



**ROGERS WATERWORKS AND SEWER COMMISSION MEETING AGENDA
FEBRUARY 22, 2022
4:00 PM**

AGENDA

CALL TO ORDER:

ACTION ON MINUTES:

1. Approval of 1/18/2022 Minutes

REPORTS:

1. Financial Reports - J. Lattin
2. Rogers Pollution Control Facility Reports - T. Beaver
3. Engineering Reports - B. Sartain

OLD BUSINESS:

NEW BUSINESS:

1. Variance Request - Simpson
2. Motion to Approve Selection of Construction Manager at Risk for RPCF Solids Handling Facility Phase 2 - B. Sartain
3. Motion to Enter Contract with Sandcreek Engineering - T. Kinion
4. Resolution to Renew Contract for Network Systems and Security - J. Huffman-Gilreath

ADJOURN:

Rogers Waterworks and Sewer Commission

January 18, 2022

Minutes

The Rogers Waterworks and Sewer Commission held its scheduled meeting at 4:00 PM Tuesday, January 18, 2022 in the Rogers Water Administration Building located at 601 S 2nd St. The Commissioners, Brent Dobler and outside attendees were present, all others attended virtually. Commissioners present were Roger Surly, Travis Greene, Kathy McClure, and Mike Watkins. Commissioner Don Kendall was absent. Rogers Water Utilities staff were Brian Sartain, Todd Beaver, Jennifer Lattin, Jene' Huffman-Gilreath, Johnny Lunsford, Dana Daniel, Jerry Roegner, and Donna Wilson. Others in attendance was Robert Frazier of the Frazier Law Firm. Chairman Mike Watkins called the meeting to order at 4:02 PM.

Robert Frazier legal counsel for RWU noted an error in reference to the RPCF purchase of polymer on page 4 of the December 20, 2021 minutes. The correct unit of measure should read \$1.44/lb not ton as stated. Commissioner Roger Surly made a motion, second by Commissioner Kathy McClure to approve the corrected minutes as submitted. All in favor, motion carried.

Commissioner Travis Greene asked about the large leak that had been discovered at 40 Riveria in the Beaver Lake area. Brent Dobler said the leak loggers helped identify the approximate 140,000 gal/day leak which is believed to have been leaking around 4-5 years. There were no more questions.

Chairman Watkins recognized Jennifer Lattin Controller to present the December 2021 Financial Reports. Lattin stated that water consumption is up 4.40% from December 2020. Both Commercial and Industrial usage increased, 12% and 18% respectively. Billed revenue for the month of December 2021 is up 14.37% from December 2020. The Water Department reported a profit of \$137,000 for December 2021 with a profit of \$122,000 reported for December 2020. Fiscal Year to Date Collections of access and impact fee revenue for FY 22 are \$477,000 and are ahead of budget by \$152,000, and compares to year to date access and impact fee revenue of \$552,000 in FY 21 and \$450,000 in FY 20. Year to date profit is more than the prior year and ahead of budget.

Sewer consumption for the month of December 2021 is up 5.66% from December 2020. Billed revenue for the month of December 2021 is up 18.16% from December 2020. The Sewer Department reported a profit of \$335,000 for December 2021 and a profit of \$412,000 was reported for December 2020. Fiscal Year to Date Collections of access and impact fee revenue for FY 22 are \$834,000 and are ahead of budget by \$67,000, and compares to year to date access and impact fee revenue of \$1,117,000 in FY 21 and \$907,000 in FY 20. Year to date profit is more than the prior year and ahead of budget.

Lost Water is at 6% for the month of December 2021, 12% for the calendar year, and 12% for the last twelve (12) months.

The Total Restricted and Unrestricted Funds are \$42.1 million for December 2021. This is an overall increase of \$3.9 million from December 2020. Water Funds increased by approximately \$1,700,000 and Sewer Funds increased by \$2,200,000. \$7.7 million of the \$42.1 million total funds are restricted for specific use such as debt service, meter deposits, access and impact fees, and depreciation.

Lattin stated that staff is in the beginning stages of the Tyler Technologies billing and accounting software implementation. An implementation schedule is expected soon. Commissioner McClure asked if Lost Water 15% or below helped when repairing a water leak. Dobler said yes, Lost Water reported at 15% or below does allow RWU staff more time to make the repair before a boil order is issued. There were no further questions.

Chairman Watkins recognized Brian Sartain Utility Engineer for the December Engineering Report. Sartain stated that the vacancy for GIS/Mapping Technician will be advertised soon. Also Engineering has experienced a backlog of work due to vacations and sick leave during the holidays. The number of plan reviews for December were on par. New projects include Pinnacle Springs Retirement Community, The Plaza (downtown), House Church, Pinnacle Hills Memorial Gardens Expansion, Hudson Rd Commercial Park, 45th St Self-Storage, Kum & Go, Patterson Building Expansion, Walmart #5837 "Drone Up" Addition, Enterprise Parking Lot Expansion, and Eastside Elementary Building Expansion.

Projects currently under construction include 2021 Waterline Replacements contractor is expected to begin working again in February. RPCF Train II is expected to be online in early February with substantial completion expected in March. The 11th St Water Tower Repaint held a pre-con meeting on January 14th and blasting and repainting is expected to start in February. The Pleasant Grove Rd-Hwy 112 Crossing is under construction. Arkansas St is waiting to finish the asphalt work on milestone 1 getting ready to start milestone 2 which is south of Poplar. JB Hunt Dr and Oak St & Uptown I-49 Overpass is under construction and has a 3-4 month wait on materials. Projects in Design/Acquisition with the Street Projects: has slow progress with engineering consultants. The projects in design has not changed much due to the staff shortage this past month. Sartain did note that the 10th & Chestnut Water & Sewer Project located north of Walnut is a small project added. The Statement of Qualifications were received for CM/GC on January 13th for the Solids Handling/Dryer Replacement Project. The recommendation is expected to be presented at the next meeting. The design team is currently developing 15% design plans for both drying technology options (Huber & Wyse). Staff is in review of the final draft of the Water Master Plan before submitting to ADH. Freese & Nichols is finalizing the Wastewater Master Plan reports and incorporating risk-based assessments into the CIP. There were no questions.

Chairman Watkins recognized Jene' Huffman-Gilreath Shared Services Manager to present the IT update. Huffman-Gilreath stated that over the past couple of months, IT has continued to standardize and update hardware based upon a five (5) year replacement rotation. Commissioner Travis Greene asked how many computers we have. Huffman-Gilreath replied approximately 85. Two new servers are being added as well as two additional firewalls. Our network is in the process of segregation based upon department and work done. Commissioner Roger Surly asked about the security of our data backup. Huffman-Gilreath said that tapes are currently being stored in a safe offsite. Digital and cloud backup is provided as well. IT staff works well together and each handles a specific area of our department, but we are also cross-training. There were no further questions.

Chairman Watkins recognized Todd Beaver RPCF Manager to present the December RPCF Reports. Beaver said the Discharge Monitoring Report looked good but did have an overflow reported at the Plant. The Industrial Pretreatment Program assessed the total amount of \$6,103.83 in surcharges for December 2021. There were five (5) industrial inspections; Pel Freez, Bekaert, SE Poultry, Tyson Chicken Quick and WestRock. Pel Freez had a low PH violation reported. The FOG inspection had routine inspections this month with a few facilities increased to every 60 day pump outs versus every 90 days.

It continues to be busy with the renewal inspections of the food trucks. Negotiations has begun with BCR to repair the sludge dryer. After review, just waiting now on the revision in timeline and price. We did experience some struggles with the gearbox and motor that delivers dried solids to the silo. After seeking outside help, it was removed and replaced the same day to get us operational again.

The vacancy from a maternity leave was filled with the interim candidate that has been working well. 316 MG was treated in December with approximately 52 MG treated from Inflow and Infiltration. These flows included 5.19" of rain over eleven (11) events. There were no questions.

Todd Beaver presented Resolution No. 22-01 to approve a contract with BCR Environmental Corp for bearing/shaft seal repairs of the sludge dryer at the RPCF; authorizing expenditure of up to and including One Hundred Eighteen Thousand, Fourteen Dollars and thirteen cents (\$118,014.13) plus shipping charges, any additional material and labor charges, any applicable taxes and if any ancillary charges. After discussion Commissioner Roger Surly made a motion, second by Commissioner Kathy McClure to approve Resolution No. 22-01 as submitted in the amount of \$118,014.13 with BCR. All in favor, motion carried.

Robert Frazier RWU Legal Counsel presented Resolution No. 22-02 to authorize an amendment for Resolution No. 21-33 (passed on December 20, 2021) as the schedule of Water Service Construction Costs in the Resolution contains a typographical error, namely the omission of a "1" in the line of the schedule specifying costs for "1 ½" Single. A motion was made by Commissioner Kathy McClure, second by Commissioner Roger Surly to approve Resolution No. 22-02 as submitted to amended Resolution No. 21-33. All in favor, motion carried.

Brian Sartain presented Resolution No. 22-03 with exhibit 1 attached to adopt a customer service agreement addendum for sewer service involving private pump stations to be effective immediately. A motion was made by Commissioner Travis Greene, second By Commissioner Roger Surly to approve Resolution No. 22-03 with exhibit I attached as submitted. All in favor, motion carried.

Brian Sartain continued presenting Resolution No. 22-04 with exhibits attached recommending amendment of certain portions of Chapter 54, Utilities, of the Code of Ordinances of the City of Rogers, Arkansas. A motion was made by Commissioner Kathy McClure, second by Commissioner Travis Greene to approve Resolution No. 22-04 with exhibits attached as submitted. All in favor, motion carried.

Brian Sartain requested approval of an Engineering Contract with CEI Engineering. This project shall include professional services associated with the design of construction documents for the Alley improvement project located between 1st St and 2nd St, from Cherry St to Maple St; the Elm Street improvement project from 1st St to 3rd St; the 2nd St improvement project from Elm St to Olive St; and the 3rd St improvement project from Poplar St to Chestnut St. Commissioner Travis Greene made a motion, second by Commissioner Kathy McClure to approve \$442,405.00 the engineering contract price with CEI Engineering as submitted.

With no further business, Chairman Watkins adjourned the meeting at 5:11 PM.

Respectfully submitted,

Brent Dobler, Acting Secretary/djw

File:rwWSC011822

February 11, 2022

To: The Rogers Water and Sewer Commission

From: Jennifer Lattin, Controller

Re: January 2022 Financial Information

Water Department

- Billed revenue for the month of January 2022 is up 14.78% from January 2021.
- Water consumption is up 3.29% from January 2021.
- The Water Department reported a profit of \$119,000 for January 2022. A profit of \$180,000 was reported for January 2021.
- Fiscal year to date collections of access and impact fee revenue for FY 22 are \$547,000 and are ahead of budget by \$167,000. This compares to year-to-date access and impact fee revenue of \$622,000 in FY 21 and \$501,000 in FY 20.
- Year to date profit is more than the prior year and ahead of budget.

Sewer Department

- Billed revenue for the month of January 2022 is up 15.93% from January 2021.
- Sewer consumption is up 3.85% from January 2021.
- The Sewer Department reported a profit of \$303,000 for January 2022. A profit of \$476,000 was reported for January 2021.
- Fiscal year to date collections of access and impact fee revenue for FY 22 are \$1,002,000 and are ahead of budget by \$107,000. This compares to year-to-date access and impact fee revenue of \$1,299,000 in FY 21 and \$1,008,000 in FY 20.
- Year to date profit is less than the prior year and ahead of budget.
 - Cost of utilities has increased notably in the past couple of months which has impacted the PCF the most as they use significant amounts of electric and gas in operations.

Other Financial Reporting Items

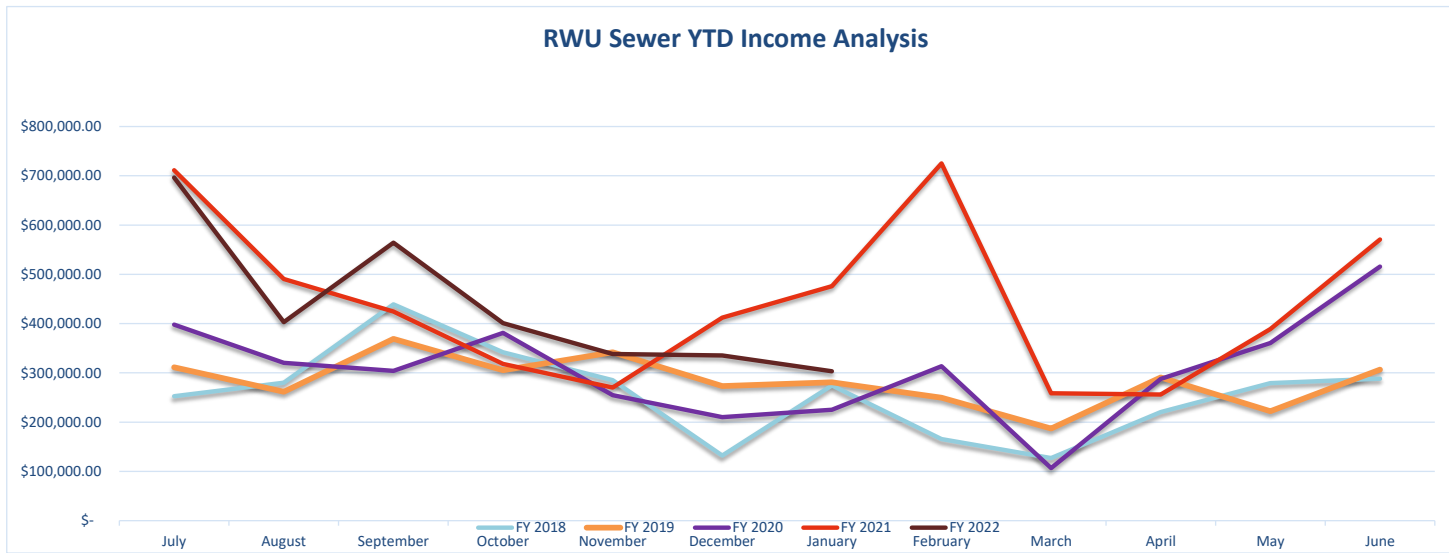
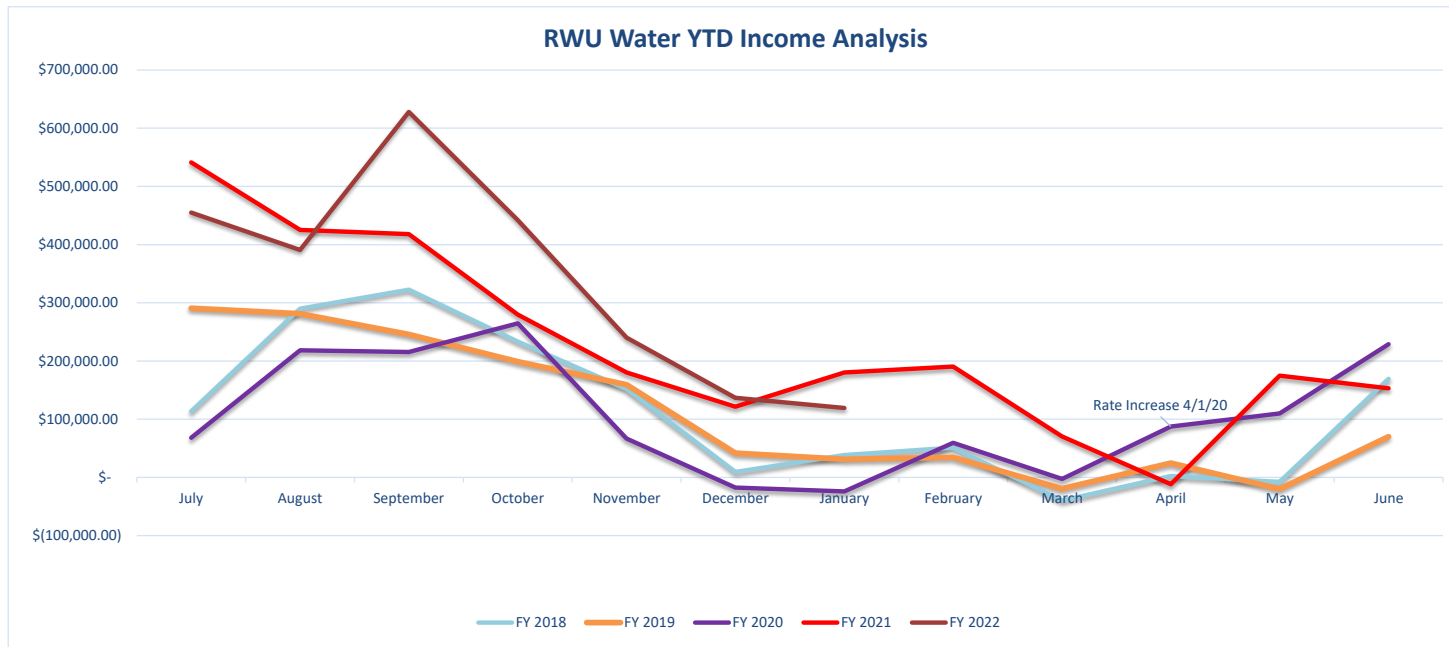
- Customer count has increased 2% in both the Water and Sewer Departments since January 2021.
- As indicated on the Lost Water Report, lost water is 10% for the month of January 2022, 10% for the calendar year, and 12% for the last twelve months.
- Total restricted and unrestricted funds are \$42.9 million for January 2022. This is an overall increase of \$3.5 million from January 2021.
 - Water funds increased by approximately \$1,800,000 and Sewer funds increased by \$1,700,000.
 - \$8.2 million of the \$42.9 million total funds are restricted for specific use such as debt service, meter deposits, access and impact fees, and depreciation.

