AGREEMENT FOR TEMPORARY PROVISION OF UTILITY SERVICES

This Agreement for Temporary Provision of Utility Services ("this Agreement") is entered into by and between the City of Rogers, Arkansas together with the Rogers Waterworks and Sewer Commission and the Rogers Water Utilities (hereinafter "Rogers"), and the City of Cave Springs, Arkansas, (hereinafter "Cave Springs"). Rogers and Cave Springs are each referred to herein individually as a "party" and collectively as the "parties" to this Agreement.

Recitals

WHEREAS Rogers is a city of the first class organized and operating under the laws of the State of Arkansas; and

WHEREAS Rogers owns a municipal water system and a municipal sewer system and operates each system through the Rogers Waterworks and Sewer Commission ("the Commission") which is the governing body for the Rogers Water Utilities, the municipal water and sewer utility of Rogers ("RWU"); and

WHEREAS Cave Springs is a city of the first class organized and operating under the laws of the State of Arkansas; and

WHEREAS Rogers and Cave Springs have reached an Agreement to adjust the boundary between the two cities through a process of simultaneous detachment and annexation; and

WHEREAS certain areas west of Arkansas Highway 112 currently within the corporate limits of the City of Rogers will be annexed into the City of Cave Springs as shown on Exhibit A. attached hereto ("planned annexation area"); and

WHEREAS Cave Springs has not yet extended its municipal water system and municipal sewer system to the planned annexation area; and

WHEREAS Cave Springs has requested that Rogers continue to provide water service and sewer service (sometimes collectively referred to herein as "utility services") to the planned annexation area while Cave Springs extends such services to the planned annexation area; and

WHEREAS Rogers and Cave Springs are authorized to enter into this Agreement in accordance with Ark Code. Ann. § 14-234-108, Ark. Code Ann. § 25-20-104(h), and other applicable law; and

WHEREAS Rogers and Cave Springs desire to enter into this Agreement setting forth their respective obligations and responsibilities with regard to the orderly transfer of utility services in the planned annexation area.

DRAFT

NOW THEREFORE, in consideration of the foregoing recitals, the mutual agreements and covenants of this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Recitals Incorporated**. The above recitals are material and incorporated into this Agreement.

2. **Temporary Provision of Water Service**. Rogers will continue to provide water service to the planned annexation area while Cave Springs extends water service to the area. Cave Springs will expeditiously extend water service to the planned annexation area. It is anticipated that Cave Springs will extend water service to the planned annexation area within two (2) years of the date of the execution of this Agreement. Rogers will not be obligated to provide water service to the planned annexation area for more than five (5) years beyond the execution of this Agreement. When Cave Springs completes its extension of water service to the area, ownership of, and responsibility for, water mains and other public water infrastructure in the planned annexation area will be assumed by Cave Springs, except for any mains and other infrastructure as Rogers may, by separate notice, specifically exclude from this Agreement. Cave Springs shall reimburse Rogers for personal property pertaining to the public water system remaining in the planned annexation area such as water meters, transmitters, etc. at a price to be agreed upon by the parties. Rogers and Cave Springs will cooperate to adjust each party's respective water service boundary in connection with the transition of service. Except as otherwise stated in this Agreement, Rogers will not be obligated to provide water service to any portion of Cave Springs located outside of the planned annexation service.

3. **Temporary Provision of Sanitary Sewer Service**. Rogers will continue to provide sanitary sewer service to the planned annexation area while Cave Springs extends sanitary sewer service to the area. Cave Springs will expeditiously extend sanitary sewer service to the planned annexation area. Cave Springs will assume the responsibilities of the Commission and RWU under the "Scissortail Lift Station Agreement," obtain cancellation of the instrument, or otherwise obtain a release for the Commission and RWU from their obligations under the instrument as further described herein below. It is anticipated that Cave Springs will extend sanitary sewer service to the area within five (5) years of the date of the execution of this Agreement. Rogers will not be obligated to provide sanitary sewer service to the planned annexation area for more than (7) seven years beyond the execution of this Agreement. When Cave Springs completes its extension of sewer service to the area, ownership of, and responsibility for, sewer mains and other public sanitary sewer infrastructure in the planned annexation area will be assumed by Cave Springs, except for any mains and other infrastructure as Rogers may by separate notice specifically exclude from this Agreement. Cave Springs shall reimburse Rogers for any personal property pertaining to the sanitary sewer system remaining in the planned annexation area at a price to be agreed upon by the parties. Rogers and Cave Springs will cooperate to adjust each party's respective sewer service boundary in connection with the transition of service. Except as otherwise stated in this Agreement, Rogers will not be

DRAFT

obligated to provide sanitary service to any portion of Cave Springs located outside of the planned annexation service.

