Applicant, on the one hand, and RWU on the other hand. This Agreement shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto.

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

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

[signature pages follow]

ROGERS WATER UTILITIES OF THE CITY OF ROGERS, ARKANSAS

By: _____ _____
Brian Sartain, Utility Engineer date

_____("Applicant")

By: _____ _____
date