Office Operations

- Staff is in the beginning stages of the Tyler Technologies billing and accounting software implementation. Currently, we are in the analysis and configuration stage of the Utility Billing. We anticipate converting to the new software in stages. Estimated “go live” times are as follows:
 - Core financials – May/June 2022
 - Utility Billing – September 2022
 - Personnel/Payroll – End of 2022/Beginning of 2023

Rogers Water Utilities
Monthly Income (Loss) comparisons

WATER		FY 2018	FY 2019	FY 2020	FY 2021	FY 2022		
July	\$	113,411.09	\$ 290,624.33	\$ 67,942.45	\$ 541,237.37	\$ 454,860.39		
August	\$	290,017.01	\$ 281,270.03	\$ 218,202.22	\$ 425,096.75	\$ 390,617.95		
September	\$	322,482.70	\$ 245,594.35	\$ 215,407.80	\$ 418,050.13	\$ 627,942.89		
October	\$	233,360.05	\$ 198,756.49	\$ 264,699.00	\$ 279,870.37	\$ 441,784.79		
November	\$	151,417.20	\$ 159,271.94	\$ 66,632.11	\$ 180,158.06	\$ 240,127.46		
December	\$	9,139.65	\$ 41,435.70	\$ (17,714.79)	\$ 121,537.90	\$ 136,549.32		
January	\$	38,411.62	\$ 31,081.88	\$ (24,131.21)	\$ 180,239.50	\$ 119,263.06		
February	\$	51,064.55	\$ 34,474.80	\$ 59,398.57	\$ 190,514.70			
March	\$	(39,832.89)	\$ (19,411.36)	\$ (2,521.91)	\$ 70,327.68			
April	\$	2,299.54	\$ 24,500.39	\$ 87,454.59	\$ (11,743.18)			
May	\$	(7,871.29)	\$ (20,066.58)	\$ 109,845.99	\$ 174,894.19			
June	\$	169,344.25	\$ 69,833.07	\$ 228,880.37	\$ 153,001.57			
YTD Income (Loss)	\$	1,333,243.48	\$ 1,337,365.04	\$ 1,274,095.19	\$ 2,723,185.04	\$ 2,411,145.86	\$ 264,955.78	Change From Same Period Last Year
Income (Loss) Before APERS Pension Adjustment	\$	1,333,243.48	\$ 1,337,365.04	\$ 1,274,095.19	\$ 2,723,185.04	\$ 2,411,145.86		
APERS Pension Adjustment	\$	(162,576.98)	\$ (98,788.44)	\$ (140,186.49)	\$ (180,687.98)	\$ -		
Income per Audited Financial Stmts	\$	1,170,666.50	\$ 1,238,576.60	\$ 1,133,908.70	\$ 2,542,497.06	\$ 2,411,145.86		
Annual Budget	\$	1,050,000.00	\$ 1,185,000.00	\$ 840,000.00	\$ 1,390,000.00	\$ 2,675,000.00		
SEWER		FY 2018	FY 2019	FY 2020	FY 2021	FY 2022		
July	\$	252,614.01	\$ 311,400.74	\$ 398,073.34	\$ 711,184.94	\$ 696,353.90		
August	\$	279,809.72	\$ 261,571.66	\$ 320,157.10	\$ 490,628.78	\$ 403,049.30		
September	\$	439,041.26	\$ 368,965.92	\$ 303,886.14	\$ 424,686.61	\$ 564,331.31		
October	\$	341,933.48	\$ 305,380.22	\$ 381,315.31	\$ 318,029.39	\$ 401,011.64		
November	\$	285,267.28	\$ 341,929.24	\$ 254,557.18	\$ 270,245.00	\$ 338,228.02		
December	\$	132,347.13	\$ 273,317.22	\$ 210,337.78	\$ 412,230.13	\$ 335,382.96		
January	\$	274,252.44	\$ 280,808.92	\$ 225,259.50	\$ 475,875.60	\$ 303,246.65		
February	\$	165,357.06	\$ 249,518.51	\$ 313,533.41	\$ 725,106.18			
March	\$	127,039.38	\$ 186,994.97	\$ 106,724.51	\$ 258,586.89			
April	\$	220,643.75	\$ 290,639.28	\$ 287,897.69	\$ 256,048.98			
May	\$	279,032.44	\$ 222,095.65	\$ 360,527.55	\$ 389,060.34			
June	\$	288,356.07	\$ 306,611.99	\$ 515,655.80	\$ 570,612.24			
YTD Income (Loss)	\$	3,085,694.02	\$ 3,399,234.32	\$ 3,677,925.31	\$ 5,302,295.08	\$ 3,041,603.78	\$ (61,276.67)	Change From Same Period Last Year
FY Income (Loss) Before APERS Pension Adjustment	\$	3,085,694.02	\$ 3,399,234.32	\$ 3,677,925.31	\$ 5,302,295.08	\$ 3,041,603.78		
APERS Pension Adjustment	\$	(255,325.20)	\$ (166,877.96)	\$ (249,434.81)	\$ (289,911.50)	\$ -		
Income per Audited Financial Stmts	\$	2,830,368.82	\$ 3,232,356.36	\$ 3,428,490.50	\$ 5,012,383.58	\$ 3,041,603.78		
Annual Budget	\$	2,600,000.00	\$ 2,865,000.00	\$ 2,470,000.00	\$ 3,025,000.00	\$ 3,960,000.00		



WATER CASH RECEIPTS
JANUARY 2022

CASH RECEIPTS	\$1,133,442.58
ACCTS RECEIVABLE OTHER	\$28,657.47
METER DEPOSITS	\$19,100.00
SERVICE CHARGES	\$6,025.00
FEES	\$5,095.00
MISCELLANEOUS	\$97,021.31
TRASH	\$392,807.31
DEPRECIATION	\$53,722.56
TOTAL	<u>\$1,735,871.23</u>

REVENUE BILLED JANUARY, 2022	CUSTOMERS	CONSUMPTION
RESIDENTIAL	26,860	109,889,900
RESIDENTIAL IRRIG	4,659	777,300
COMMERCIAL	3,068	58,744,000
INDUSTRIAL	46	33,658,700
HYDRANTS		
FIRE LINES	34,633	203,069,900
PENALTY		
SERVICE CHARGE		
NEW CUSTOMER FEES		
TOTAL		

REVENUE BILLED JANUARY, 2021

RESIDENTIAL	26,366	110,791,400
RESIDENTIAL IRRIG	4,524	499,000
COMMERCIAL	3,004	52,045,900
INDUSTRIAL	46	33,269,400
HYDRANTS		
FIRE LINES	33,940	196,605,700
PENALTY		
SERVICE CHARGE		
NEW CUSTOMER FEES		
TOTAL		

INCREASE (DECREASE)	\$122,859.09	693	6,464,200
CHANGE FROM 2020	14.78%	2.04%	3.29%

PURCHASE FROM BEAVER WATER DISTRICT		
JANUARY, 2022	\$ 371,722.53	263,633,000
JANUARY, 2021	\$ 351,749.58	254,891,000

CITY OF ROGERS METERED CONSUMPTION	
JANUARY, 2022	607,700
JANUARY, 2021	448,300

SEWER CASH RECEIPTS
JANUARY 2022

CASH RECEIPTS	\$1,237,480.24
FEES	\$5,615.00
MISCELLANEOUS	\$175,853.99
ACCOUNTS RECEIVABLE OTHER	\$925.00
DEPRECIATION	\$59,161.43
	<u>\$1,479,035.66</u>

O&M	\$1,419,874.23
DEPRECIATION	\$59,161.43
	<u>\$1,479,035.66</u>

REVENUE BILLED JANUARY, 2022		CUSTOMERS	CONSUMPTION
RESIDENTIAL	\$759,166.95	22,888	90,359,400
COMMERCIAL	\$239,488.24	1,993	43,805,900
INDUSTRIAL	\$157,398.38	<u>32</u>	<u>32,809,100</u>
PENALTY	\$12,480.75		
OTHER CHARGES	\$6,103.83		
NEW CUSTOMER FEES		<u>24,913</u>	<u>166,974,400</u>
TOTAL	<u>\$1,174,638.15</u>		

REVENUE BILLED JANUARY, 2021

RESIDENTIAL	\$675,883.44	22,443	91,012,900
COMMERCIAL	\$174,658.15	1,944	37,330,900
INDUSTRIAL	\$138,993.20	<u>32</u>	<u>32,433,800</u>
PENALTY/SURCHARGES	\$23,708.85		
NEW CUSTOMER FEES		<u>24,419</u>	<u>160,777,600</u>
TOTAL	<u>\$1,013,243.64</u>		

INCREASE (DECREASE)	\$161,394.51	494	6,196,800
CHANGE FROM 2020	15.93%	2.02%	3.85%

ROGERS WATER DEPARTMENT

UNACCOUNTED WATER

DATE	RESIDENTIAL GALLONS	COMMERCIAL GALLONS	INDUSTRIAL GALLONS	ACCOUNTED MISC. USAGE	TOTAL GALLONS	PURCHASE GALLONS	% LOST	AVG. MONTH LOST WATER PRIOR 12 MOS
JAN 18	104,077,100	49,883,300	30,539,700	6,551,902	191,052,002	243,083,000	21%	15%
FEB 18	102,411,400	52,007,700	30,093,700	4,813,185	189,325,985	210,445,000	10%	15%
MAR 18	92,303,700	48,678,500	27,958,200	4,730,709	173,671,109	233,310,000	26%	15%
APRIL 18	100,347,200	52,624,100	30,220,200	2,788,786	185,980,286	234,138,000	21%	15%
MAY 18	115,213,000	58,076,000	32,293,600	10,621,380	216,203,980	313,067,000	31%	16%
JUNE 18	166,994,000	63,428,100	36,002,900	12,041,975	278,466,975	396,880,000	30%	17%
JULY 18	215,713,300	106,907,600	39,968,600	14,532,288	377,121,788	407,710,000	8%	16%
AUG 18	187,257,800	102,092,600	41,230,600	12,760,973	343,341,973	358,759,000	4%	16%
SEP 18	171,314,600	95,024,400	44,748,500	13,441,939	324,529,439	342,806,000	5%	15%
OCT 18	151,248,300	89,077,800	35,094,000	9,583,577	285,003,677	298,657,000	5%	15%
NOV 18	114,305,500	66,659,600	35,432,100	9,616,009	226,013,209	242,305,000	7%	15%
DEC 18	103,775,000	51,543,200	30,402,800	4,406,624	190,127,624	239,950,000	21%	15%
JAN 19	103,865,900	52,948,000	28,080,600	8,954,401	193,848,901	247,190,000	22%	15%
FEB 19	102,380,100	49,948,900	30,691,200	5,981,366	189,001,566	223,269,000	15%	16%
MAR 19	93,343,200	50,183,200	30,006,500	5,180,973	178,713,873	245,637,700	27%	16%
APRIL 19	102,953,700	55,815,400	29,714,000	5,135,844	193,618,944	253,408,000	24%	16%
MAY 19	110,874,100	57,963,200	31,735,600	8,532,334	209,105,234	290,282,000	28%	16%
JUNE 19	130,751,800	72,428,900	36,719,000	6,506,804	246,406,504	306,021,000	19%	14%
JULY 19	140,146,700	72,365,400	38,367,500	13,779,584	264,659,184	368,933,000	28%	17%
AUG 19	173,213,500	91,257,400	40,011,100	12,953,917	317,435,917	364,525,000	13%	18%
SEP 19	175,778,300	95,785,400	47,750,900	12,644,585	331,959,185	347,520,000	4%	18%
OCT 19	140,246,600	87,202,300	41,753,500	4,610,318	273,812,718	293,352,000	7%	18%
NOV 19	111,343,600	65,636,000	36,987,000	20,520,520	234,487,120	248,739,000	6%	18%
DEC 19	101,525,100	55,312,500	31,463,400	49,014,571	237,315,571	250,561,000	5%	17%
JAN 20	107,463,300	53,464,100	32,057,900	12,961,957	205,947,257	246,298,000	16%	16%
FEB 20	105,145,200	55,635,200	33,986,500	4,801,031	199,567,931	229,761,000	13%	16%
MAR 20	98,555,000	51,849,200	30,874,700	2,375,487	183,654,387	246,077,000	25%	16%
APRIL 20	106,636,500	43,825,700	33,037,000	3,274,351	186,773,551	239,765,000	22%	16%
MAY 20	119,371,900	44,099,900	32,573,500	6,747,718	202,793,018	267,629,000	24%	15%
JUNE 20	148,312,100	59,144,100	32,918,900	6,214,732	246,589,832	376,881,000	35%	17%
JULY 20	206,932,800	96,036,700	39,369,200	7,593,698	349,932,398	410,197,000	15%	16%
AUG 20	203,523,300	98,480,900	41,240,200	6,949,275	350,193,675	407,040,000	14%	16%
SEP 20	206,965,900	102,725,300	44,438,200	18,615,746	372,745,146	367,521,000	-1%	15%
OCT 20	167,790,900	88,726,700	39,899,000	11,045,672	307,462,272	344,476,000	11%	15%
NOV 20	129,135,700	71,660,000	40,441,200	15,257,052	256,493,952	256,620,000	0%	15%
DEC 20	113,763,200	55,122,800	33,785,500	8,947,224	211,618,724	253,299,000	16%	16%
JAN 21	111,290,400	52,045,900	33,269,400	14,322,767	210,928,467	254,891,000	17%	16%
FEB 21	111,411,400	50,512,700	33,656,900	10,405,260	205,986,260	248,588,000	17%	16%
MAR 21	106,220,600	56,840,800	28,438,500	27,699,088	219,198,988	262,143,000	16%	15%
APRIL 21	108,392,100	61,424,400	38,230,400	65,652,670	273,699,570	317,276,000	14%	15%
MAY 21	116,157,700	60,862,700	38,655,100	135,221,813	350,897,313	416,951,000	16%	14%
JUNE 21	130,372,500	69,229,600	40,881,400	23,972,913	264,456,413	347,498,000	24%	13%
JULY 21	185,342,500	90,529,200	48,100,400	19,203,868	343,175,968	401,633,000	15%	13%
AUG 21	193,282,000	99,125,700	41,925,600	21,546,929	355,880,229	425,819,000	16%	13%
SEP 21	223,049,300	112,713,500	48,449,400	13,332,735	397,544,935	405,933,000	2%	14%
OCT 21	173,762,700	94,842,800	43,782,400	9,295,245	321,683,145	330,541,000	3%	13%
NOV 21	126,655,800	77,501,500	37,538,300	28,519,177	270,214,777	260,226,000	-4%	13%
DEC 21	109,711,100	61,930,000	39,953,300	27,939,291	239,533,691	255,581,000	6%	12%
JAN 22	110,667,200	58,744,000	33,658,700	33,616,254	236,686,154	263,633,000	10%	12%
ANNUAL TOTALS								
1996	1,033,147,700	378,946,600	646,243,600	40,833,456	2,099,171,356	2,374,167,000	12%	
1997	1,017,742,400	335,996,200	695,610,300	68,958,900	2,118,307,800	2,388,301,000	11%	
1998	1,177,425,800	346,184,000	694,663,700	68,430,958	2,286,704,458	2,519,861,000	9%	
1999	1,165,475,900	370,893,600	627,120,700	45,076,413	2,208,566,613	2,485,559,000	11%	
2000	1,194,969,900	390,911,800	574,602,400	58,711,543	2,219,195,643	2,493,792,000	11%	
2001	1,202,600,800	403,707,700	579,445,500	51,102,682	2,236,856,682	2,503,182,000	11%	
2002	1,233,191,500	441,953,900	613,014,500	80,165,443	2,368,325,343	2,622,997,000	10%	
2003	1,277,794,600	495,897,700	601,934,800	68,067,878	2,443,694,978	2,749,160,000	11%	
2004	1,274,534,100	499,435,200	608,668,100	93,809,002	2,476,446,402	2,772,906,000	11%	
2005	1,422,636,600	558,104,400	602,642,000	126,300,558	2,709,683,558	3,022,519,000	10%	
2006	1,499,064,700	617,313,100	596,850,100	144,167,033	2,857,394,933	3,178,011,000	10%	
2007	1,383,481,700	622,496,900	599,424,900	176,409,977	2,781,813,477	3,109,083,000	11%	
2008	1,273,620,400	594,752,700	603,791,900	152,922,688	2,625,087,688	2,953,139,000	11%	
2009	1,315,205,700	580,440,100	521,371,600	135,666,469	2,552,683,869	2,787,670,000	8%	
2010	1,443,799,600	638,199,600	516,194,000	96,577,502	2,694,770,702	3,022,614,000	11%	
2011	1,517,844,800	663,668,200	530,469,800	78,272,859	2,790,255,659	3,127,474,000	11%	
2012	1,688,130,600	760,644,700	491,108,500	99,329,864	3,039,213,664	3,355,086,000	9%	
2013	1,494,327,200	702,752,000	431,137,100	94,617,419	2,722,833,719	3,102,856,000	12%	
2014	1,480,643,800	698,320,800	397,758,200	75,320,430	2,652,043,230	3,043,700,000	13%	
2015	1,501,611,900	688,970,600	383,107,000	83,742,677	2,657,432,177	3,124,838,000	15%	
2016	1,505,181,300	740,265,900	415,037,400	85,587,177	2,746,071,777	3,256,967,000	16%	
2017	1,535,436,100	813,428,400	437,697,600	76,968,233	2,863,530,333	3,369,048,000	15%	
2018	1,624,960,900	836,002,900	413,984,900	105,889,347	2,980,838,047	3,521,110,000	15%	
2019	1,486,422,600	806,846,600	423,280,300	153,815,217	2,870,364,717	3,439,437,700	17%	
2020	1,713,595,800	820,770,600	434,621,800	104,783,943	3,073,772,143	3,645,564,000	16%	
2021	1,695,648,100	887,558,800	472,881,100	397,111,756	3,453,199,756	3,927,080,000	12%	
2022	110,667,200	58,744,000	33,658,700	33,616,254	236,686,154	263,633,000	10%	

ROGERS WATER UTILITIES SCHEDULE OF FUNDS

January 2022

	UNRE- STRICTED	RESTRICTED				TOTAL RESTRIC- TED	GRAND TOTAL
		Meter Deposits	Debt Reserve	Access/ Impact Fees	Depreci- ation		
WATER							
Petty Cash	\$ 1,725					\$ -	\$ 1,725
Checking - O&M	223,154					-	223,154
Checking-Bank of Rogers	206,798					-	206,798
Savings-Utility Money Fund	1,591,104					-	1,591,104
Savings-Depr Money Fund					598,663	598,663	598,663
Savings-O&M Money Fund	2,666,532					-	2,666,532
Access/Impact Fees-Simmons				917,026		917,026	917,026
Investments-CD's	10,985,155	1,080,980			2,472,201	3,553,181	14,538,336
Checking-Meter Deposits		394,988				394,988	394,988
Regions Bank-2012 Bonds			131,151			131,151	131,151
Regions Bank-2016 Bonds			108,748			108,748	108,748
TOTAL WATER	15,674,468	1,475,968	239,899	917,026	3,070,864	5,703,757	21,378,225
SEWER							
Petty Cash	150					\$ -	\$ 150
Savings-Depr Money Fund					533,748	533,748	533,748
Savings-O&M Money Fund	3,012,290					-	3,012,290
Access/Impact Fees-Simmons				1,651,748		1,651,748	1,651,748
Investments-CD's	16,039,251					-	16,039,251
Regions Bank-2010 Bonds			-			-	-
Regions Bank-2016 Bonds			302,578			302,578	302,578
TOTAL SEWER	19,051,690	-	302,578	1,651,748	533,748	2,488,074	21,539,764
GRAND TOTAL	\$ 34,726,158	\$ 1,475,968	\$ 542,477	\$ 2,568,775	\$ 3,604,611	\$ 8,191,831	\$ 42,917,989

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ROGERS WATER UTILITIES
CITY OF ROGERS WATER CONSUMPTION
FOR MONTH AND YEAR ENDING 1/31/22

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METER LOCATION			MONTH		12 MONTH		SIZE
			CONSUMPTION	COST	CONSUMPTION	COST	
ROGERS STREET DEPT	721 S 2ND ST	STREET DEPT	2,600	3.67	12,000	16.76	7
ROGERS STREET DEPT	415 S 1ST ST	SIGN SHOP	0	.00	170,800	235.92	7
ROGERS MUSEUM	322 S 2ND ST	MUSEUM	700	.99	552,700	769.51	1
ROGERS MUSEUM ANNEX	120 W POPLAR ST		0	.00	800	1.11	1
ROGERS MUSEUM EXHIBIT SHOP	311 S 3RD ST		14,200	20.02	22,800	32.14	7
ROGERS MUSEUM	313 S 2ND ST	NEW MTR	2,000	2.82	17,000	23.61	C
ROGERS PARKS CENTENNIAL PARK	100 S 1ST ST	IRRIG	0	.00	5,600	7.89	7
ROGERS PARKS BIKE PARK	299 E CHERRY ST	IRRIG	0	.00	5,000	6.99	C
ROGERS PARKS BIKE PARK	299 E CHERRY ST		8,000	11.28	218,000	303.87	C
ROGERS PARKS LAKE ATALANTA	800 E WALNUT ST		2,500	3.53	31,900	44.43	7
ROGERS PARKS LAKE ATALANTA IRR	803 E WALNUT ST	IRRIG	0	.00	0	.00	C
ROGERS FIRE #1	201 N 1ST ST		11,000	15.51	152,000	211.56	C
ROGERS ACTIVITY CENTER	315 W OLIVE ST		13,000	18.33	223,000	310.35	C
ROGERS PARKS WATER FOUNTAIN	5603 BELLVIEW		0	.00	9,000	12.55	7
ROGERS PARKS 5TH & OLIVE SOCCE	315 W OLIVE	IRRIG	1,000	1.41	600,000	835.83	B
ROGERS PARKS N 6TH ST SOCCER	315 W OLIVE ST	IRRIG	3,000	4.23	1,011,000	1,412.73	C
ROGERS PARKS LAKE ATALANTA	801 E WALNUT ST		1,800	2.54	56,500	78.67	1
ROGERS PARKS LAKE ATALANTA	908 E WALNUT ST		4,800	6.77	240,300	332.13	1
ROGERS FIRE #3	1 ETRIS DR		10,100	14.24	119,700	166.70	1
ROGERS AIRPORT	3 N AIRPORT DR	IRRIG	0	.00	0	.00	7
ROGERS PARKS MAINT SHOP	947 N 13TH ST		30,000	42.30	1,806,000	2,507.49	C
ROGERS PARKS NW PARK	947 N 13TH ST		0	.00	400	.55	1
ROGERS FIRE #4	2424 W OLIVE ST		7,900	11.14	108,800	151.43	1
ROGERS PARKS OLIVE ST PARK	2422 W OLIVE ST		200	.28	14,900	20.81	1
ROGERS PARKS CAMBRIDGE	1304 N 37TH ST	IRRIG	1,200	1.69	30,900	43.00	1
ROGERS PARKS FOXFIRE CLUBHOUSE	FOXFIRE CLUBHOUSE		500	.71	8,500	11.86	7
ROGERS PARKS WESTSIDE	2200 W OAK ST	IRRIG	0	.00	0	.00	1
ROGERS ANIMAL SHELTER	2935 W OAK ST		21,000	29.61	265,800	370.58	7
ROGERS FIRE TRAINING CTR	3003 W OAK ST		3,500	4.94	74,200	103.00	7
ROGERS FIRE #5	2525 CHAMPIONS DR		13,200	18.61	341,200	474.71	1
ROGERS LIBRARY	711 S DIXIELAND RD		14,000	19.74	140,000	195.42	B
ROGERS LIBRARY	711 S DIXIELAND RD	IRRIG	0	.00	37,900	52.57	1
ROGERS POLICE DEPT	1905 S DIXIELAND RD		74,000	104.34	1,550,000	2,163.87	C
ROGERS FIRE #2	1800 W NEW HOPE RD		15,000	21.15	161,000	224.22	B
ROGERS PARKS TOWER	S 11TH ST	IRRIG	900	1.27	8,600	11.99	7
ROGERS PARKS TOWER BATHROOMS	S 11TH ST		0	.00	25,600	35.57	1
ROGERS CEMETARY	510 S 10TH ST		0	.00	0	.00	7
ROGERS CEMETARY	510 S 10TH ST		700	.99	47,200	66.34	7
ROGERS CEMETARY	S 9TH ST AND W OAK		0	.00	0	.00	1
ROGERS PARKS MAPLE GROVE	805 S ARKANSAS ST		100	.14	33,300	46.08	1
ROGERS PARKS VETERANS MAINT	275 E VETERANS PKWY		7,300	10.29	91,500	127.63	7
ROGERS PARKS VETERANS	500 VETERANS PARKWAY		5,200	7.33	409,800	567.84	1
CITY OF ROGERS	ELM & 1ST ST	EAST IRRIG	0	.00	346,000	482.94	B
ROGERS PARKS MAPLE GROVE	805 S ARKANSAS	IRRIG	0	.00	0	.00	B
ROGERS FIRE #6	5801 S BELLVIEW DR		5,800	8.18	133,000	185.05	1
ROGERS AIRPORT CONTROL TOWER	2 ETRIS DR		700	.99	9,000	12.51	7
ROGERS PARKS SKATE PARK	315 W OLIVE		0	.00	3,999,000	5,527.71	C
ROGERS PARKS MAPLE GROVE	1206 MONTE NE RD	IRRIG	0	.00	28,000	39.48	B
CITY OF ROGERS	301 W CHESTNUT ST		9,200	12.97	94,100	131.11	1
ROGERS CITY ADMIN	301 W CHESTNUT ST	IRRIG	0	.00	285,000	398.52	1
ROGERS FIRE #7	3400 S 1ST ST		3,900	5.50	53,500	74.43	1
ROGERS ADULT WELLNESS CENTER	2001 W PERSIMMON		76,000	107.16	1,187,000	1,653.18	C