4. **Inside City Rates Apply**. While Rogers continues to provide water service to the planned annexation area, "inside city" water rates, fees, costs, charges, etc. will apply to water service provided in the planned annexation area. Likewise, while Rogers supplies sanitary sewer service to the planned annexation area, "inside city" sewer rates, fees, costs, charges, etc. will apply to sewer service in the planned annexation area. When Cave Springs supplies water services to the area, then Cave Springs water rates, fees, costs, charges, etc. will apply to water services within the planned annexation area. When Cave Springs supplies sanitary sewer services to the area, then Cave Springs Sewer rates, fees, costs, charges, etc. will apply to sanitary sewer services within the planned annexation area.

5. **Continuing Water Service Jurisdiction**. Rogers, including the Commission and RWU, shall continue to have jurisdiction over provision of water service in the planned annexation area until Cave Springs extends and provides water service to the planned annexation area. The ordinances, rules, regulations, procedures, specifications, deposits, service charges and fees, rates, meter connection charges, tapping fees, impact fees, access fees, sales taxes, fees for Federal Safe Drinking Water Act compliance, (and any other applicable charges and fees) applicable to provision of water service shall continue to apply to provision of water service within the planned annexation area until Cave Springs provides water service to the planned annexation area. In any time when Cave Springs has provided water service to only a portion of the planned annexation area, Rogers shall continue to have jurisdiction over water service for any area where it continues to provide services.

6. **Continuing Sewer Service Jurisdiction**. Rogers, including the Commission and RWU, shall continue to have jurisdiction over provision of sanitary sewer service in the planned annexation area until Cave Springs extends and provides sanitary sewer service to the planned annexation area. The ordinances, rules, regulations, procedures, specifications, deposits, service charges and fees, rates, meter connection charges, tapping fees, impact fees, access fees, sales taxes, fees for Federal Safe Drinking Water Act compliance, (and any other applicable charges and fees) applicable to provision of sanitary sewer service shall continue to apply to provision of sanitary sewer service within the planned annexation area until Cave Springs provides sanitary sewer service to the planned annexation area. In any time when Cave Springs has provided sanitary sewer service to only a portion of the planned annexation area, Rogers shall continue to have jurisdiction over sanitary sewer service for any area where it continues to provide services.

DRAFT

7. **Joint Planning**. Rogers and Cave Springs shall jointly develop policies to address the design and construction of additional developments and utility extensions within the planned annexation area during the periods of temporary provision of water service and the temporary provisions of sewer service described herein above.

8. **Benton County Parcel No. 18-09153-000** Cave Springs additionally anticipates annexing a certain parcel currently located in an unincorporated area of Benton County, Arkansas, namely Benton County Parcel No. 18-091153-000 currently owned by Three Flags Investments, LLC ("Three Flags"). Cave Springs requests that Rogers temporarily extend water service and sewer service to the parcel for purposes of facilitating development of the parcel and incorporation of the parcel into the City of Cave Springs. The parcel is currently subject to a Development Agreement between Three Flags Investments, LLC (as successor in interest to the previous owner) and the Commission and RWU. Rogers is willing to temporarily provide water service and sewer service to the Parcel provided that Three Flags (a) enters into a revised Development Agreement with the Commission and RWU (in a form acceptable to Rogers, the Commission, and RWU) pursuant to which, *inter-alia*, Three Flags will be responsible for paying all of the costs of extension of water service and sewer service to the parcel and (b) Three Flags releases Rogers from all claims arising from its annexation petition and requests for water service and sewer service and dismisses with prejudice litigation currently brought against Rogers, the Commission, and RWU as further described herein below. "Outside City" water rates, fees, costs, charges, etc., and "outside city" sewer rates, fees, costs, charges, etc. will apply to utility services provided by Rogers to Parcel No. 18-091153-000. Cave Springs will expeditiously extend its own water services to Parcel No. 18-091153-000 and when extended, Rogers' obligation to provide water service to the parcel shall cease. Cave Springs shall complete its extension of water service to the Parcel within two years of execution of this Agreement. Cave Springs will expeditiously extend its own sanitary sewer services to Parcel No. 18-091153-000 and when extended, Rogers' obligation to provide sanitary sewer services to the parcel shall cease. Cave Springs shall complete its extension of sewer services to the Parcel within seven years of the execution of this Agreement. Except as otherwise stated in this Agreement, Rogers shall not be obligated to provide water service or sewer service to any other parcel or area that is annexed by Cave Springs.