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ROGERS WATER UTILITIES
CITY OF ROGERS WATER CONSUMPTION
FOR MONTH AND YEAR ENDING 1/31/22

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METER LOCATION			MONTH		12 MONTH		SIZE
			CONSUMPTION	COST	CONSUMPTION	COST	
ROGERS STREET DEPT	W PAULINE WHITAKER W-IRR		0	.00	0	.00	1
ROGERS STREET DEPT	W PAULINE WHITAKER E-IRR		0	.00	0	.00	1
ROGERS STREET DEPT	1203 N 6TH ST		5,000	7.05	132,000	183.00	C
ROGERS STREET CITY OF ROGERS	WALNUT & 1ST ST IRRIG		0	.00	17,700	24.96	7
ROGERS STREET DEPT	W PAULINE WHITAKER M-IRR		0	.00	45,900	63.34	1
ROGERS STREET DEPT	2300 N ARKANSAS		3,000	4.23	64,000	88.89	C
ROGERS PARKS VETERANS	475 VETERANS PARKWAY NORTH		0	.00	1,500	2.08	1
ROGERS PARKS VETERANS	480 VETERANS PARKWAY SOUTH		5,100	7.19	167,800	233.01	1/C
ROGERS RECYCLE CENTER	2300 N ARKANSAS		1,700	2.40	67,800	93.85	1
ROGERS STREET CITY OF ROGERS	ELM & 1ST ST WEST IRRIG		0	.00	88,700	123.58	7
ROGERS STREET DEPT	1203 N 6TH ST		35,800	50.48	418,700	582.87	1
ROGERS STREET DEPT	1203 N 6TH ST		4,000	5.64	45,600	63.42	1
ROGERS STREET DEPT	1203 N 6TH ST		39,500	55.70	126,000	175.86	1
ROGERS STREET CITY OF ROGERS	POPLAR & 2ND ST IRRIG		0	.00	151,000	210.10	7
ROGERS STREET CITY OF ROGERS	ELM & 2ND ST IRRIG		0	.00	193,400	269.38	7
ROGERS STREET CITY OF ROGERS	POPLAR & 1ST ST IRRIG		0	.00	0	.00	7
ROGERS STREET CITY OF ROGERS	WALNUT & 2ND ST IRRIG		0	.00	374,400	521.46	7
ROGERS PARKS HORSEBARN WLKG TR	423 HORSEBARN RD		4,300	6.06	57,600	80.24	7
ROGERS STREET CITY OF ROGERS	WALNUT & 2ND ST IRRIG II		0	.00	14,100	19.64	7
ROGERS STREET CITY OF ROGERS	111 W WALNUT IRRIG		0	.00	100	.14	7
ROGERS PARKS OSAGE SPRINGS FTM	S OSAGE SPRINGS DR FTM		0	.00	5,800	8.17	7
ROGERS STREET CITY OF ROGERS	WALNUT & 3RD ST IRRG (SE)		0	.00	137,600	191.62	7
ROGERS PARKS CITY OF ROGERS	113 N 4TH ST		1,500	2.12	339,600	471.81	1
ROGERS PARKS AQUATIC CENTER	1707 S 26TH ST POOL		0	.00	11,115,000	15,372.00	C
ROGERS PARKS CITY OF ROGERS	2150 N DIXIELAND IRRIG 2		0	.00	240,000	332.10	B
ROGERS PARKS CITY OF ROGERS	2150 N DIXIELAND IRRIG 1		0	.00	9,000	12.48	B
ROGERS PARKS AQUATIC CENTER	1707 S 26TH ST BLDG		0	.00	6,719,000	9,318.12	C
ROGERS PARKS REGIONAL SPORTS	2150 N DIXIELAND CONCESSIONS		1,000	1.41	47,000	65.43	C
ROGERS PARKS REGIONAL SPORTS	2150 N DIXIELAND MAINTENANCE		300	.42	5,000	6.93	7
ROGERS PARKS AQUATIC CENTER	1707 S 26TH ST IRRIG		0	.00	36,000	49.68	B
ROGERS MUSEUM ANNEX II	300 W POPLAR ST		1,800	2.54	9,000	12.53	1
ROGERS PARKS VETERANS	122 VETERANS PARKWAY IRRIG		0	.00	5,000	6.93	C
ROGERS PARKS MERCY TRAILHEAD	3500 S RIFE MEDICAL LN		2,500	3.53	43,300	60.27	1
ROGERS PARKS VETERANS	122 VETERANS PARKWAY		1,000	1.41	50,000	70.08	B
ROGERS PARKS VETERANS IRRIG II	122 VETERANS PARKWAY IRRIG		0	.00	623,400	867.59	1
ROGERS AIRPORT CITY OF ROGERS	AIRPORT METER #3		2,000	2.82	33,400	46.44	7
ROGERS CITY ADMIN	2 EXECUTIVE HANGAR RD		0	.00	0	.00	7
ROGERS CITY ADMIN	4 EXECUTIVE HANGAR RD		0	.00	25,900	36.50	7
ROGERS CITY ADMIN	5 N EXECUTIVE HANGAR RD		0	.00	18,600	25.69	1
ROGERS POLICE DISPATCH CENTER	1903 S DIXIELAND RD		3,200	4.51	53,900	75.13	1
ROGERS POLICE DISPATCH CENTER	1903 S DIXIELAND RD IRRIG		700	.99	700	.99	1
ROGERS FIRE #8	7001 W PLEASANT GROVE RD		4,000	5.64	61,000	84.93	C
ROGERS STREET CITY OF ROGERS	WALNUT & 3RD ST IRRG (NE)		0	.00	95,200	132.59	7
CITY OF ROGERS	5803 S BELLVIEW DR		700	.99	21,300	29.70	1
ROGERS PARKS RAILYARD IRRIG	101 E CHERRY ST		0	.00	0	.00	1
ROGERS PARKS RAILYARD	204 S ARKANSAS ST		1,100	1.55	238,400	332.80	1
ROGERS PARKS RAILYARD	202 S ARKANSAS ST		0	.00	2,095,200	2,915.53	7
ROGERS PARKS RAILYARD IRRIG	200 S ARKANSAS ST		0	.00	518,300	718.52	1
ROGERS STREET DEPT	PINNACLE HILLS & PARK IRR		0	.00	1,271,700	1,792.91	1
ROGERS MUSEUM IRRIG	313 S 2ND ST		3,300	4.65	33,100	46.35	1
ROGERS STREET CITY OF ROGERS	CHERRY & 2ND IRRIG		0	.00	183,800	257.24	7
ROGERS STREET CITY OF ROGERS	CHERRY & 1ST IRRIG		0	.00	31,400	43.82	7

ROGERS WATER UTILITIES
CITY OF ROGERS WATER CONSUMPTION
FOR MONTH AND YEAR ENDING 1/31/22

		MONTH		12 MONTH		<u>SIZE</u>
METER LOCATION		CONSUMPTION	COST	CONSUMPTION	COST	
CITY OF ROGERS	101 E CHERRY	4,100	5.78	42,200	59.13	1
		-----	-----	-----	-----	
TOTALS:		490,600	\$691.78	40,813,400	\$56,662.47	

Rogers Pollution Control DMR Summary

2021

	Limits	Jan	Feb	March	April	May	June	July	Aug	Sept	Oct	Nov	Dec
Phosphorus Mo Avg lbs/day	117	9.80											
Phosphorus 30 Day Mo Avg mg/l	1	0.14											
Phosphorus Max 7 day Avg mg/l	2	0.15											
May - Oct	Limits												
Total Suspended Solids lbs/day Mo Avg	1,751												
Total Suspended Solids Mo Avg	15												
Total Suspended Solids 7 day Avg	23												
Nov- April													
Total Suspended Solids lbs/day Mo Avg	2,335	76.7											
Total Suspended Solids Mo Avg	20	1.1											
Total Suspended Solids 7 day Avg	30	1.4											
April	Limits												
Ammonia lbs/day Mo Avg	234												
Ammonia Mo Avg mg/l	2.0												
Ammonia max 7 day Avg mg/l	4.5												
May- Oct	Limits												
Ammonia lbs/day Mo Avg	175												
Ammonia Mo Avg mg/l	1.5												
Ammonia max 7 day Avg mg/l	2.3												
Nov- March	Limits												
Ammonia lbs/day Mo Avg	350	24.54											
Ammonia Mo Avg mg/l	3.0	0.35											
Ammonia max 7 day Avg mg/l	4.5	0.53											
May - Oct	Limits												
CBOD Mo Avg lbs/day	1,168												
CBOD Mo Avg mg/l	10												
CBOD Max 7 day Avg. mg/l	15												
Nov- April	Limits												
CBOD Mo Avg lbs/day	1,751	114.0											
CBOD Mo Avg mg/l	15	1.6											
CBOD Max 7 day Avg. mg/l	23	1.8											



Monthly Summary of Industrial Pretreatment Activities **January 2022**

# of industrial control monitoring activities:	0
Industries control monitored:	n/a
# of self monitoring reports processed:	10
# of industrial inspection activities:	0
Industries inspected:	n/a
# of short site visits:	0
Industries visited:	n/a
# of Notices of Violation:	0
Notices of Violation:	n/a

Surcharges December 2021 issued in January 2022

User Name	Monthly Flow MG	TSS ppm	TSS \$ Charge	CBOD ppm	CBOD \$ Charge	NH3N ppm	NH3N \$ Charge	TPhos ppm	TPhos \$ Charge	Total \$ Charge
Ozark Mt Poultry	3.635249	42.3	0.00	398.37	781.84	31.21	344.02	8.92	758.22	1884.08
SE Poultry	2.911006	38.2	0.00	255.63	175.57	5.30	0.00	11.25	894.52	1070.09
Tyson CNQ	6.550620	43.0	0.00	214.50	102.98	2.05	0.00	1.49	0.00	102.98
Tyson of Rogers	4.556275	12.3	0.00	54.67	0.00	127.33	2988.01	1.37	0.00	2988.01
WestRock	0.062400	17.8	0.00	1050.00	57.51	89.24	27.05	0.13	0.00	84.56
Glad	2.340314	940	2022.09	283.2	211.11	n/a	0.00	7.40	337.12	2570.32
Sum \$										8700.04

Surcharge thresholds in mg/L and cost per pound of loading

Pollutant	TSS	CBOD	NH3N	TPhos
mg/L threshold	200	200	15.00	4.00
\$ per pound	0.14	0.13	0.70	5.08

The total amount surcharged during the 2021 – 2022 budget year is \$37,370.77.

Note that Glad's surcharges represent the three months of the 4th Quarter. In January the annual pretreatment program status report was submitted to the Arkansas Energy & Environment Dept. of Environmental Quality.

Report prepared by Paul Burns, Pretreatment Coordinator



FOG Inspection Report Monthly Summary for January 2022

- 51 known places were pumped in January. A list of serviced establishments can be generated upon request.
- Inspections were limited this month. All were routine with nothing major to report though.
- The new Kum & Go being built off Pleasant Grove did not install the approved grease interceptor from the red stamped plans. They have already replaced it with the approved one.
- 120 Tapas and Eat My Catfish recently opened. I went to both locations to discuss the FOG program, give them handouts, what pumping frequency they need to start on and other requirements (such as record keeping).
- McDonalds off Pleasant Grove submitted plans for a remodel, so I went and inspected their grease interceptor to make sure everything was ok. If it wasn't, then they could address it with the remodel. I found that one of the lids was not properly secured and the outlet tee piping was missing. I informed the management company for this location about the required corrections. They are currently waiting on quotes and will address the corrections as quickly as possible.
- Zoe's Kitchen is also being remodeled/rebranded. Their grease interceptor looked good and seems to be in working order. The remodel will add a small fryer, but I do not think it will affect the loading enough to replace the interceptor. The only concerns I had were the lids. They were not secured, but I was able to properly secure them with the screws that were there. I let the management know that they need to keep an eye out for when the pumper comes and to go double check the lids after each service.
- I continue to help with plan reviews and have been involved in pre-construction meetings with Risk Reduction and RWU when grease interceptors/oil water separators are involved.
- I collected the monthly Oil and Grease samples at the plant. Four grab and one composite sample.
- I been reviewing and updating the ordinance I hope to have a final rough draft out shortly.

Amber Owens
F.O.G. Inspector
Rogers Pollution Control Facility
(479) 273-7378 Ext. 301

Pollution Control Facility Significant Events

January 2022

1. Train 2 refurbishment hit a milestone and is now being used to treat water. Some equipment is still being transferred from train 1, but the new equipment is working well.
2. We had a significant failure in the dryer that warped the large end cap of the pressurized treatment vessel. We called our boiler certified repair group who was able to get us going again the same day. My team of operators and maintenance guys came in early and stayed late and modified schedules and were very flexible to get the needed work done to be prepared for the repairmen and do all of the work that we could. I am very proud of my team for their performance at a difficult and unpleasant task.
3. I have been working on our permit renewal paperwork. The EPA has sent letters to both Springdale and NACA that unless ADEQ revises the permits to both be .1 mg/l Phos limit, the EPA will send their own permit superseding ADEQ. I expect litigation from all parties and likely more delays for us. Of note on the attached letters from the EPA
 - a. -An objection from STIR (Save the Illinois River) which has no actual weight due to the comment not meeting the standards and rules for public comment. STIR will learn from this and likely be an issue on our permit.
 - b. An objection from the City of Bentonville to the Springdale permit that I highlighted.
 - c. A very short window for response for both parties.
 - d. A 30 day averaging for P instead of the longer rolling average in the ADEQ issued permit.
4. We treated 285.2 MG in January. $31 \times 8.5 \text{ MGD} = 263.5 \text{ MG}$. That means we treated approximately 21.7 MG from I and I. These flows included 1.08" of rain over 5 events. The historical average rainfall for January is 2.5".



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

December 30, 2021

Alan York
Associate Director
Office of Water Quality
Division of Environmental Quality
Arkansas Department of Energy and Environment
5301 North Shore Drive North Little Rock, AR 72118-5317

Re: Notification of Invalid Final NPDES Permit and
General Objection to Proposed NPDES Permit for
Northwest Arkansas Conservation Authority
NPDES Permit No. AR0050024

Dear Mr. York:

The U.S. Environmental Protection Agency (EPA) is in receipt of your email dated December 3, 2021, notifying the EPA of the Arkansas Division of Environmental Quality's (ADEQ) issuance of Permit Number AR0050024 to Northwest Arkansas Conservation Authority (NACA) on December 1, 2021. This letter is to notify you that ADEQ's issuance of the NACA permit violated the provisions of Clean Water Act (CWA) Section 402, federal implementing regulations at 40 CFR Part 123, and the Memorandum of Agreement signed between the EPA and the Arkansas Pollution Control and Ecology Commission (APC&EC) upon approval of the State of Arkansas to implement the National Pollutant Discharge Elimination System (NPDES) program ("the MOA"). Consequently, the December 1, 2021, NACA permit is not a validly issued final NPDES permit. Instead, the EPA has determined the December 1, 2021, permit to be a proposed permit subject to EPA review under CWA Section 402(d), 40 C.F.R. 123.44(j) and Section III.B.11 of the MOA.

In addition, following review of the December 1, 2021, proposed permit, which was received by the EPA on December 3, 2021, the EPA is hereby exercising its authority under Section 402(d) of the CWA, federal regulations at 40 C.F.R. 123.44(b), and Section III.B of the MOA to generally object to this permit for the general reasons described herein. In accordance with 40 C.F.R. 123.44(b)(2) and Section III.B.11 of the MOA, the EPA will, within 90 days of receipt of the December 1, 2021, proposed permit, follow this general objection with a specific objection setting forth in greater detail the reasons for the objection, including the Section of the CWA or regulations supporting the objection, and the actions that must be taken by the ADEQ to eliminate the objection. Within 90 days of receipt of the EPA's specific objection, the State or any interested person may request a public hearing on the objection. If no public hearing is held and the ADEQ does not resubmit a permit that addresses the EPA's objections within 90 days of receipt of the objection, exclusive authority to issue the permit will pass to the EPA. See 40 C.F.R. 123.44(e), (f), (g), and (h) and MOA Sections III.B.11 and 12.

I. The Permit issued to NACA by the ADEQ on December 1, 2021, was not issued in accordance with the requirements of the CWA, federal regulations, or the MOA, and is therefore not a validly issued NPDES permit effective for CWA purposes. Instead, the December 1, 2021, permit is a proposed permit as defined under 40 C.F.R. 122.2.

Per 40 C.F.R. 123.44(j), if the EPA agrees in the Memorandum of Agreement with an authorized state, as it did in the Arkansas MOA, to review draft permits rather than proposed permits,¹ the authorized state is not required to send the proposed permit to the EPA “unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.” This requirement cannot be waived in an authorization Memorandum of Agreement, and is, in fact, echoed in the Arkansas MOA:

If (a) the proposed final permit is the same as or more stringent than the draft permit submitted to the EPA in accordance with Section III.B.7 of this MOA, and (b) the EPA has not objected to such draft permit, and (c) valid and significant public comments have not been made, the State may issue the permit without further review by the EPA. In all other cases, the State will send one copy of the proposed final permit and other information to the EPA. MOA Section III.B.11.

The EPA originally received the draft NACA permit from ADEQ for review on October 28, 2020. The draft permit included tiered total phosphorus (TP) limits, a Tier I limit of 0.1mg/L TP based on a design flow of 3.6 MGD, and a Tier II limit of 0.5 mg/L based on an increased design flow of 7.2 MGD. The Tier I 0.1 mg/L TP limit was the same as in the previous permit. The draft permit also included mass load limits of 3 lbs/day at Tier I, which increased to 30 lbs/day at Tier II. Before transitioning to the Tier II limit, the permittee was required to notify the ADEQ within 30 day of construction completion provided the new system was fully operational. The draft permit fact sheet indicated the Tier II TP limit of 0.5 mg/L was based on a Memorandum of Agreement between the States of Arkansas and Oklahoma and was in accordance with Arkansas’ Continuing Planning Process (CPP) guidelines. The fact sheet also described the Tier II TP limit as water quality-based.

Upon initial review of the draft permit, the EPA did not object, but by letter dated November 23, 2020, offered comments and reminded the ADEQ that prior to the issuance of any final permit, the ADEQ’s Water Quality Management Plan would have to be approved by the EPA. However, after being made aware of Oklahoma’s opposition to the permit by the Oklahoma Water Resources Board (OWRB) on January 19, 2021, the EPA asked for additional information by telephonic meeting on January 26, 2021. On February 11, 2021, the EPA followed up with a supplemental letter to the ADEQ requesting additional information and explanation on several items, including an analysis of how the Tier II TP limit of 0.5 mg/L would neither cause nor contribute to a violation of WQS in the immediate receiving water or in downstream Oklahoma waters, an explanation of how the 0.5 mg/L TP limit did not violate anti-backsliding requirements, and a detailed analysis of whether the 0.1 mg/L TP limit was technologically achievable at the Tier II projected 7.2 MGD design flow. The EPA also requested a detailed technical analysis of the projected net reduction in TP loadings at the NACA regional plant, including calculations showing the reduction in TP loadings projected to result from each existing

¹ Federal regulations define *Draft permit* to mean “a document prepared under § 124.6 indicating the Director’s tentative decision to issue or deny, modify or revoke and reissue, terminate or reissue a ‘permit.’” *Proposed permit* is defined as “a State NPDES ‘permit’ prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for final review before final issuance by the State. A ‘proposed permit’ is not a ‘draft permit.’” 40 C.F.R. 122.2.

permitted discharger expected to connect to the NACA facility (and thus reduce or cease independent operation) and the expected timeframe for such reductions in loadings to be realized.

The EPA and the ADEQ subsequently engaged in telephone discussions regarding the EPA's concerns, including a conference call between the two agencies on June 30, 2021. On August 18, 2021, the ADEQ forwarded by email a draft response aimed at addressing the EPA's concerns. However, the EPA determined the draft response did not sufficiently address the EPA's concerns regarding the Tier II 0.5 mg/L TP limit or the backsliding issue. The EPA discussed its determination by telephone with the ADEQ and offered the EPA's assistance in finding a path forward. On September 21, 2021, the ADEQ forwarded by email draft revised permit language for EPA review that continued to include a 0.5 mg/L Tier II TP limit based on a theoretical presumption of TP reductions. The EPA notified the ADEQ via telephone that the revised permit language did not address the EPA's concerns.

On December 3, 2021, the ADEQ notified the EPA via email that the ADEQ had issued the NACA permit on December 1, 2021. The December 1, 2021, permit is fundamentally different from the draft permit reviewed by the EPA in October 2020. For instance, the Tier II limits in the December 1, 2021, permit now include a TP limit of 0.35 mg/L, with a phosphorus load of 21 lbs/day, as opposed to the Tier II TP limit in the draft permit of 0.5 mg/L, with a phosphorus load of 30 lbs/day. Part II of the permit has also been revised to require that the permittee provide a list of facilities signed up to connect to NACA with no phosphorus treatment or a limit greater than 0.35mg/L. The revised language in Part II indicates that the ADEQ now projects the NACA plant to result in an overall reduction in TP to the Illinois River Watershed of 6,575 lbs/year, as opposed to an estimate of overall reduction in TP of 7,800 lbs/year described by the ADEQ in its draft email response to the EPA's February 11, 2021, letter. Although the Tier II TP limits in the December 1, 2021, permit may appear on their face to be more stringent than the Tier II limits in the draft permit, in fact the changes only call into greater question the ADEQ's rational and basis for these limits. The Tier II TP limits in the draft permit were described as water quality-based, while the December 1, 2021, permit describes them as technology-based. In addition, the ADEQ's explanation of why the permit complies with anti-backsliding requirements changed significantly. Despite the material differences in the December 1, 2021, permit and the draft permit reviewed by the EPA, the ADEQ did not submit the December 1, 2021, permit to the EPA for review prior to issuance.

In addition, significant public comment was submitted to the ADEQ regarding the draft NACA permit by the Oklahoma Conservation Commission (OCC) and the OWRB. The State of Oklahoma is downstream of Arkansas in the Illinois River Basin and its waters are thus affected by the ADEQ's issuance of the NACA permit. By letter dated January 19, 2021, the OCC noted Arkansas and Oklahoma's shared commitment to protect the Illinois River Basin and the importance of updating permits on both sides of the border in furtherance of that goal. However, the OCC stated that it had significant concerns with the draft permit, foremost of which was its opposition to the increase in the TP effluent limit from 0.1 to 0.5 mg/L. The OCC stated that it could not support this increase in the TP limit, as it would allow an increase the allowable TP load by a factor of 10 in a basin that already consistently fails to meet water quality standards at the state line. The OCC also stated that it did not accept ADEQ's argument that the increase in TP loading would be offset by regionalization, arguing instead that the NACA plant has always been intended to be a regional plant, that regionalization was always intended at the 0.1 mg/L TP limit, and that ADEQ's vision of additional cities tying into the plant in the future, thereby decreasing the pollutant load, was based on conjecture. The OCC also argued that the draft permit was not in compliance with federal anti-backsliding requirements.

The OWRB also submitted comments opposing the increase in the TP effluent limit from 0.1 mg/L to 0.5 mg/L, noting that ambient water quality monitoring results from state line locations in both Arkansas and Oklahoma demonstrate that Oklahoma's total phosphorus water quality standard (WQS) is consistently violated as the Illinois River flows from Arkansas into Oklahoma, and that increasing the allowable phosphorus load in the watershed from the NACA plant is inconsistent with watershed wide efforts to reduce phosphorus loading and meet applicable Oklahoma WQS as required by the CWA. The OWRB also commented on the speculative nature of ADEQ's argument that additional small communities would in the future connect to the NACA regional wastewater treatment plant, in addition to arguing that the increased TP limit violated anti-backsliding requirements. The OWRB recommended that the draft permit be revised to reflect a TP effluent limit of 0.1 mg/L as a 6-month average at outfall 001 under Tier II of the permit.

Because the NACA permit prepared by the ADEQ following the receipt of public comments (i.e., the proposed permit) differed from the draft permit reviewed by the EPA, and because the ADEQ received significant public comment on the draft permit, the ADEQ was required pursuant to 40 C.F.R.123.44(j) and Section III.B.11 of the MOA to resubmit the proposed permit to the EPA for review. The ADEQ did not do so, but instead issued a final permit on December 1, 2021.

Because the ADEQ did not provide the EPA with the proposed NACA permit for review prior to issuance of the final permit as required by the NPDES regulations and the MOA, the December 1, 2021, permit is not a validly issued final NPDES permit. Instead, the December 1, 2021, permit is a proposed permit as defined under 40 C.F.R. 122.2. The EPA's determination that the December 1, 2021, permit is a proposed permit subject to EPA review, rather than a validly issued final NPDES permit, is supported by case law. See Champion International Corp. v. U.S. E.P.A., 850 F.2d 182 (4th Cir., 1988). See also In the Matter of: J&L Specialty Products Corp. Permit No. OH 0007188, 5 E.A.D. 31 (EAB 1994).

II. The EPA generally objects to issuance of the NACA permit pursuant to Section 402(d) of the CWA, federal regulations at 40 C.F.R. 123.44, and Section III.B. of the MOA.

Based on our review of the December 1, 2021, proposed NACA permit, which was received by the EPA on December 3, 2021, the EPA generally objects to the issuance of this permit based in general terms on the following:

- The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with the procedures required by the CWA, 40 C.F.R. Part 123 and the MOA. The ADEQ did not provide Oklahoma, a downstream state whose waters are affected by issuance of the NACA permit, and the EPA written notification of its failure to accept Oklahoma's written recommendations with respect to the NACA permit and its reasons for doing so as required by CWA Section 402(b)(5). See also MOA Section III.B.13. In addition, the ADEQ did not forward to the EPA the significant comments objecting to the draft permit and received in writing during the public comment period as required by Section III.B.13 of the MOA.
- The written recommendations from the State of Oklahoma regarding the NACA permit were not accepted by the ADEQ and the EPA finds the reasons for rejecting the recommendations

inadequate. As described above, during the public comment period for the draft permit, the OWRB and the OCC expressed significant concerns about the draft permit's 0.5 mg/L TP limit and recommended that draft permit be revised to reflect a TP effluent limit of 0.1 mg/L as a 6-month average at outfall 001 under Tier II of the permit. The ADEQ did not accept Oklahoma's recommendations, and the EPA has determined the ADEQ's reason for rejecting the recommendations to be inadequate.

- The increase in TP effluent limits in the proposed permit violates the anti-backsliding provisions at CWA 402(0) and 40 C.F.R. 122.44(l).
- The Tier II TP effluent limit in the proposed permit fails to satisfy the requirements of the CWA and implementing regulations, including 40 C.F.R. 122.44 (d). The ADEQ has failed to demonstrate this limit is sufficient to protect all applicable WQS, including those of the downstream State of Oklahoma. The ADEQ states that the 0.35 mg/L Tier II TP limit in the permit is technology-based.
- The Tier II TP permit limit is not consistent with the ADEQ's approved Water Quality Management Plan.

As noted above, this objection letter describes the general nature of the EPA's objections in accordance with 40 C.F.R. 123.44(b)(1) and Section III.B.11 of the MOA. As required by 40 C.F.R. 123.44(b)(2) and MOA Section III.B.11, the EPA will follow this general objection with a specific objection setting forth in greater detail the reasons for the objection, including the section of the CWA or regulations supporting the objection, and the actions that must be taken by the ADEQ to eliminate the objection. In accordance with 40 C.F.R. 123.44(a)(1), the EPA has forwarded a copy of this general objection letter to the permit applicant.

Thank you for your attention to this matter. If you have any questions or concerns, please feel free to contact me at 214-665-8138.

Sincerely,

Charles Maguire

Charles W. Maguire
Director
Water Division (6WD)

Cc: (electronic) Mr. Michael G. Neil, Facility Manager, NACA
Mr. George R. Spence, Board Chair, NACA
Ms. Becky Keogh, Cabinet Secretary, Arkansas Energy & Environment;
Director, Arkansas Department of Environmental Quality
Ms. Julie Linck, Administrator, Arkansas Energy & Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

January 21, 2022

Alan York
Associate Director
Office of Water Quality Division
Division of Environmental Quality
Arkansas Department of Energy and Environment
5301 North Shore Drive North Little Rock, AR 72118-5317

Re: Specific Objection to Proposed NPDES Permit for
Northwest Arkansas Conservation Authority
NPDES Permit No. AR0050024

Dear Mr. York:

In accordance with Section 402(d) of the Clean Water Act (CWA), federal regulations at 40 C.F.R. 123.44(b), and Section III.B of the Memorandum of Agreement signed between the EPA and the Arkansas Pollution Control and Ecology Commission upon approval of the State of Arkansas to implement the National Pollutant Discharge Elimination System (NPDES) program ("the MOA"), the U.S. Environmental Protection Agency (EPA) is hereby specifically objecting to the Division of Environmental Quality's (DEQ's, formally the Arkansas Department of Environmental Quality or ADEQ) issuance of Permit Number AR0050024 to Northwest Arkansas Conservation Authority (NACA) (hereinafter the "proposed permit").

This specific objection follows the EPA's letter to the DEQ dated December 30, 2021, notifying the DEQ of the EPA's determination that the December 1, 2021, NACA permit is a proposed permit subject to EPA review and of the EPA's general objection to the NACA permit ("General Objection Letter," attached and incorporated herein). As required by 40 C.F.R. 123.44(b)(2) and Section III.B.11 of the MOA, this specific objection describes in greater detail the reasons for the objection, including the Sections of the CWA or regulations supporting the objection, and the actions that must be taken by the DEQ to eliminate the objection. Within 90 days of receipt of the EPA's specific objection, the State or any interested person may request a public hearing on the objection. If no public hearing is held and the DEQ does not resubmit a permit that addresses the EPA's objections within 90 days of receipt of this objection, exclusive authority to issue the permit will pass to the EPA. See 40 C.F.R. 123.44(e), (f), (g), and (h) and MOA Sections III.B.11 and 12.

Based on our review of the December 1, 2021, proposed NACA permit, which EPA received on December 3, 2021, and in accordance with 40 C.F.R. 122.44(c), the EPA specifically objects to the issuance of this permit on the following grounds:

Item 1. The procedures followed in connection with formation of the proposed permit failed in a material respect to comply with procedures required by the CWA, regulations, and MOA (40 C.F.R. 123.44(c)(3)).

During the public comment period for the draft NACA permit, the Oklahoma Water Resources Board (OWRB) and the Oklahoma Conservation Commission (OCC) submitted written comments opposing the draft permit's 0.5 mg/L total phosphorous (TP) limit at Outfall 001 under Tier II (7.2 MGD design flow) and recommending that the draft permit be revised to reflect a Tier II TP effluent limit of 0.1 mg/L as a 6-month average at Outfall 001. Both Oklahoma agencies expressed significant concern that the increased TP concentration combined with the expanded facility flow would result in a ten-fold increase in phosphorus load to the Illinois River watershed in a basin that already consistently fails to meet water quality standards at the Arkansas/Oklahoma state line.

The DEQ did not forward to the EPA the significant comments objecting to the draft permit received in writing during the public comment period as required by Section III.B.13 of the MOA. In addition, both 40 C.F.R. 123.44(j) and the MOA required the DEQ to forward the proposed NACA permit to the EPA for review because the proposed permit differed from the draft permit that was previously reviewed by the EPA and because the DEQ had received significant public comment on the draft permit. (See detailed discussion in Section I of the EPA's December 30, 2021, General Objection Letter). The DEQ failed to comply with these regulatory and MOA requirements, which would have provided the EPA an opportunity to review the proposed NACA permit before it was issued on December 1, 2021.

Item 2. The effluent limits of the permit fail to satisfy the requirements of 40 C.F.R. 122.44(d) (40 C.F.R. 123.44(c)(8)).

40 C.F.R 122.44(d) requires permits to include, in pertinent part, requirements as necessary to:

- Achieve water quality standards established under Section 303 of the CWA, including state narrative criteria for water quality (40 C.F.R 122.44(d)(1))

The DEQ has failed to demonstrate that the 0.35 mg/L effluent limit for TP in the December 1, 2021, proposed permit will achieve or maintain either Arkansas's narrative nutrient WQS or the 0.037 TP water quality criterion of the downstream State of Oklahoma, as required by 40 C.F.R. 122.44(d)(1). The permit fact sheet states that the Tier I (3.6 MGD design flow) limit for TP at Outfall 001 is a technology-based limit justified by the previous permit and EPA's April 3, 2009, objection letter, and that the Tier II (7.2 MGD design flow) TP limit is a technology-based limit justified by the 2018 Memorandum of Agreement between the States of Arkansas and Oklahoma and the DEQ's "calculated offset based on the amount of phosphorus injected into the subsurface." See Part 12.A of the Fact Sheet, Chart titled 'Justification for Limitations and Conditions of the Final Permit'¹

¹ Although the DEQ states that the 0.35 mg/L Tier II TP limit is a technology-based limit based on an offset of TP loading to the watershed, the EPA's Trading Policy does not support trading to meet technology-based effluent limits. "The intent of a TBEL is to require a minimum of performance level for point sources based on currently available treatment technologies. EPA expects all dischargers within a particular industrial category to achieve the defined basic level of pollutant control and does not support the use of water quality trading to meet technology standards." Water Quality Trading Toolkit for Permit Writers (EPA, 2007, Updated 2009, p. 27)

There is nothing in the permit record to support the DEQ's assertion that the TP limits in the proposed permit are technology-based. The 0.1 mg/L (as a 30-day average) TP effluent limit contained in NACA's 2012 permit (which expired in 2017 and is administratively continued under 40 C.F.R. 122.6) is a water quality-based effluent limit established under 40 C.F.R. 122.44(d) as a translation of Arkansas' narrative water quality criterion and based on the EPA's 304(a) Gold Book recommended criterion. See 40 CFR 122.44(d)(1)(vi)(B).² Regardless, the DEQ has not demonstrated that the 0.35 mg/L Tier II TP limit will be sufficient to achieve compliance with all applicable WQS, including any narrative criteria for water quality, as required by 40 C.F.R. 122.44(d). The 2018 MOA between the States of Arkansas and Oklahoma neither supersedes nor nullifies the requirements of the CWA or federal regulations.

In the permit fact sheet, the DEQ justifies the 0.35 mg/L Tier II TP limit at Outfall 001 based on the regional nature of the NACA facility and the anticipated offsets in phosphorus loading to be realized by current and future connections to the facility. According to the fact sheet, the facility currently serves Bentonville, Elm Springs and Tontitown, with plans to serve other communities in the future, including Cave Springs and Highfill. The fact sheet states that, using Cave Springs as a model, the DEQ calculated the appropriate TP offset credit by subtracting the phosphorus that could be removed by plant uptake from the total amount of phosphorus that is injected subsurface each year, and then applying a trading ratio of 1:1.5 to the remaining phosphorus not available for plant uptake that is injected into the subsurface each year. The calculation sheet included in the fact sheet (and based on Cave Springs) shows an allowable TP credit of approximately 6,712 lbs per year, supporting a Tier II TP effluent limit for NACA of 0.35 mg/L.

The EPA finds several problems with the DEQ's calculated TP offset. For example, the TP offset proposed between NACA and Cave Springs involves an offset between a point source discharger and a no-discharge facility. The DEQ proposes to allow NACA to meet TP WQS by reducing or eliminating the discharge of TP from Cave Springs through the diversion of Cave Springs' wastewater flow to NACA. However, the DEQ currently permits Cave Springs as a no-discharge facility because Cave Springs' existing wastewater treatment system does not discharge its effluent to surface waters. Instead, Cave Springs' treated wastewater effluent, including its TP load, is disposed of through sub-surface discharges via low-pressure drip zones at a rate calculated to prevent the effluent from reaching Osage Creek, approximately three miles from Cave Springs' sub-surface application site. There is nothing in the permit record to substantiate the presumption in the DEQ's calculations that over ninety percent of the TP load in these permitted no-discharge sub-surface flows is reaching Osage Creek.

In addition, information provided in the permit fact sheet regarding the DEQ's TP offset calculations is inconsistent with data contained in an engineering report provided to the EPA in conjunction with Cave Springs' application for federal assistance (SF-424) on January 22, 2019, in which diversion of wastewater flow to NACA was discussed and identified as the most cost-effective option ("the McClelland Report").³ The nutrient trading offset calculations provided by

² Where a state has not established a water quality criterion for a specific pollutant, 40 CFR 122.44(d)(1)(vi)(B) provides the permitting authority with authority to establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 304(a) of the CWA, supplemented where necessary by other relevant information.

³ Preliminary Engineer Report Wastewater Treatment and Disposal, City of Cave Springs, Arkansas. McClelland Consulting Engineers, Inc. January 2019.

the DEQ in the permit fact sheet are based on a flow rate of 0.49 MGD and a TP concentration of 7.35 mg/L. However, after describing how Cave Springs' treated effluent is currently disposed of via low pressure drip zones (leech fields), Section 2.5 of the McClelland Report indicates the average inflow to the leech fields from 2017-2018 was 0.067697 MGD, not the 0.49 MGD value provided in the fact sheet. The EPA has determined that by calculating the TP offset using the 0.49 MGD flow rate instead of the 0.067697 MGD flow rate, the DEQ has inadvertently overestimated the available trading offset by a factor of seven⁴. Based on the above analysis, the EPA cannot conclude that the DEQ's proposed TP offset is based on scientifically defensible pollutant reductions in accordance with the EPA's Water Quality Trading Policy. See Water Quality Trading Policy (EPA 2003) and "Updating the Environmental Protection Agency's (EPA) Water Quality Trading Policy to Promote Market-Based Mechanisms for Improving Water Quality." (EPA Memorandum dated February 6, 2019).