9 **Contingencies**. This Agreement is contingent upon occurrence of the following:

9.1 ***Annexations Occurring***. This Agreement is contingent upon the contemplated simultaneous detachment and annexation contemplated in the recitals above being approved by the governing bodies of both Rogers and Cave Springs and the annexation becoming final in accordance with law. This Agreement is further conditioned on Cave Springs annexing Parcel No. 18-091153-000 into the City of Cave Springs and said annexation becoming final. In the event the contemplated annexations do not occur, do not become final, or objections to the annexations are successfully sustained, then this Agreement shall not be binding on the parties hereto.

DRAFT

9.2 ***Release of Commission and RWU from Scissortail Lift Station Agreement***. RWU and the Commission are parties to that certain "Agreement to Convey Land for Utility Improvements" entered into by the Commission and RWU and Hiway 112 Partners, LLC and ABS Option Company, LLC recorded on July 29, 2020 as instrument No. L202045900 in the real estate records of Benton County, Arkansas ("Scissortail Lift Station Agreement"). This Agreement is contingent upon the Commission and RWU being released from any obligations under the Scissortail Lift Station Agreement by (a) novation in which Cave Springs is substituted as a party to the Scissortail Lift Station Agreement in the place of the Commission and RWU and thereby assumes all of the Commission and RWU's obligations under the Scissortail Lift Station Agreement, (b) cancellation of the Scissortail Lift Station Agreement, or (c) by other release (in a form acceptable to the Commission and RWU) from their obligations under the Scissortail Lift Station Agreement. Cave Springs shall be responsible for obtaining consent of Hiway 112 Partners, LLC and ABS Company, LLC for the novation contemplated herein, cancellation of the the Scissortail Lift Station Agreement, or other release of the Commission and RWU from their obligations under the Scissortail Lift Station Agreement. Rogers may cancel this Agreement if the Commission and RWU are not released from their obligations under the Scissortail Lift Station Agreement as described herein.

9.3 ***Dismissal of Three Flags Investments, LLC Litigation with Prejudice***. Three Flags, Investments, LLC ("Three Flags") and Rogers are parties to that certain action pending in the Circuit Court of Benton County, Arkansas styled: *Three Flags Investments, LLC v. Rogers Waterworks and Sewer Commission, Rogers Water Utilities and the City of Rogers, Arkansas,* Case No. 04CV 2023-2545 ("the litigation"). Provision of water Service and sewer service to Benton County Parcel No. 18-09153-000 is contingent upon Three Flags entering into a settlement and release agreement with Rogers (in a form acceptable to Rogers) in which, *inter-alia*, Three Flags releases Rogers from any and all claims and causes of action arising from Three Flags' annexation petition, its water and sewer service requests, and the common nucleus of operative fact giving rise to the litigation, and pursuant to which Three Flags causes the litigation to be dismissed with prejudice. Rogers may cancel this Agreement if Three Flags does not enter into a settlement and release agreement as described herein and if Three Flags does not dismiss the litigation with prejudice.

9.4 ***Approval of Governmental Authorities***. Rogers is a recipient of certain funding from the Arkansas Clean Water Revolving Loan Fund administered by the Arkansas Natural Resources Commission ("ANRC") and Arkansas Development Finance Authority ("ADFA"). This Agreement is contingent upon receiving any required approval for this Agreement from the ANRC, the ADFA and any other governmental authority with jurisdiction. Rogers may cancel this Agreement if such approval cannot be obtained.

9.5 ***Compliance with Bond Ordinances and Agreements.*** Rogers is the issuer of certain sewer revenue bonds and certain water revenue bonds. This Agreement is contingent

DRAFT

upon Rogers being able to comply with certain contractual obligations concerning the bonds and being able to obtain any necessary approvals from certain third parties concerning Rogers' contractual obligations concerning the bonds. Rogers' determination as to whether it can and has complied with any relevant contractual obligations shall be conclusive. Rogers may cancel this Agreement if Rogers determines that such compliance cannot occur.

10. Term and Termination

10.1 *Term of Agreement*. The term of this Agreement begins when it is signed by both parties hereto ("effective date") and, unless otherwise terminated in accordance with other provisions of this Agreement, or earlier terminated by completion by the parties' of all the parties' obligations hereunder, this Agreement shall remain in full force and effect for a term of ten (10) years from and after the effective date.

10.2 *Termination of Agreement for Cause*. This Agreement may be terminated by either party in the event the other party fails to perform its obligations under this Agreement. Prior to termination for cause, the party asserting a breach shall give the other party written notice describing the other party's breaches. The party against whom a breach is asserted shall then have thirty (30) days to cure all breaches. If that party's breaches are not cured within this time limit, then the party asserting the breach may proceed to terminate this Agreement by giving written notice of termination to the other party. Termination is not a party's exclusive remedy and either party may further seek all other legal and equitable remedies available to it arising from the other party's breach.