The proposed permit allows a ten-fold increase in total phosphorus loading (mass) to be discharged from the NACA facility. While the EPA recognizes the potential benefit of shifting phosphorus removal from one or more less efficient wastewater plants to a more efficient regional wastewater plant, a demonstration is still needed that the proposed 0.35 mg/L Tier II TP effluent limit for NACA is, in fact, sufficient to ensure compliance with Arkansas's narrative water quality criterion, as well as the 0.037 TP water quality criterion of the downstream State of Oklahoma. Based on our review of the proposed 0.35 mg/L Tier II limit for TP and the justification for the limit provided by the DEQ, the EPA cannot conclude that the proposed Tier II TP limit is sufficient to do so.

Item 3. The permit fails to apply, or to ensure compliance with, any applicable requirement of this part (40 C.F.R. 123.44(c)(1)), and issuance of the proposed permit would in any other respect be outside the requirements of CWA, or regulations issued under CWA (40 C.F.R. 123.44(c)(7)).

The 0.35 mg/L Tier II TP limit in the proposed permit violates the anti-backsliding provisions at CWA Section 402(o) and 40 C.F.R. 122.44(l). CWA section 402(o) and 40 CFR 122.44(l) state that a permit may not be renewed, reissued, or modified to contain effluent limits that are less stringent than the effluent limits in the previous permit, with limited exceptions. In the permit fact sheet and in the Response to Comments document accompanying the proposed permit, the DEQ argues that because the region served by NACA has experienced significant growth and the facility must expand to provide wastewater treatment services for these communities, the NACA proposed permit falls under the anti-backsliding exception found at CWA Section 402(o)(2)(A), providing for a less stringent effluent limit if material and substantial alterations or additions to the permitted facility occurred after permit issuance which justify the application of a less stringent effluent limit. The permit record does not describe why an increased design flow justifies a less stringent effluent limit. Based on the original permit application submitted by NACA, the facility was always intended to be a regional facility. The original permit was written with the understanding that construction was not complete and that even though the original permit contained a design flow of 3.6 MGD, the long-term plan for the facility was to reach a design flow as high as 80 MGD. Thus, the current proposal to increase NACA's design flow from 3.6 MGD to 7.2 MGD does not in itself justify the application of a less stringent TP

⁴ It is also important to note that the EPA's Water Quality Trading Policy calls for trades to be made on current credits, not future credits.

concentration effluent limit, particularly in light of NACA's demonstrated ability to comply with the 0.1 mg/L TP permit limit.

Regardless of the anti-backsliding exemption's applicability, Section 402(o)(3) of the CWA states that in no event may a permit be renewed, reissued, or modified to contain a less stringent effluent limit if the implementation of such limitation would result in a violation of a water quality standard under section 303 of the Act. The EPA has concluded the proposed 0.35 mg/L Tier II TP limit is not sufficient to meet Arkansas's narrative nutrient WQS or Oklahoma's 0.037 mg/L criterion for TP at the border, as discussed above.

In the fact sheet for the proposed permit, the DEQ also argues that the 0.35 mg/L Tier II TP limit in the proposed permit does not violate CWA Section 402(o) or 40 C.F.R. 122.44(l) because it is not a revised effluent limit under CWA Section 303(d)(4)(A). Because the proposed permit requires an offset that reduces phosphorus loading from currently operating treatment systems that have little to no phosphorus treatment, the DEQ argues that the Tier II TP limit requires the same level of pollutant reduction as the previous 0.1 mg/L TP limit. According to the fact sheet, the 0.35 mg/L Tier II TP should not be considered a change because it is functionally equivalent to the 0.1 mg/L TP limit. The DEQ also argues that it evaluated the *potential* impact of the 0.35 mg/L Tier II TP limit at the state line, and that when the DEQ's calculations account for the reduction in phosphorus in the watershed required by the proposed permit, a reduction in phosphorus loading occurs. The fact sheet argues that without a clear demonstration that the Tier II limits on phosphorus would cause a measurable increase in phosphorus concentration at the state line, those Tier II TP limits are not revised effluent limits under CWA Section 303(d)(4)(A). The EPA disagrees with the argument that the 0.35 Tier II TP limit is the functional equivalent of the 0.1 mg/L TP limit based on the EPA's concerns with the DEQ's proposed TP offset as discussed in Item 2 above.

In the fact sheet, the DEQ also appears to argue that, in the alternative, the anti-backsliding provisions of the CWA do not apply because the 0.1 mg/L TP limit is not a water quality-based limit under the CWA. The fact sheet states that because neither the DEQ nor the EPA conducted a rulemaking to establish the 0.1 mg/L TP limit as a water quality based effluent limit, the DEQ does not have a basis in state or federal law to impose the 0.1 mg/L limit as a water quality-based limit. The EPA disagrees. As noted above, the 0.1 mg/L TP water quality-based effluent limit in NACA's 2012 permit was established under 40 C.F.R. 122.44(d)(1)(vi)(B) as a numeric translation of Arkansas' narrative water quality criterion. The regulation does not require a rulemaking to establish a water quality-based effluent limit based on a narrative water quality criterion. Further, even if the 0.1 mg/L TP effluent limit were not water quality-based, the anti-backsliding provisions of the CWA and federal regulations would still apply. CWA Section 402(o) also applies to best professional judgment (BPJ) based limits and the regulatory anti-backsliding prohibition at 40 C.F.R. 122.44(l) applies broadly to "effluent limitations, standards, or conditions."

In addition to violating the anti-backsliding provisions of the CWA and federal regulations, the 0.35 mg/L Tier II TP effluent limit in the proposed permit fails to satisfy the requirements of 40 C.F.R. 122.4(d) because the permit fails to ensure compliance with the water quality standard of the downstream State of Oklahoma, as discussed in Item 2 above.

To eliminate the EPA's specific objections to the proposed permit, the DEQ must revise the 0.35 mg/L Tier II TP limit in the proposed permit to reflect a 0.1 mg/L Tier II TP limit (as a 30-day average) at Outfall 001.

In closing, the Illinois River watershed is an important resource for a diverse range of stakeholders, both public and private. Notably, the watershed holds significant cultural and natural resource importance to the Cherokee Nation, whose reservation is downstream of the discharge. By not ensuring the protection of the watershed's designated uses, the potential is increased for negative impacts to the Tribal Nation, as well as other communities with environmental justice concerns.

Thank you for your attention to this matter. If you have any questions or concerns, please feel free to contact me at 214-665-8138.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles W. Maguire', with a stylized flourish at the end.

Charles W. Maguire
Director
Water Division (6WD)

cc: (electronic)

Mr. Michael G. Neil, Facility Manager, NACA

Mr. George R. Spence, Board Chair, NACA

Ms. Becky Keogh, Cabinet Secretary, Arkansas Energy & Environment

Director, Arkansas Department of Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

December 30, 2021

Alan York
Associate Director
Office of Water Quality
Division of Environmental Quality
Arkansas Department of Energy and Environment
5301 North Shore Drive North Little Rock, AR 72118-5317

Re: Notification of Invalid NPDES Permit, and
General Objection to Proposed NPDES Permit for
Springdale Water and Sewer Commission, Springdale Wastewater Treatment Facilities
NPDES Permit No. AR0022063

Dear Mr. York:

The U.S. Environmental Protection Agency (EPA) is in receipt of your email dated December 3, 2021, notifying the EPA of the Arkansas Division of Environmental Quality's (ADEQ) issuance of Permit Number AR0022063 to Springdale Water and Sewer Commission, Springdale Wastewater Treatment Facilities (Springdale) on December 1, 2021. This letter is to notify you that ADEQ's issuance of the Springdale permit violated the provisions of Clean Water Act (CWA) Section 402, federal implementing regulations at 40 CFR Part 123, and the Memorandum of Agreement signed between the EPA and the Arkansas Pollution Control and Ecology Commission (APC&EC) upon approval of the State of Arkansas to implement the National Pollutant Discharge Elimination System (NPDES) program ("the MOA"). Consequently, the December 1, 2021, permit is not a validly issued final NPDES permit. Instead, the EPA has determined the December 1, 2021, permit to be a proposed permit subject to EPA review under CWA Section 402(d), 40 C.F.R. 123.44(j) and Section III.B.11 of the MOA.

In addition, following review of the December 1, 2021, proposed permit, which was received by the EPA on December 3, 2021, the EPA is hereby exercising its authority under Section 402(d) of the CWA, federal regulations at 40 C.F.R. 123.44(b), and Section III.B. of the MOA to generally object to this permit for the general reasons described herein. In accordance with 40 C.F.R. 123.44(b)(2) and MOA Section III.B.11, the EPA will, within 90 days of receipt of the December 1, 2021, proposed permit, follow this general objection with a specific objection setting forth in greater detail the reasons for the objection, including the section of the CWA or regulations supporting the objection, and the actions that must be taken by the ADEQ to eliminate the objection. Within 90 days of receipt of the EPA's specific objection, the State or any interested party may request a public hearing on the objection. If no public hearing is held and the ADEQ does not resubmit a permit that addresses the EPA's objections within 90 days of receipt of the specific objection, exclusive authority to issue the permit will pass to the EPA. See 40 C.F.R. 123.44(e), (f), (g), and (h) and MOA Sections III.B.11 and 12.

I. The Permit issued to Springdale by the ADEQ on December 1, 2021, was not issued in accordance with the requirements of the CWA, federal regulations, or the MOA, and is therefore not a validly issued NPDES permit effective for CWA purposes. Instead, the December 1, 2021, permit is a proposed permit as defined under 40 C.F.R. 122.2.

Per 40 C.F.R. 123.44(j), if the EPA agrees in the Memorandum of Agreement with an authorized state, as it did in the Arkansas MOA, to review draft permits rather than proposed permits¹, the authorized state is not required to send the proposed permit to the EPA “unless the State proposes to issue a permit which differs from the draft permit reviewed by the Regional Administrator, the Regional Administrator has objected to the draft permit, or there is significant public comment.” This requirement cannot be waived in an authorization Memorandum of Agreement, and is, in fact, echoed in the Arkansas MOA:

If (a) the proposed final permit is the same as or more stringent than the draft permit submitted to the EPA in accordance with Section III.B.7 of this MOA, and (b) the EPA has not objected to such draft permit, and (c) valid and significant public comments have not been made, the State may issue the permit without further review by the EPA. In all other cases, the State will send one copy of the proposed final permit and other information to the EPA. MOA Section III.B.11.

The EPA originally received the draft Springdale permit for review from the ADEQ on December 14, 2020. The draft permit included a total phosphorus (TP) limit of 1.0 mg/L based on a six-month rolling average, which the draft permit fact sheet stated was water quality-based. Upon initial review of the draft permit, the EPA did not object, but by letter dated January 13, 2021, offered comments and reminded the ADEQ that prior to the issuance of any final permit, the ADEQ’s Water Quality Management Plan would have to be approved by the EPA.

On December 3, 2021, the ADEQ notified the EPA via email that the ADEQ had issued the Springdale permit on December 1, 2021. The December 1, 2021, permit is fundamentally different from the draft permit reviewed by the EPA in December 2020. Although the TP limit in the draft permit reviewed by the EPA was stated by ADEQ to be water quality-based, the fact sheet for the December 1, 2021, permit states that the TP limit is technology-based. Despite the material differences in the December 1, 2021, permit and the draft permit reviewed by the EPA, the ADEQ did not submit the December 1, 2021, permit to the EPA for review prior to issuance.

In addition, significant public comment was received by the ADEQ regarding the draft Springdale permit. Comments were submitted by the Oklahoma Water Resources Board (OWRB), the Oklahoma Conservation Commission (OCC), and the Oklahoma Department of Environmental Quality (ODEQ) on March 16, 2021. The state of Oklahoma is downstream of Arkansas in the Illinois River Basin and its waters are thus affected by the ADEQ’s issuance of the Springdale permit. Comments were also

¹ Federal regulations define *Draft permit* to mean “a document prepared under § 124.6 indicating the Director’s tentative decision to issue or deny, modify or revoke and reissue, terminate or reissue a ‘permit.’” *Proposed permit* is defined as “a State NPDES ‘permit’ prepared after the close of the public comment period (and, when applicable, any public hearing and administrative appeals) which is sent to EPA for final review before final issuance by the State. A ‘proposed permit’ is not a ‘draft permit.’” 40 C.F.R. 122.2.

received from Save the Illinois River (STIR) on March 16, 2021, and the City of Bentonville, Arkansas, on March 15, 2021.

In its comments, the OWRB stated that it could not support an interim or final TP effluent limit expressed as a 6-month average. The OWRB stated that the ADEQ provided no rational basis for this change from the previous permit's TP limit, which was expressed as a monthly average or why the monthly average had become impractical as required by 40 CFR 422.45(d)(2). The OWRB also stated it could not support the two times per month monitoring frequency in conjunction with the rolling average method for determining TP effluent concentration as this was not adequate to evaluate the effluent quality, to ensure permit compliance or to ensure that TP loads are reduced sufficiently to meet the downstream Oklahoma water quality standards (WQS). The OWRB also sought clarification as to how phosphorus loads would be impacted by wet weather events.

In its comments, the OCC noted Arkansas and Oklahoma's shared a commitment to protect the Illinois River Basin and the importance of updating permits on both sides of the border in furtherance of that goal. However, the OCC stated it had significant concerns with the draft permit, questioning the switch to a TP effluent limit expressed as a 6-month average and the twice monthly TP sampling. The OCC also questioned the water quality impacts resulting from the draft permit's allowance for wet-weather based excursions from the daily load limit of 200.2 lbs per day based on the new six-month average. .

Like the OWRB and the OCC, the ODEQ expressed concerns with the use of a six-month rolling average to determine TP effluent concentration, arguing that the six-month rolling average is inherently less stringent than the existing monthly average, given that it would allow for greater variability and magnitude in effluent concentrations. The ODEQ stated there was no explanation or justification in the fact sheet as to why this change did not violate anti-backsliding regulations. Additionally, the ODEQ noted that the permit did not mention Oklahoma's designated use classification of the Illinois River as an Outstanding Resource Water and a Scenic River nor its status on Oklahoma's CWA Section 303(d) list as impaired for TP and *Escherichia coli*. The ODEQ further argued that the reasonable potential analysis provided by the ADEQ failed to assess whether the TP limit would be protective of WQSs for the initial receiving stream or of Oklahoma's downstream WQS. The ODEQ also noted that there was no indication of any analysis that had been done to assess the reasonable potential for metallic compounds to exceed Oklahoma's WQS. In addition, the ODEQ expressed concerns with the sampling type for most parameters being revised to composite versus 24-hour composite and with a full 5-year term being allowed for evaluation of a phosphorus reduction plan as the ODEQ felt these changes were not appropriate for such a large facility and that adequate data should already be available to evaluate reduction strategies, respectively.

STIR submitted comments objecting to the continued use of the 0.1 mg/L TP limit in reissuance of the permit when the technology exists to reduce it to 0.1 mg/L or lower, and also objected to the expression of the TP effluent limit as a 6-month rolling average. The City of Bentonville expressed concern with the Springdale facility being allowed to have a higher total phosphorus limit than NACA without having a phosphorus reduction plan in place.

Because the Springdale permit prepared by the ADEQ following the receipt of public comments (i.e., the proposed permit) differed from the draft permit reviewed by the EPA, and because the ADEQ received significant public comment on the draft permit, the ADEQ was required pursuant to 40

C.F.R.123.44(j) and Section III.B.11 of the MOA to resubmit the proposed permit to the EPA for review. The ADEQ did not do so, but instead issued a final permit on December 1, 2021.

Because the ADEQ did not provide the EPA with the proposed Springdale permit for review prior to issuance of the final permit as required by the NPDES regulations and the MOA, the December 1, 2021, permit is not a validly issued final NPDES permit. Instead, the December 1, 2021, permit is a proposed permit as defined under 40 C.F.R. 122.2. The EPA's determination that the December 1, 2021, permit is a proposed permit subject to EPA review, rather than a validly issued final NPDES permit, is supported by case law. See Champion International Corp. v. U.S. E.P.A., 850 F.2d 182 (4th Cir., 1988). See also In the Matter of: J&L Specialty Products Corp. Permit No. OH 0007188, 5 E.A.D. 31 (EAB 1994).

II. The EPA generally objects to issuance of the Springdale permit pursuant to Section 402(d) of the CWA, federal regulations at 40 C.F.R. 123.44, and Section III.B. of the MOA.

Based on our review of the December 1, 2021, proposed Springdale permit, which was received by the EPA on December 3, 2021, the EPA generally objects to the issuance of this permit based in general terms on the following:

- The procedures followed in connection with formulation of the proposed permit failed in a material respect to comply with the procedures required by the CWA, 40 C.F.R. Part 123 and the MOA. The ADEQ did not provide Oklahoma, a downstream state whose waters are affected by issuance of the Springdale permit, and the EPA written notification of its failure to accept Oklahoma's written recommendations with respect to the Springdale permit and its reasons for doing so as required by CWA Section 402(b)(5). See also MOA Section III.B.13. In addition, the ADEQ did not forward to the EPA the significant comments objecting to the draft permit and received in writing during the public comment period as required by Section III.B.13 of the MOA.
- The written recommendations from the State of Oklahoma regarding the Springdale permit were not accepted by the ADEQ and the EPA finds the reasons for rejecting the recommendations inadequate. As described above, during the public comment period for the draft permit, the OWRB, OCC, ODEQ, STIR and the City of Bentonville expressed significant concerns about the draft permit's use of a six-month rolling average, monitoring frequency/sampling type, the 1.0 mg/L TP limit and the reasonable potential summary statistics provided. It was recommended that the draft permit be revised to address these concerns. The ADEQ did not accept Oklahoma's recommendations and the EPA has determined the ADEQ's reasons for rejecting the recommendations to be inadequate.
- The TP effluent limit in the proposed permit fails to satisfy the requirements of the CWA and implementing regulations, including 40 C.F.R. 122.44 (d). The ADEQ has failed to demonstrate this limit is sufficient to protect all applicable WQS, including those of the downstream State of Oklahoma. The ADEQ states that the TP limit in the permit is technology-based.
- The TP effluent limit in the proposed permit violates the anti-backsliding provisions at CWA 402(0) and 40 C.F.R. 122.44(l).
- The TP permit limit is not consistent with the ADEQ's approved Water Quality Management Plan.

As noted above, this general objection letter describes the general nature of the EPA's objections in accordance with 40 C.F.R. 123.44(b)(1) and Section III.B.11 of the MOA. As required by 40 C.F.R. 123.44(b)(2) and MOA Section III.B.11, the EPA will follow this general objection with a specific objection setting forth in greater detail the reasons for the objection, including the section of the CWA or regulations supporting the objection, and the actions that must be taken by the ADEQ to eliminate the objection. In accordance with 40 C.F.R. 123.44(a)(1), the EPA has forwarded a copy of this objection letter to the permit applicant.

Thank you for your attention to this matter. If you have any questions or concerns, please feel free to contact me at 214-665-8138.

Sincerely,



Charles W. Maguire
Director
Water Division (6WD)

Cc: (electronic) Mr. Heath Ward, Executive Director, Springdale Water Utilities
Ms. Becky Keogh, Cabinet Secretary, Arkansas Energy & Environment;
Director, Arkansas Department of Environmental Quality
Ms. Julie Linck, Administrator, Arkansas Energy & Environment



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 6
1201 ELM STREET, SUITE 500
DALLAS, TEXAS 75270

February 10, 2022

Alan York
Associate Director
Office of Water Quality
Division of Environmental Quality
Arkansas Department of Energy and Environment
5301 North Shore Drive
North Little Rock, AR 72118-5317

Re: Specific Objection to Proposed NPDES Permit for
Springdale Water and Sewer Commission, Springdale Wastewater Treatment Facilities
NPDES Permit No. AR0022063

Dear Mr. York:

In accordance with Section 402(d) of the Clean Water Act (CWA), federal regulations at 40 C.F.R. 123.44(b), and Section III.B of the Memorandum of Agreement signed between the EPA and the Arkansas Pollution Control and Ecology Commission upon approval of the State of Arkansas to implement the National Pollutant Discharge Elimination System (NPDES) program ("the MOA"), the U.S. Environmental Protection Agency (EPA) is specifically objecting to the Division of Environmental Quality's (DEQ's, formerly the Arkansas Department of Environmental Quality or ADEQ) issuance of Permit Number AR0022063 to the Springdale Water and Sewer Commission, Springdale Wastewater Treatment Facilities (Springdale) (hereinafter the "proposed permit").

This specific objection follows the EPA's letter to the DEQ dated December 30, 2021, notifying the DEQ of the EPA's determination that the December 1, 2021, Springdale permit is a proposed permit subject to EPA review and of the EPA's general objection to the Springdale permit ("General Objection Letter," enclosed and incorporated herein). As required by 40 C.F.R. 123.44(b)(2) and Section III.B.11 of the MOA, this specific objection describes in greater detail the reasons for the objection, including the Sections of the CWA or regulations supporting the objection, and the actions that must be taken by the DEQ to eliminate the objection. Within 90 days of receipt of the EPA's specific objection, the State or any interested person may request a public hearing on the objection. If no public hearing is held and the DEQ does not resubmit a permit that addresses the EPA's objections within 90 days of receipt of this objection, exclusive authority to issue the permit will pass to the EPA. See 40 C.F.R. 123.44(e), (f), (g), and (h) and MOA Sections III.B.11 and 12.

Based on our review of the December 1, 2021, proposed Springdale permit, which EPA received on December 3, 2021, and in accordance with 40 C.F.R. 122.44(c), the EPA specifically objects to the issuance of this permit on the following grounds:

Item 1: The procedures followed in connection with formation of the proposed permit failed in a material respect to comply with procedures required by the CWA, regulations, and MOA (40 C.F.R. 123.44(c)(3)).

During the public comment period for the draft Springdale permit, the Oklahoma Water Resources Board (OWRB) and the Oklahoma Conservation Commission (OCC) submitted written comments opposing the draft permit's use of a six-month average to express the final total phosphorus (TP) limit at Outfall 001 and the twice per month monitoring frequency in conjunction with the rolling average method for determining the TP effluent concentration. Both agencies felt that insufficient rationale had been provided to demonstrate why the use of a monthly average had become impracticable as required by 40 C.F.R. 422.45(d)(2). Additionally, they each expressed concerns about whether the proposed methodology would be adequate to consistently evaluate effluent quality for permit compliance or to ensure TP load reductions sufficient to attain Oklahoma's water quality standard (WQS) for TP.

Additional significant comments were received by Save the Illinois River, Inc. (STIR) and the City of Bentonville, Arkansas (Bentonville). STIR objected to the continued use of the 1.0 mg/L TP limit in the permit when the technology exists to reduce it to 0.1 mg/L or lower. STIR also objected to the proposed permit change to a six-month rolling average for TP testing instead of a seven-day average test. Bentonville objected to the Springdale facility being allowed a higher TP limit than the Northwest Arkansas Conservation Authority (NACA) facility, even though Springdale is only eight miles upstream of NACA and has no plans for reducing phosphorus loads to the watershed. Bentonville expressed concern that the DEQ is fostering delay in water quality improvements and providing some communities with unfair advantages by allowing such discrepancies in treatment levels for facilities located within the same watershed. The DEQ did not forward to the EPA the significant comments objecting to the draft permit received in writing during the public comment period as required by Section III.B.13 of the MOA. In addition, both 40 C.F.R. 123.44(j) and the MOA required the DEQ to forward the proposed Springdale permit to the EPA for review because the proposed permit differed from the draft permit that was previously reviewed by the EPA and because the DEQ had received significant public comment on the draft permit. (See detailed discussion in Section I of the EPA's December 30, 2021, General Objection Letter). The DEQ failed to comply with these regulatory and MOA requirements, which would have provided the EPA an opportunity to review the proposed permit before it was issued on December 1, 2021.

Item 2: The effluent limits of the permit fail to satisfy the requirements of 40 C.F.R. 122.44(d) (40 C.F.R. 123.44(c)(8)).

40 C.F.R. 122.44(d) requires permits to include, in pertinent part, requirements as necessary to:

- Achieve water quality standards established under Section 303 of the CWA, including state narrative criteria for water quality (40 C.F.R. 122.44(d)(1)).

The DEQ has failed to demonstrate that the 1.0 mg/L effluent limit for TP in the December 1, 2021, proposed permit will achieve or maintain either Arkansas's narrative nutrient WQS or the 0.037 mg/L TP water quality criterion of the downstream State of Oklahoma, as required by 40 C.F.R. 122.44(d)(1). The proposed permit fact sheet states that the effluent limits for TP are technology-based justified by Rule 2.509, the 2018 Memorandum of Agreement between the States of Arkansas and Oklahoma and the previous permit. (See Part 12.A of the Fact Sheet, Chart titled 'Justification for Limitations and Conditions of the Final Permit.)

There is nothing in the permit record to support the DEQ's assertion that the TP limit in the proposed permit is technology-based. Rule 2.509, adopted by the Arkansas Pollution Control and Ecology Commission, establishes the WQS for nutrients for waters of the State. In addition, although the fact sheet for the draft permit reviewed by the EPA in 2020 stated that the TP limit was water quality-based,

the justification for the technology-based TP effluent limit provided in the fact sheet for the proposed permit does not differ significantly from the justification provided for the TP limit in the draft permit. Regardless, the DEQ has not demonstrated that the 1.0 mg/L TP limit will be sufficient to achieve compliance with all applicable WQS, including any narrative criteria for water quality, as required by 40 C.F.R. 122.44(d). The 2018 MOA between the States of Arkansas and Oklahoma neither supersedes nor nullifies the requirements of the CWA or federal regulations. Based on our review of the proposed 1.0 mg/L TP effluent limit and the justification for the limit provided by the DEQ, the EPA cannot conclude that the proposed limit is sufficient to ensure compliance with Arkansas' narrative water quality criterion or Oklahoma's TP WQS.

To eliminate the EPA's specific objections to the proposed permit, the DEQ must revise the 1.0 mg/L TP limit in the proposed permit to reflect a 0.1 mg/L TP limit (as a 30-day average) at Outfall 001. The 0.1 mg/L TP limit is a water quality-based limit established under 40 C.F.R. 122.44(d) as a translation of Arkansas' narrative nutrient water quality criterion. It is based on the EPA's 304(a) Gold Book recommended criterion and has been determined sufficient to meet Oklahoma's 0.037 mg/L water quality criterion for TP. See 40 CFR 122.44(d)(1)(vi)(B).

In closing, the Illinois River watershed is an important resource for a diverse range of stakeholders, both public and private. Notably, the watershed holds significant cultural and natural resource importance to the Cherokee Nation, whose reservation is downstream of the discharge. By not ensuring the protection of the watershed's designated uses, the potential is increased for negative impacts to the Tribal Nation, as well as other communities with environmental justice concerns.

Thank you for your attention to this matter. If you have any questions or concerns, please feel free to contact me at 214-665-8138.

Sincerely,

A handwritten signature in black ink, appearing to read 'Charles W. Maguire', with a stylized flourish at the end.

Charles W. Maguire
Director
Water Division (6WD)

Enclosures

cc: (electronic)

Mr. Heath Ward, Executive Director, Springdale Water Utilities
Ms. Becky Keogh, Cabinet Secretary, Arkansas Energy & Environment
Director, Arkansas Department of Environment
Ms. Julie Linck, Administrator, Arkansas Energy and Environment

Engineering Report

2/22/22





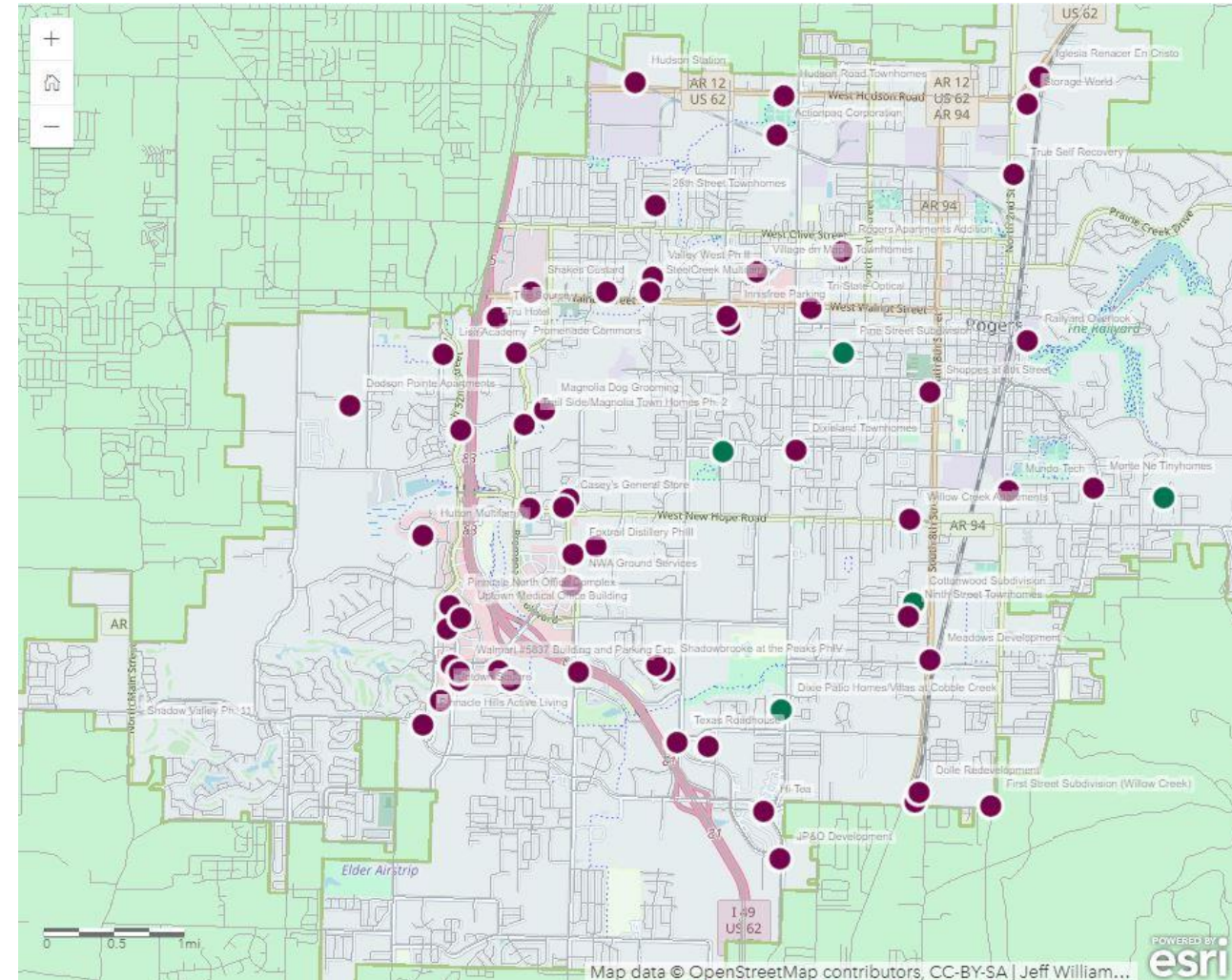
Staff / Administrative

- Evaluating Candidates for GIS / Mapping Technician
- Reviewing Data for GIS as part of ESRI / Cityworks Implementation
- Coordination with RPCF plant staff for ADEQ permit evaluation, retainage of services from Freese & Nichols
- Coordination with ADH / response to comments for standard specifications

Plan Review - January

- 6 Plumbing Reviews
- 16 Civil / Site Reviews
- 1 Fire Sprinkler Plan Review

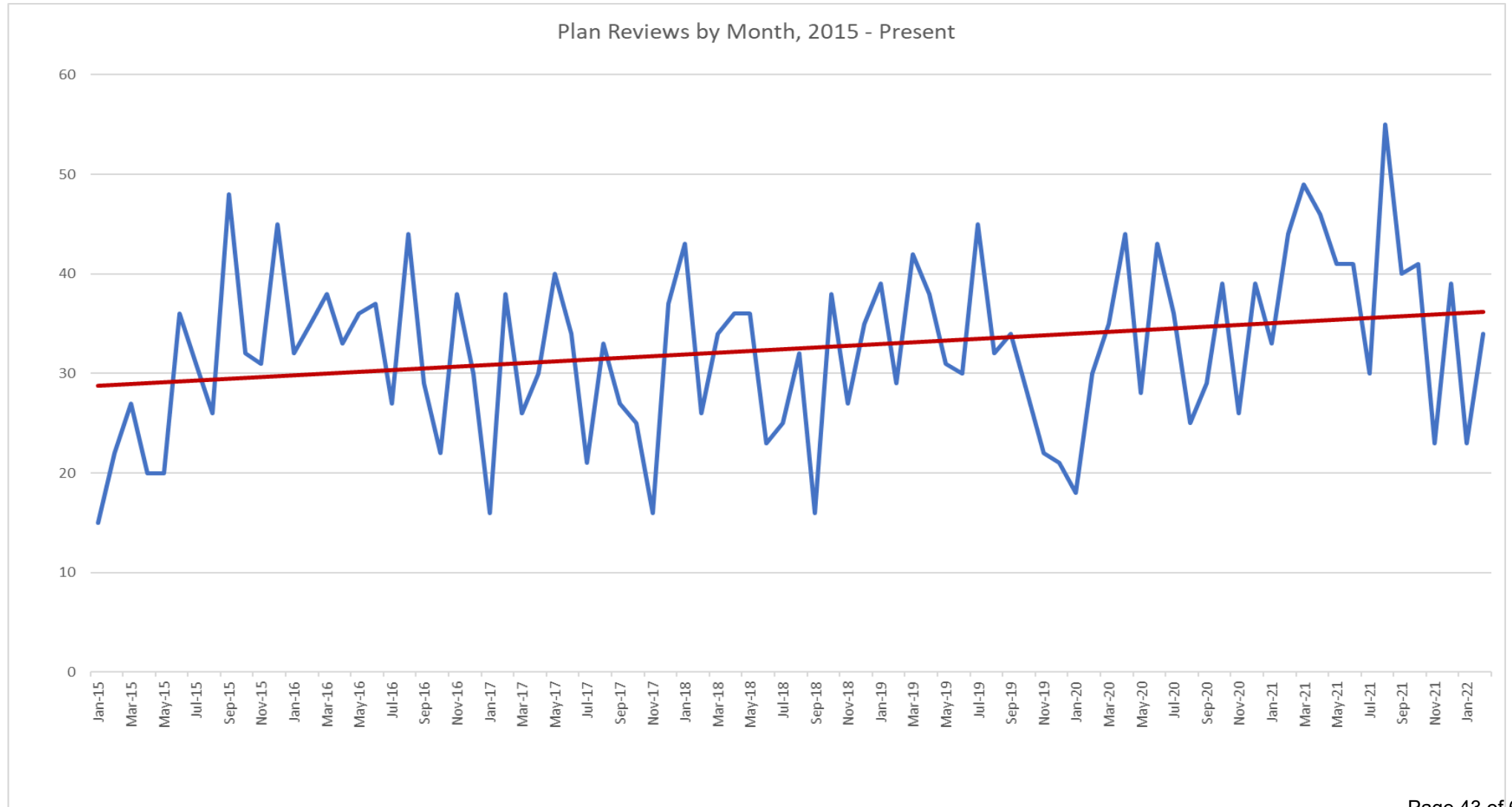
- New Projects:
 - Embassy Apartments
 - Tri-State Optical Center
 - Plaza at Pinnacle Hills - NE





Plan Review Trend, 2015-Present

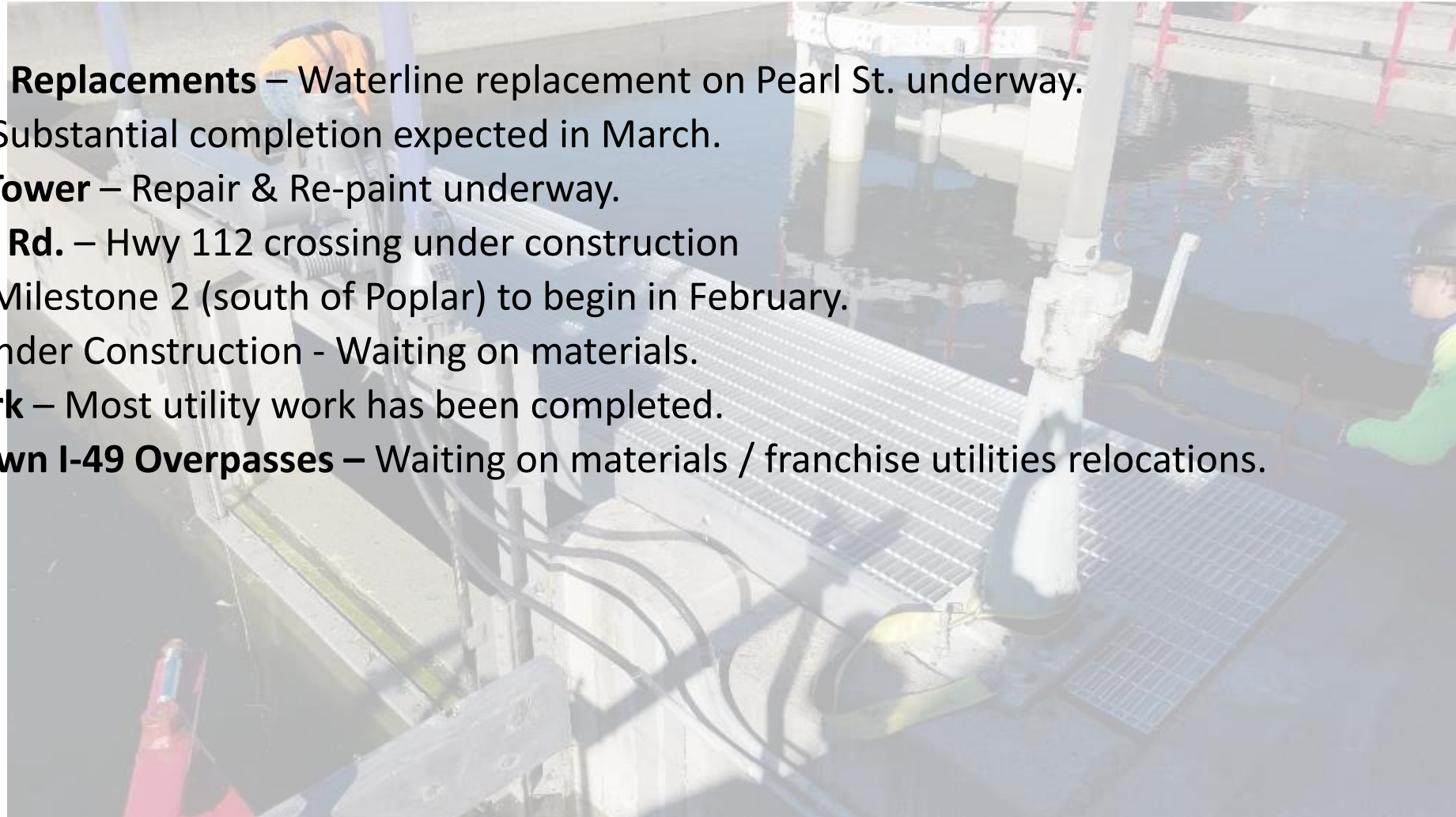
25% Growth in
Development
Plan Reviews
Since 2015



Map of downtown Rogers, Arkansas, showing various development projects and landmarks. The map includes labels for streets, schools, businesses, and residential areas. Key locations marked include Rogers Charter School, Sterling Bank, Casey's General Store, Foxtrail Distillery Phill, Walmart #5837 Building and Parking Exp., Uptown Square, Beauty Office Park, Kum & Go #2420, First Baptist Church Addition, JP&O Development, The Grove Residential Community, Hi-Tea, Meadows Development, Cottonwood Subdivision, Ninth Street Townhomes, Preformed Line Products, Monte Ne Tinyhomes, Heritage High Parking Lot, Strasters Mixed Use, The Plaza, Railyard Overlook, Beluse Muse Townhomes, True Self Recovery, Glad Building Addition, Hudson Road Townhomes, and Hudson Road Marine Sales & Service. The map also shows the Elder Airstrip and the Shadow Valley Ph. 11.