10.3. *Termination of Agreement to Comply with Law or Obligations***.** This Agreement may be terminated by either party at any time in the event that party determines, in its sole judgment and discretion, that this Agreement will violate any applicable law or regulation, or constitute or cause a condition of default or breach on the part of that party, its commissions, boards, or other public bodies, under any other contracts or agreements.

11. Additional Provisions

11.1 The parties may extend the deadlines and timelines specified in this Agreement by mutual agreement expressed in writing in a document signed by both parties hereto.

11.2 *Tort Immunity*. Nothing in this Agreement shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities granted to the parties pursuant to Ark. Code. Ann. §21-9-301 and other applicable law.

11.3 *No Joint Venture; No Third-Party Beneficiaries***.** This Agreement is made at arm's length between independent contracting parties. Nothing in this Agreement shall be deemed to create a joint venture, partnership, tenancy in common, joint tenancy, or any similar relationship between the parties or require either party to engage in further business relationships between the parties. The parties further agree that there are no third-party beneficiaries of this Agreement and that no person or entity, other than the parties hereto (and in the case of Rogers, the Commission and RWU) shall have standing to enforce the terms of this agreement.

DRAFT

11.4 *No Assignment of Rights or Delegation of Duties*. Neither party shall assign its rights under this Agreement without the express written permission of the other party. Nor shall either party delegate its duties under this Agreement without the express written permission of the other party.

11.5 *Compliance with Law***.** Each of the parties hereto is responsible for securing whatever permits, licenses, permissions, certificates, etc. required for the activities undertaken by that party pursuant to this Agreement. Each of the parties hereto states that it will at all times operate in compliance with all applicable, local, state and federal laws and/or regulations and will not act under this Agreement to cause the other party to violate any applicable local, state or federal laws or regulations.

11.6 *Notices*. Any notice or communication required or permitted (other than routine communications between the parties' representatives for coordination, scheduling, and the like, which may be sent by electronic mail or made by telephone) to be given shall be in writing and shall be deemed to have been given (i) when received if personally delivered; (ii) three (3) days after being sent by certified mail, return receipt requested, postage prepaid; or (iii) one (1) day by express courier (e.g. FedEx), if receipt is confirmed by the delivery agent, at the following addresses (or such other address as may be designated).

If given to Rogers, notice shall be sent to:

Mayor, City of Rogers, Arkansas
301 W. Chestnut St.
Rogers, AR 72756

with copies to:

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

If given to Cave Springs, notice shall be sent to:

Mayor, City of Cave Springs, Arkansas
134 N. Main Street
Cave Springs, AR 72712

with copies to

Public Works

DRAFT

City of Cave Springs, Arkansas
134 N. Main Street
Cave Springs, AR 72712

11.7 *Choice of Law and Venue*. This Agreement shall be governed by the laws of the State of Arkansas without regard to its principles of conflict of laws. Venue for any action concerning this Agreement shall be the state or federal courts embracing Benton County, Arkansas.

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

11.9 *Complete Agreement.* Except as otherwise specified herein, this Agreement constitutes the entire agreement between the parties, and it shall not be hereafter amended or modified unless reduced to writing and signed by the parties hereto. It is further agreed that all earlier agreements of the parties concerning this subject matter are hereby rescinded.

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

11.11 *Each Party Relying on its Own Counsel*. Each party hereby represents and warrants that it has received the advice of its own legal counsel in connection with the negotiation and preparation of this Agreement (or that it has had the opportunity to do so) and that it is not relying upon the other party or the other party's counsel in reaching its decision to enter into this Agreement.

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

11.14 *Multiple Counterparts*. This Agreement may be executed in multiple counterparts, each of which shall be an original and which together constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have executed these presents by their respective authorized representatives, having been authorized to do so by appropriate resolution or ordinance.

[signature pages follow]

DRAFT

DRAFT

CITY OF ROGERS, ARKANSAS

By: _____
Greg Hines, Mayor
CITY OF ROGERS

Attest:

_____
Jessica Rush, City Clerk

Date: _____

By:

ROGERS WATERWORKS AND SEWER COMMISSION

By: _____
Peter Farmer, Chairman

Attest:

_____
Brent Dobler, Acting Secretary

ROGERS WATER UTILITIES

By: _____
Brent Dobler, Superintendent

Attest:

_____
Brian Sartain, Utility Engineer

DRAFT

CITY OF CAVE SPRINGS, ARKANSAS

By: _____
Randall Noblett, Mayor

Attest:

_____

, City Clerk

DRAFT