Projects Under Construction

- **2021 Waterline Replacements** – Waterline replacement on Pearl St. underway.
- **RPCF Train II** – Substantial completion expected in March.
- **11th St. Water Tower** – Repair & Re-paint underway.
- **Pleasant Grove Rd.** – Hwy 112 crossing under construction
- **Arkansas St.** – Milestone 2 (south of Poplar) to begin in February.
- **JB Hunt Dr.** – Under Construction - Waiting on materials.
- **Mt. Hebron Park** – Most utility work has been completed.
- **Oak St. & Uptown I-49 Overpasses** – Waiting on materials / franchise utilities relocations.



Projects Out to Bid

- 10th & Chestnut Water & Sewer





Projects In Design/Acquisition

- **Street Projects**
 - Walnut St. (Dixieland to 8th)
 - W. Poplar St.
 - 28th St. South
 - E. Pine St. (likely will become part of Arkansas St. project)
 - Laurel Ave.
 - 8th St. Sidewalks
 - Safe Routes to School (Misc. Sidewalks)
 - N. Arkansas St.
 - Oak St. (28th to 2nd)
 - 13th St. Sidewalks
- **Pinnacle Sanitary Sewer Improvements** – portions under re-design / realignment.
- **Sanitary Sewer Maintenance Contract**
- **Banz Addition Sewer Replacement**
- **Sewer Trunk Main Sewer Rehab / Replacement (Blossom Way / Turtle Creek)**
- **2nd St. (Oak to Pine) Water & Sewer Main Replacement**
- **2022 Waterline Replacements**
- **10th & Chestnut Water & Sewer**

Solids Handling / Dryer Replacement

- CM / GC Selection
- Design team is currently completing 15% design plans for both drying technology options (Huber & Wyse).

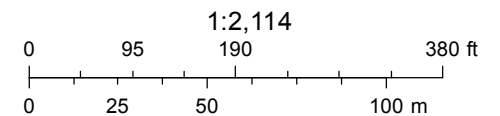


W. Lilac St. Water Availability



February 15, 2022

- | | | | |
|----------|---------------|----------------|----------------------------|
| Railroad | Lift Stations | Sewer Lines | Downtown Historic District |
| Roads | Fire Hydrants | Address Points | Ponds |
| Manholes | Water Lines | Parcels | Lakes |



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

A faded background image of an industrial facility interior. In the center, a yellow forklift is parked. To the right, there are yellow safety railings and blue structural elements. A large white bag is on the floor near the forklift. The ceiling has exposed pipes and lights.

Rogers Pollution Control Facility Solids Handling Phase II (Dryer Replacement)

Selection of Construction Manager / General Contractor

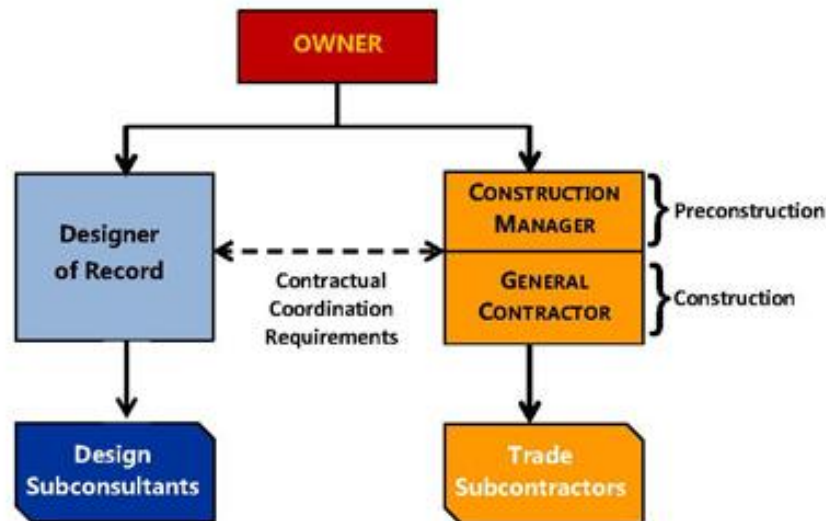
Evaluation Criteria:

- GC/CM Firm Profile
- Project Team
- Experience / Record of Performance
- Locality

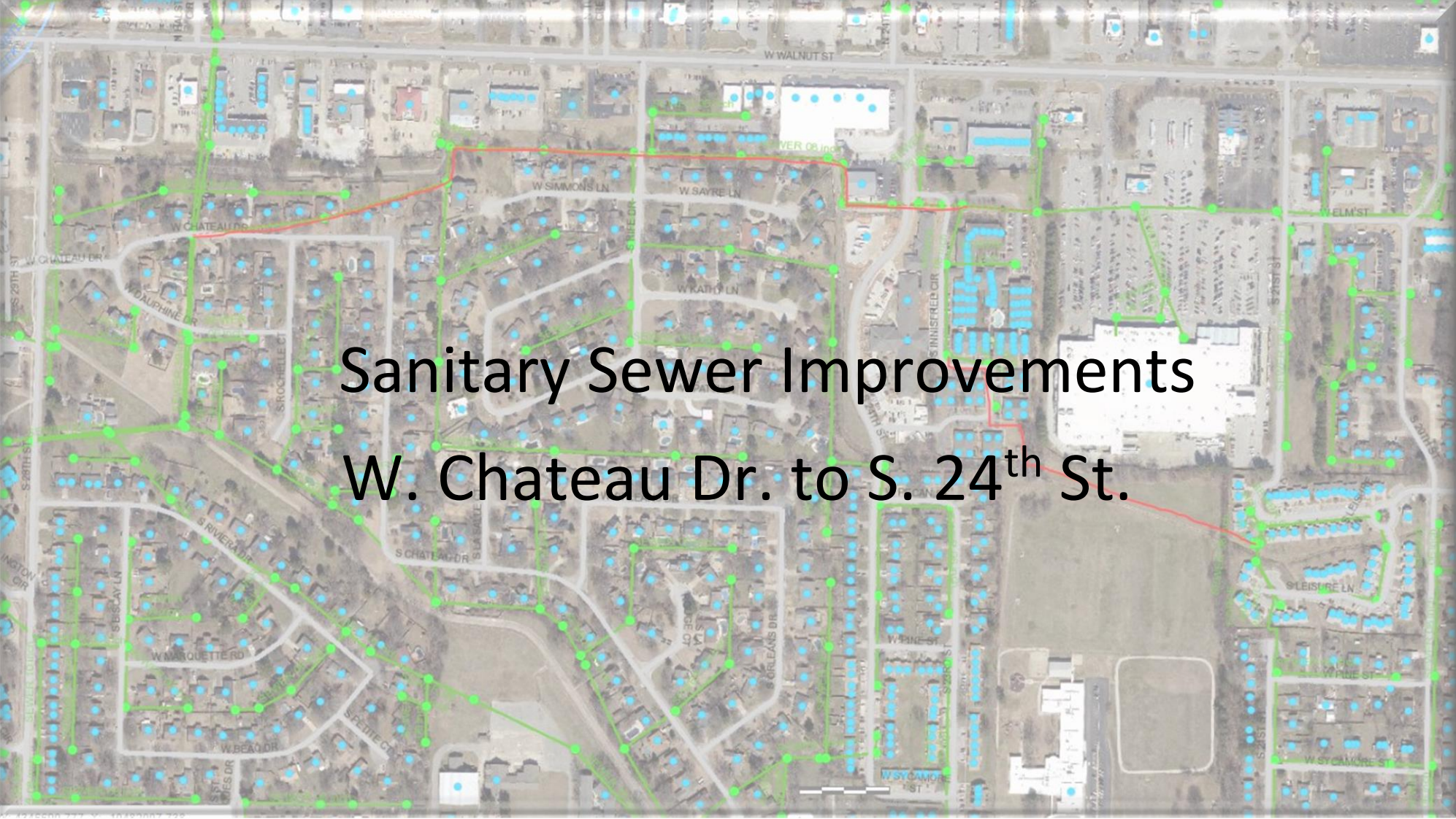
SOQs Received:

- Flintco - Interviewed
- Nabholz Construction
- C.R. Crawford Construction
- Crossland Heavy Contractors - Interviewed

Staff recommends the selection of Crossland Heavy Contractors (CHC) based on their firm's capacity and capability to perform the work, the experience and record of performance of the firm and their proposed project team, and their general understanding of the complexities and challenges of the project.



Staff requests authorization to negotiate a construction management contract with CHC, to be structured with a guaranteed maximum price and a preconstruction services option. This agreement will be brought before commission for approval.



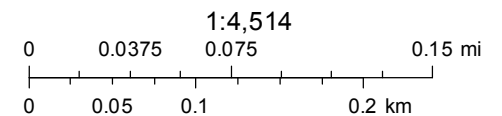
Sanitary Sewer Improvements W. Chateau Dr. to S. 24th St.

Detailed Design & Bid Administration Sewer Improvements - W. Chateau Dr. to Walmart



February 2, 2022

- | | | | |
|----------|---------------|----------------|----------------------------|
| Railroad | Lift Stations | Sewer Lines | Downtown Historic District |
| Roads | Fire Hydrants | Address Points | Ponds |
| Manholes | Water Lines | Parcels | Lakes |



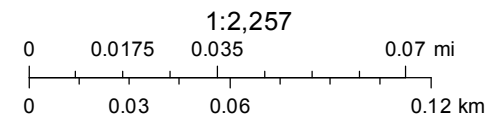
Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

Concept Plan / Feasibility Study
Sewer extension and lift station decommissioning



February 2, 2022

- | | | | |
|------------------|------------|-----------------|------------------|
| — Contours (50') | — Railroad | ■ Lift Stations | — Sewer Lines |
| — Contours (10') | — Roads | ● Fire Hydrants | ● Address Points |
| — Contours (1') | ● Manholes | — Water Lines | □ Parcels |



Source: Esri, Maxar, GeoEye, Earthstar Geographics, CNES/Airbus DS, USDA, USGS, AeroGRID, IGN, and the GIS User Community

PROPOSAL FOR SURVEY AND ENGINEERING SERVICES

TO: Rogers Water Utilities ("Client")
Attn: Tony Kinion
P.O. Box 338 (72757), 601 S. 2nd St.
Rogers, AR 72756
(479) 621-1142 Office
(479) 936-6212 Direct
tonykinion@rwu.org

FROM: Sand Creek Engineering and Land Surveying ("Engineer")
1610 NW 12th Street
Bentonville, AR 72712
(479) 464-9282 Phone
(479) 464-9284 Fax

RE: Sanitary Sewer Improvements
W Chateau to 24th Street
Rogers, Arkansas

Staff recommends approval of the engineering proposal from Sand Creek Engineering and Land Surveying for hourly services not to exceed \$85,000, allowing staff to negotiate the final form and content of the agreement.

DATE: 02-15-22

PROJECT: #

DESCRIPTION OF PROJECT

The project consists of preparation of Utility Corridor / Topographic Survey, Sewer Feasibility and Engineering Design for Rogers Water Utilities. The proposed project is in two sections. The First Section (for detailed design) is located between South 28th Street to the West Boundary of the Walmart Supercenter on Walnut, approximately 3,100 linear feet. The Second Section (for conceptual plan / feasibility study) is located between South Innisfree Circle and West Savannah Drive, approximately 1,450 linear feet. Following is a list of services to be provided as well as a list of the responsibilities of the Client.

BASIC SERVICES

- **Preparation of Utility Corridor / Topographic Survey of First Section**

- Contours at 1' intervals
- Exterior footprints of all buildings at ground level
- Substantial visible improvements such as signs, above ground utilities, power poles, fire hydrants, fences, sidewalks, pavement, drainage structures, etc.
- Observed evidence of underground utilities from 811/One Call Locate, GIS Maps, and As-Built Surveys as provided by Client
- Survey work will comply with state and local standards
- Horizontal Datum will be NAD 1983 (State Plane Grid)
- Vertical Datum will be NAVD 1988
- Preparation of descriptions for easements based on platted properties

- **Engineering First Section – South 28th to Walmart**

- Feasibility / route evaluation and coordination with R.W.U.
- Preparation of permit / construction documents
- Submittals to city and state agencies for approvals and permits
- Attendance of necessary permit and approval meetings
- Preparation of quantity take-off for bid documents

- **Engineering Second Section – Innisfree to Savannah Drive**

- Route feasibility and conceptual profile (based on G.I.S. data), coordination with R.W.U.

FEE FOR SERVICES

The fee for requested services shall be billed at the hourly rate as set forth in this proposal **not-to-exceed \$85,000.00**. This fee schedule is based on all information included in this proposal being acceptable to the Client. Any change to this information or request for services not covered in this proposal shall be in writing and could affect the not-to-exceed amount. This proposal is void if not signed received within 30 days of issuance.

- **Retainer Fee**

- A retainer of **\$0.00** is required at signing of contract, (the retainer is part of the total contract amount but will be billed separately and is non-refundable if the project is canceled.) and is applied to the initial consultation for the possible project. This proposal is void if not signed and retainer received within 30 days of issuance.

RESPONSIBILITIES OF THE CLIENT

- Property Owner notification of survey
- Access to subject properties
- Contract Documents for bidding and construction

ADDITIONAL SERVICES

Additional services are those items that may be required for the development but are not included in the project scope of services. Fees for the additional services shall be billed on an hourly basis in accordance with the fee schedule listed herein. Additional services may include but are not limited to:

- Coordination and acquisition of easements if needed
- Additional platting services if required by city and county
- Boundary surveys
- Structural designs (retaining walls, oversized drainage boxes, etc)
- Construction Staking
- Construction Observation
- Significant scope of work changes after the approved conceptual
- Record Drawings or As-Built Surveys

FEE SCHEDULE

Additional services shall be performed in accordance with the rates and conditions contained in the fee schedule. Engineering services and costs are divided into three categories: Labor, Sub-Consultants and Reimbursable Expenses.

- **Labor**

Fees for Labor are charged for all activity directly attributable to a Client's project. No charge is made for general office overhead, accounting, or maintenance. Labor charges are billed by the following categories:

CATEGORY	RATE	CATEGORY	RATE
Owner/Principal	165.00	Survey Field	110.00
Two Man Crew	148.00	Construction Observation	88.00
Engineer	140.00	Survey Office	80.00
Landscape Architect	132.00	CAD Technician	77.00
Licensed Surveyor	130.00	Clerical	66.00
Project Manager	120.00		

(Hourly rates are subject to changing one time annually and this contract will be subject to the new rates if the change occurs during the life of this project.)

- **Sub-consultants**

In cases where the Engineer retains a Sub-Consultant to provide services, the cost of such services will be billed at actual invoice amount plus 10%, and sub-consultant will be paid upon receipt of payment by Client. Client may independently retain sub-consultant and pay for services directly, with the approval of the engineer regarding the sub-consultant selected.

- **Reimbursable Expenses**

Out-of-pocket materials and services will be billed at actual cost. Common items to which this rate would apply include but are not limited to: printing and photographic work, delivery services, service laboratory testing, subsistence expenses, and survey crew supplies such as rebar, stakes, and paint. Vehicle mileage is billed at the rate of **\$0.56** per mile beginning from Engineer's office to job/project and back to Engineer's offices. Aircraft travel, car rental and other similar expenses are billed at actual invoice amount.

CATEGORY	RATE	CATEGORY	RATE
8.5" x 11" Copies	0.15/Sheet	Drone	35.00/Hour
24" x 36" Reproducible Copies	0.60/S.F.	Survey Field Equipment	35.00/Hour
Mileage	0.585/Mile		

INVOICES

All outstanding invoices shall be paid prior to submittal for planning commission approval, a governing agency approval, or any documentation distributed to client or agents of client. Submittal for approval will not be made without payment prior to the submittal deadline. If surveying services are estimated to take longer than 30 days, invoices will be rendered monthly, either as final or progress billing, and will be due upon receipt. An account becomes past due thirty (30) days after the date of invoice and a late payment charge of \$100.00 per month will be assessed at Engineer's discretion. **At Engineer's discretion, all work will cease on any project that becomes past due based on these procedures or as outlined in the schedule of conditions.**

SCHEDULE OF CONDITIONS

SCHEDULE FOR RENDERING SERVICES

Time for Completion

- A. If, through no fault of Engineer, such periods of time or dates are changed, or the orderly and continuous progress of Engineer's services is impaired, or Engineer's services are delayed or suspended, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- B. If Client authorizes changes in the scope, extent, or character of the Project, then the time for completion of Engineer's services, and the rates and amounts of Engineer's compensation, shall be adjusted equitably.
- C. Client shall make decisions and carry out its other responsibilities in a timely manner so as not to delay the Engineer's performance of its services.

INVOICES AND PAYMENTS

Payments

- A. *Failure to Pay.* If Client fails to make any payment due Engineer for services and expenses within 30 days after receipt of Engineer's invoice, then:
 - 1. Engineer may, after giving seven days written notice to Client, suspend services under this Agreement until Client has paid in full all amounts due for services, expenses, and other related charges. Client waives any and all claims against Engineer for any such suspension.
- B. *Disputed Invoices.* If Client contests an invoice, Client may withhold only that portion so contested, and must pay the undisputed portion. Written notice from the Client regarding the contested amount must be received within 30 days of the invoice date.

OPINIONS OF COST

Opinions of Probable Construction Cost

- A. Engineer's opinions of probable Construction Cost are to be made on the basis of Engineer's experience and qualifications and represent Engineer's best judgment as an experienced and qualified professional generally familiar with the construction industry. However, since Engineer has no control over the cost of labor, materials, equipment, or services furnished by others, or over contractors' methods of determining prices, or over competitive bidding or market conditions, Engineer cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by Engineer. If Client wishes greater assurance as to probable Construction Cost, Client shall employ an independent cost estimator.

Opinions of Total Project Costs

- A. The services, if any, of Engineer with respect to Total Project Costs shall be limited to assisting the Client in collating the various cost categories which comprise Total Project Costs. Engineer assumes no responsibility for the accuracy of any opinions of Total Project Costs.

GENERAL CONSIDERATIONS

Standards of Performance

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services.
- B. Client shall not be responsible for discovering deficiencies in the technical accuracy of Engineer's services. Engineer shall correct any such deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Client-furnished information.
- C. Engineer may employ such Consultants as Engineer deems necessary to assist in the performance or furnishing of the services, subject to reasonable, timely, and substantive objections by Client.
- D. Subject to the standard of care set forth above, Engineer and its Consultants may use or rely upon design elements and information ordinarily or customarily furnished by others, including, but not limited to, specialty contractors, manufacturers, suppliers, and the publishers of technical standards.
- E. Engineer and Client shall comply with applicable Laws and Regulations and Client-mandated standards that Client has provided to Engineer in writing. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to Client's responsibilities or to Engineer's scope of services, times of performance, and compensation.
- F. Engineer shall not be required to sign any documents, no matter by whom requested, that would result in the Engineer having to certify, guarantee, or warrant the existence of conditions whose existence the Engineer cannot ascertain. Client agrees not to make resolution of any dispute with the Engineer or payment of any amount due to the Engineer in any way contingent upon the Engineer signing any such documents.
- G. Engineer shall not at any time supervise, direct, or have control over Contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- H. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- I. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any of their agents or employees or of any other persons (except Engineer's own employees and its Consultants) at the Site or otherwise furnishing or performing any Work; or for any decision made on interpretations or clarifications of the Contract Documents given by Client without consultation and advice of Engineer.

Design Without Construction Phase Services

- A. If Engineer's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, then (1) Engineer's services under this Agreement shall be deemed complete no later than the end of the approval of documents by governing municipality; (2) Engineer shall have no design or shop drawing review obligations during construction; (3) Client assumes all responsibility for the application and interpretation of the Contract Documents, contract administration, construction observation and review, and all other necessary Construction Phase engineering and professional services; and (4) Client waives any claims against the Engineer that may be connected in any way thereto.

Use of Documents

- A. All Documents are instruments of service in respect to this Project, and Engineer shall retain an Ownership and property interest therein (including the copyright and the right of reuse at the discretion of the Engineer) whether or not the Project is completed. Client shall not rely in any way on any Document unless it is in printed form, signed or sealed by the Engineer or one of its Consultants.
- B. A party may rely that data or information set forth on paper (also known as hard copies) that the party receives from the other party by mail, hand delivery, or facsimile, are the items that the other party intended to send. Files in electronic media format of text, data, graphics, or other types that are furnished by one party to the other are furnished only for convenience, not reliance by the receiving party. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- C. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any transmittal errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files.
- D. When transferring documents in electronic media format, the transferring party makes no representations as to long-term compatibility, usability, or readability of such documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by the documents' creator.

- E. Client may make and retain copies of Documents for information and reference in connection with use on the Project by Client. Engineer grants Client a license to use the Documents on the Project, extensions of the Project, and other projects of Client, subject to the following limitations: (1) Client acknowledges that such Documents are not intended or represented to be suitable for use on the Project unless completed by Engineer, or for use or reuse by Client or others on extensions of the Project or on any other project without written verification or adaptation by Engineer; (2) any such use or reuse, or any modification of the Documents, without written verification, completion, or adaptation by Engineer, as appropriate for the specific purpose intended, will be at Client's sole risk and without liability or legal exposure to Engineer or to Engineer's Consultants; (3) Client shall indemnify and hold harmless Engineer and Engineer's Consultants from all claims, damages, losses, and expenses, including attorneys' fees, arising out of or resulting from any use, reuse, or modification without written verification, completion, or adaptation by Engineer; (4) such limited license to Client shall not create any rights in third parties.
- F. If Engineer at Client's request verifies or adapts the Documents for extensions of the Project or for any other project, then Client shall compensate Engineer at rates or in an amount to be agreed upon by Client and Engineer.

Insurance

- A. Client shall require Contractor to purchase and maintain general liability and any other insurance required to protect Client and engineer from construction related activities, and to cause Engineer and Engineer's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- B. All policies of property insurance relating to the Project shall contain provisions to the effect that Engineer's and Engineer's Consultants' interests are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against Engineer or its Consultants, or any insureds or additional insureds thereunder.

Suspension and Termination

- A. **Suspension.**
By Client: Client may suspend the Project upon seven days written notice to Engineer.
By Engineer: If Engineer's services are substantially delayed through no fault of Engineer, Engineer may, after giving seven days written notice to Client, suspend services under this Agreement.
- B. **Termination.** The obligation to provide further services under this Agreement may be terminated:
1. **For cause,**
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.
 - b. By Engineer:
 - 1) upon seven days written notice if Client demands that Engineer furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - 2) upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - 3) Engineer shall have no liability to Client on account of such termination.
 2. **For convenience,**
 - a. By Client effective upon Engineer's receipt of notice from Client.
- C. **Effective Date of Termination.** The terminating party may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.
- D. **Payments Upon Termination.**
1. In the event of any termination, Engineer will be entitled to invoice Client and to receive full payment for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination. Upon making such payment, Client shall have the limited right to the use of Documents, at Client's sole risk.
 2. In the event of termination by Client for convenience or by Engineer for cause, Engineer shall be entitled, to invoice Client and to payment of a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with Engineer's Consultants, and other related close-out costs, using methods and rates for Additional Services.

Controlling Law

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

Successors, Assigns, and Beneficiaries

- A. Client and Engineer are hereby bound and the partners, successors, executors, administrators and legal representatives of Client and Engineer are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Client nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.
- C. Unless expressly provided otherwise in this Agreement:
1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by Client or Engineer to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 2. All duties and responsibilities undertaken pursuant to this Agreement will be for the sole and exclusive benefit of Client and Engineer and not for the benefit of any other party.
 3. Client agrees that the substance of the provisions of this Paragraph C. shall appear in the Contract Documents between Client and contractor.

Dispute Resolution

- A. Client and Engineer agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to invoking the procedures of mediation or other provisions of this Agreement, or exercising their rights under law.
- B. If the parties fail to resolve a dispute through negotiation, then either or both may invoke the procedures of mediation.
1. **Mediation.** Client and Engineer may submit any and all unsettled claims, counterclaims, disputes, and other matters in question between them arising out of or relating to this Agreement or the breach thereof ("Disputes") to mediation by ADR, Inc. or other firm as selected if needed. If such mediation is unsuccessful in resolving a Dispute, then (a) the parties may mutually agree to a dispute resolution of their choice, or (b) either party may seek to have the Dispute resolved by a court of competent jurisdiction.

Environmental Condition of Site

- A. Client has disclosed to Engineer in writing the existence of all known and suspected Asbestos, PCBs, Petroleum, Hazardous Waste, Radioactive Material, Hazardous Substances, Wetlands, Endangered Species, Historical Sites, and other Constituents of Concern located at or near the Site, including type, quantity, and location.
- B. Client represents to Engineer that to the best of its knowledge no Constituents of Concern, other than those disclosed in writing to Engineer, exist at the Site.
- C. If Engineer encounters an undisclosed Constituent of Concern, then Engineer shall notify (1) Client and (2) appropriate governmental officials if Engineer reasonably concludes that doing so is required by applicable Laws or Regulations.
- D. It is acknowledged by both parties that Engineer's scope of services does not include any services related to Constituents of Concern. If Engineer or any other party encounters an undisclosed Constituent of Concern, or if investigative or remedial action, or other professional services, are necessary with respect to disclosed or undisclosed Constituents of Concern, then Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Client: (1) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Constituents of Concern; and (2) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. If the presence at the Site of undisclosed Constituents of Concern adversely affects the performance of Engineer's services under this Agreement, then the Engineer shall have the option of (1) accepting an equitable adjustment in its compensation or in the time of completion, or both; or (2) terminating this Agreement for cause on 30 days notice.
- F. Client acknowledges that Engineer is performing professional services for Client and that Engineer is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, which are or may be encountered at or near the Site in connection with Engineer's activities under this Agreement.

Indemnification, Mutual Waiver and Limit of Liability

- A. *Indemnification by Client.* Without waiving immunity pursuant to the law and to the fullest extent permitted by law, Client shall indemnify and hold harmless Engineer, Engineer's officers, directors, partners, agents, employees, and Consultants from and against any and 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, arbitration, or other dispute resolution costs) arising out of or relating to the Project, 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 Client or Client's officers, directors, partners, agents, consultants, or employees, or others retained by or under contract to the Client with respect to this Agreement or to the Project.
- B. *Environmental Indemnification.* In addition to the indemnity provided under this Agreement, and to the fullest extent permitted by law, Client shall indemnify and hold harmless Engineer and its officers, directors, partners, agents, employees, and Consultants from and against any and 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, arbitration, or other dispute resolution costs) caused by, arising out of, relating to, or resulting from a Constituent of Concern at, on, or under the Site, provided that (i) 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, and (ii) nothing in this paragraph shall obligate Client to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence or willful misconduct.
- C. *Mutual Waiver.* To the fullest extent permitted by law, Client and Engineer waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project.
- D. *Limit of Liability.* It is hereby agreed that the Engineer shall be held harmless for any acts, errors or omissions of Sub-Consultants, including but not limited to Surveyor's Geotechnical/Environmental Consultants and others. The Sub-Consultant is completely and solely accountable for all field measurements, calculations and technical statements regarding the thoroughness and accuracy of all drawings, reports and documents. The Engineer's financial liability for any disputes or actions brought against the Engineer as a direct result of errors or omissions in the documents produced by the Engineer shall not exceed the Engineer's fee stipulated in this contract.

Miscellaneous Provisions

- A. *Notices.* Any notice required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, by facsimile, by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.
- B. *Survival.* All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- C. *Severability.* Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon Client and Engineer, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.
- D. *Waiver.* 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 Agreement.
- E. *Accrual of Claims.* To the fullest extent permitted by law, all causes of action arising under this Agreement shall be deemed to have accrued, and all statutory periods of limitation shall commence, no later than the date of Substantial Completion.

Role of Resident Project Representative

- A. Engineer shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist Engineer in observing progress and quality of the Work. The RPR, assistants, and other field staff under may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, Engineer shall endeavor to provide further protection for Client against defects and deficiencies in the Work. However, Engineer shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by Contractor, for security or safety at the Site, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- C. The duties and responsibilities of the RPR are as follows:
 - 1. *General:* RPR is Engineer's agent at the Site, will act as directed by and under the supervision of Engineer, and will confer with Engineer regarding RPR's actions. RPR's dealings in matters pertaining to the Contractor's work in progress shall in general be with Engineer and Contractor, keeping Client advised as necessary. RPR's dealings with subcontractors shall only be through or with the full knowledge and approval of Contractor. RPR shall generally communicate with Client with the knowledge of and under the direction of Engineer.
 - 2. *Conferences and Meetings:* Attend meetings with Contractor, such as preconstruction conferences, progress meetings, job conferences and other project-related meetings, and advise engineer of contents of such meetings.
 - 3. *Liaison:*
 - a. Serve as Engineer's liaison with Contractor, working principally through Contractor's superintendent, assist in providing information regarding the intent of the Contract Documents.
 - b. Assist Engineer in serving as Client's liaison with Contractor when Contractor's operations affect Client's on-Site operations.
 - c. Assist in obtaining from Client additional details or information, when required for proper execution of the Work.
 - 4. *Interpretation of Contract Documents:* Report to Engineer when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by Engineer.
 - 5. *Modifications:* Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report such suggestions, together with RPR's recommendations, to Engineer. Transmit to Contractor in writing decisions as issued by Engineer.
 - 6. *Review of Work and Rejection of Defective Work:*
 - a. Conduct on-Site observations of Contractor's work in progress to assist Engineer in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to Engineer whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will imperil the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise Engineer of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection or approval.
 - 7. *Inspections, Tests, and System Startups:*
 - a. Consult with Engineer in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Observe, record, and report to Engineer appropriate details relative to the test procedures and systems start-ups.

- c. Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to Engineer.
 8. *Records:*
 - a. Prepare a daily report or keep a diary or log book, recording Contractor's general activities on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to Engineer.
 - b. Upon completion of the Work, furnish original set of all RPR Project documentation to Engineer.
 9. *Reports:*
 - a. Furnish to Engineer periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
 - b. Draft and recommend to Engineer proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
 - c. Furnish to Engineer and Client copies of all inspection, test, and system start-up reports.
 - d. Immediately notify Engineer of the occurrence of any Site accidents, emergencies, acts of God endangering the Work, damage to property by fire or other causes, or the discovery of any Constituent of Concern
 10. *Payment Requests:* Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to Engineer, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
 11. *Completion:*
 - a. Participate in a Substantial Completion inspection, assist in the determination of Substantial Completion and the preparation of lists of items to be completed or corrected.
 - b. Participate in a final inspection in the company of, Client, and Contractor and prepare a final list of items to be completed and deficiencies to be remedied.
 - c. Observe whether all items on the final list have been completed or corrected and make recommendations to Engineer concerning acceptance.
- D. Resident Project Representative shall not:
1. Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
 2. Exceed limitations of Engineer's authority as set forth in the Agreement or the Contract Documents.
 3. Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
 4. Advise on, issue directions relative to, or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advice or directions are specifically required by the Contract Documents.
 5. Advise on, issue directions regarding, or assume control over safety practices, precautions, and programs in connection with the activities or operations of Client or Contractor.
 6. Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by Engineer.
 7. Accept Shop Drawing or Sample submittals from anyone other than Contractor.
 8. Authorize Client to occupy the Project in whole or in part.

Client's Responsibilities

In addition to other responsibilities of Client as set forth in this Agreement, Client shall at its expense:

- A. Provide Engineer with all criteria and full information as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the Drawings and Specifications; and furnish copies of Client's standard forms, conditions, and related documents for Engineer to include in the Bidding Documents, when applicable.
- B. Furnish to Engineer any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following Engineer's assessment of initially-available Project information and data and upon Engineer's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable Engineer to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 1. Property descriptions.
 2. Zoning, deed, and other land use restrictions.
 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 5. Environmental assessments, audits, investigations, and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to Engineer whenever Client observes or otherwise becomes aware of the presence at the Site of any Constituent of Concern, or of any other development that affects the scope or time of performance of Engineer's services, or any defect or nonconformance in Engineer's services, the Work, or in the performance of any Contractor.
- E. Authorize Engineer to provide Additional Services as set forth in the Agreement as required.
- F. Arrange for safe access to and make all provisions for Engineer to enter upon public and private property as required for Engineer to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by Engineer (including obtaining advice of an attorney, insurance counselor, and other advisors or consultants as Client deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.
- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by Engineer and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
- I. Provide, as required for the Project:
 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 2. Legal services with regard to issues pertaining to the Project as Client requires, Contractor raises, or Engineer reasonably requests.
 3. Such auditing services as Client requires to ascertain how or for what purpose Contractor has used the moneys paid.
 4. Placement and payment for advertisement for Bids in appropriate publications, plan rooms, etc., as required by Client.
- J. Advise Engineer of the identity and scope of services of any independent consultants employed by Client to perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value engineering, and constructability review.
- K. Furnish to Engineer data as to Client's anticipated costs for services to be provided by others (including, but not limited to, accounting, bond and financial, independent cost estimating, insurance counseling, and legal advice) for Client so that Engineer may assist Client in collating the various cost categories which comprise Total Project Costs.
- L. If Client designates a construction manager or an individual or entity other than, or in addition to, Engineer to represent Client at the Site, define and set forth as an attachment to this Agreement the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of Engineer.
- M. If more than one prime contract is to be awarded for the Work designed or specified by Engineer, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of Engineer as an attachment to this Agreement that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.

- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of Client, prior to their incorporation into the Work with appropriate professional interpretation thereof.

DEFINITIONS

Defined Terms

- A. Wherever used in this Agreement terms (including the singular and plural forms) have the meanings indicated:
1. *Additional Services* – The services to be performed for or furnished to Client by Engineer in accordance with this Agreement at hourly rates.
 2. *Basic Services* – The services to be performed for or furnished to Client by Engineer in accordance with this Agreement at contracted amount.
 3. *Construction Cost* – The cost to Client of those portions of the entire Project designed or specified by Engineer. Construction Cost does not include costs of services of Engineer or other design professionals and consultants, cost of land or rights-of-way, or compensation for damages to properties, or Client's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to Client pursuant to this Agreement. Construction Cost is one of the items comprising Total Project Costs.
 4. *Constituent of Concern* – Any substance, product, waste, or other material of any nature whatsoever (including, but not limited to, Asbestos, Petroleum, Radioactive Material, and PCBs) which is or becomes listed, regulated, or addressed pursuant to [a] the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §§9601 et seq. ("CERCLA"); [b] the Hazardous Materials Transportation Act, 49 U.S.C. §§1801 et seq.; [c] the Resource Conservation and Recovery Act, 42 U.S.C. §§6901 et seq. ("RCRA"); [d] the Toxic Substances Control Act, 15 U.S.C. §§2601 et seq.; [e] the Clean Water Act, 33 U.S.C. §§1251 et seq.; [f] the Clean Air Act, 42 U.S.C. §§7401 et seq.; and [g] any other federal, state, or local statute, law, rule, regulation, ordinance, resolution, code, order, or decree regulating, relating to, or imposing liability or standards of conduct concerning, any hazardous, toxic, or dangerous waste, substance, or material. In addition, any site features such as but not limited to Corps of Engineers designated Wetlands, Waters of the US, Endangered Species, or Historical Sites shall be considered a Constituent of Concern.
 5. *Consultants* – Individuals or entities having a contract with Engineer to furnish services with respect to this Project as Engineer's independent professional associates, consultants, subcontractors, or vendors.
 6. *Documents* – Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by Engineer to Client pursuant to this Agreement.
 7. *Drawings* – That part of the Contract Documents prepared or approved by Engineer which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
 8. *Laws and Regulations; Laws or Regulations* – Any and all applicable laws, rules, regulations, ordinances, codes, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 9. *Reimbursable Expenses* – The expenses incurred directly by Engineer in connection with the performing or furnishing of Basic and Additional Services for the Project.
 10. *Resident Project Representative* – The authorized representative of Engineer, if any, assigned to assist Engineer at the Site during the Construction Phase. The Resident Project Representative will be Engineer's agent or employee and under Engineer's supervision. As used herein, the term Resident Project Representative includes any assistants of Resident Project Representative as assigned by the engineer. The duties and responsibilities of the Resident Project Representative, if any, are set forth in this document.
 11. *Specifications* – That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
 12. *Total Project Costs* – The sum of the Construction Cost, allowances for contingencies, and the total costs of services of Engineer or other design professionals and consultants, together with such other Project-related costs that Client furnishes for inclusion, including but not limited to cost of land, rights-of-way, compensation for damages to properties, Client's costs for legal, accounting, insurance counseling and auditing services, interest and financing charges incurred in connection with the Project, and the cost of other services to be provided by others to Client pursuant to this Agreement.

Total Agreement

- A. This Agreement constitutes the entire agreement between Client and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument agreeable to both Client and engineer.

Designated Representatives

- A. With the execution of this Agreement, Engineer and Client shall designate specific individuals to act as Engineer's and Client's representatives with respect to the services to be performed or furnished by Engineer and responsibilities of Client under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

Client:

(Manager, Officer, Authorized Representative)

By: _____

Title: _____

Date Signed: _____

Personal Guarantor of Client:

By: _____

(Signature of Individual Guarantor of Payment to Sand
Creek Engineering and Land Surveying)

Address for giving notices:

Designated Representative:

Title: _____

Phone Number: _____

Facsimile Number: _____

E-Mail Address: _____

Engineer:

Timothy R. Sorey, P.E.

By: _____

Title: President

Date Signed: _____

Engineer License or Certificate No. 9253

Address for giving notices:

Sand Creek Engineering and Land Surveying

1610 NW 12th Street

Bentonville, AR 72712

Designated Representative:

Ken Booth

Title: Project Manager

Phone Number: (479) 464-9282

Facsimile Number: (479) 464-9284

E-Mail Address: kbooth@sandcreek.us

RESOLUTION NO. 22-

A RESOLUTION AUTHORIZING RENEWAL OF A CONTRACT FOR NETWORKING AND SYSTEMS SECURITY and RELATED INFORMATION TECHNOLOGY SERVICES FOR THE ROGERS WATER UTILITIES; AND FOR OTHER PURPOSES.

WHEREAS the Rogers Waterworks and Sewer Commission (“the Commission”) has been empowered by the Rogers City Council to oversee efficient operation of the Rogers Water Utilities (“RWU”), and has full authority to set policies and procedures for RWU in a manner consistent with existing law and public policy; and

WHEREAS RWU is party to that certain “Contract for Networking and Systems Security and Related Information Technology Services for the Rogers Water Utilities” with Computer Systems and Services, Inc. operating under the registered fictitious name of Compsys Inc. with an effective date of June 1, 2021 (“the Contract”); and

WHEREAS the parties mutually desire to renew the Contract for an additional one-year period beginning on June 1, 2022 and ending on June 1, 2023 (“renewal term”); and

WHEREAS pursuant to Ark Code Ann. § 14-58-104, the Commission may authorize renewal or extension of the term of an existing contract without soliciting bids.

NOW THEREFORE, BE IT RESOLVED BY THE ROGERS WATERWORKS AND SEWER COMMISSION OF THE CITY OF ROGERS, ARKANSAS:

Section 1. The Rogers Waterworks and Sewer Commission (“the Commission”) hereby authorizes, but does not direct, the Rogers Water Utilities (“RWU”) to execute a renewal of the above-referenced Contract and authorizes the expenditure of an amount not to exceed Sixty Thousand Dollars (\$60,000.00) (or such other amount to be subsequently budgeted and approved by the Commission) for the renewal term. The Superintendent of RWU or his designated representative, is authorized to execute a renewal and other contract documents necessary to renew the Contract as contemplated herein, consistent with the authority given under this Resolution, the final form and content of any renewal or other contract document to be approved by the Superintendent of RWU, his approval being evidenced by his signature thereon, or by the signature of his designated representative.

Section 2. In the event satisfactory prices and other necessary terms and conditions for the contemplated renewal cannot be reached, then RWU may publish a Request for Qualifications (RFQ) to obtain the needed professional services from other qualified firms.

Section 3. Severability Provision- In the event that any section, paragraph, subdivision, clause, phrase, or other provision or portion of this Resolution shall be adjudged invalid or unconstitutional, the same shall not affect the validity of this Resolution as a whole, or any part or provision, other than the part so decided to be invalid or unconstitutional, and the remaining provisions of this Resolution shall be construed as if such invalid, unenforceable or unconstitutional provision or provisions had never been contained herein.

Section 4. Repeal of Conflicting Actions and Resolutions- All previous actions and resolutions of the Rogers Waterworks and Sewer Commission, or parts of actions and resolutions of the Rogers Waterworks and Sewer Commission, in conflict herewith are hereby repealed to the extent of such conflict.

PASSED AND APPROVED this ____ day of _____ 2022.

Michael Watkins, Chairman

ATTEST:

Brent Dobler, Acting Secretary