



Office of the City Clerk-Treasurer
301 W. Chestnut
Rogers, Arkansas 72756
479-621-1117· (Fax) 479-936-5401
www.rogersar.gov

COMMITTEE SCHEDULE

TO: MAYOR
CITY COUNCIL
DEPARTMENT HEADS
PRESS

FROM: Jessica Rush, CITY CLERK-TREASURER

DATE: June 9, 2020

The following committee meetings will be held on **Tuesday, June 9, 2020** prior to the City Council Meeting:

6:00 p.m. - FINANCE COMMITTEE: (Reithemeyer*, Wolf, Kendall)

<https://us02web.zoom.us/j/87474807875> OR (312) 626-6799 ID: 874 7480 7875

To Discuss: (a) A Resolution Authorizing The Purchase Of A West Intrado Viper System; Amending The 2020 Budget To Appropriate \$4,050.00 From CMRS Fund Reserves To Account #352-52-70252 Communications Equipment

6:00 p.m. - COMMUNITY ENVIRONMENT & WELFARE COMMITTEE: (Carmichael*, Townzen, Hayes) **<https://us02web.zoom.us/j/82444365271> OR (312) 626-6799 ID: 824 4436 5271**

To Discuss: (a) An Ordinance Amending Various Sections Of Chapter 14 Of The City Of Rogers Code Of Ordinances

(b) An Ordinance Accepting The Annexation Of Certain Territory To The City Of Rogers; Approving The Schedule Of Services To Be Extended To Said Area And The Development Agreement Governing Extension Of Services; Assigning Such To Wards



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ROGERS CITY COUNCIL
AGENDA

JUNE 9, 2020
6:30 PM

<https://us02web.zoom.us/j/87112031816> OR (312)626-6799 ID: 87112031816

PUBLIC HEARING:

PUBLIC FORUM:

INVOCATION & PLEDGE OF ALLEGIANCE:

ROLL CALL:

ACTION ON MINUTES:

1. May 26, 2020

REPORTS OF BOARDS AND STANDING COMMITTEES:

1. RES. Re: Authorizing The Purchase Of A West Intrado Viper System; Amending The 2020 Budget To Appropriate \$4,050.00 From CMRS Fund Reserves To Account #352-52-70252 Communications Equipment FINANCE COMMITTEE
2. ORD. Re: Amending Various Sections Of Chapter 14 Of The City Of Rogers Code Of Ordinances COMMUNITY ENVIRONMENT & WELFARE COMMITTEE
3. ORD. Re: Accepting The Annexation Of Certain Territory To The City Of Rogers; Approving The Schedule Of Services To Be Extended To Said Area And The Development Agreement Governing Extension Of Services; Assigning Such To Wards COMMUNITY ENVIRONMENT & WELFARE COMMITTEE

OLD BUSINESS:

NEW BUSINESS:

APPOINTMENTS:

ANNOUNCEMENTS:

RESOLUTION NO. R20-_____

A RESOLUTION AUTHORIZING THE PURCHASE OF A WEST INTRADO VIPER SYSTEM; AMENDING THE 2020 BUDGET TO APPROPRIATE FOUR THOUSAND FIFTY DOLLARS (\$4,050.00) FROM CMRS FUND RESERVES TO ACCOUNT #352-52-70252 COMMUNICATIONS EQUIPMENT; AND FOR OTHER PURPOSES.

WHEREAS, the City of Rogers Police Department needs to purchase a West Viper System with Higher Ground Integration that will allow 911 calls to be recorded with the new phone system; and

WHEREAS, this service will be purchased from Commercial Electronics, a company out of San Antonio, Texas.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ROGERS, ARKANSAS THAT:

Section 1: The 2020 Budget is amended to appropriate four thousand fifty dollars (\$4,050.00) from CMRS Fund Reserves to Account #352-52-70252 Communications Equipment;

Section 2: Severability Provision: If any part of this Resolution is held invalid, the remainder of this Resolution shall continue in effect as if such invalid portion never existed; and

Section 3: Repeal of Conflicting Resolutions: All ordinances, resolutions, or orders of the City Council, or parts of the same, in conflict with this Resolution are repealed to the extent of such conflict.

RESOLVED this _____ day of _____, 2020.

APPROVED:

C. GREG HINES, Mayor

Attest:

JESSICA RUSH, City Clerk

Requested By: Hayes Minor, Police Chief
Prepared By: Bonnie Bridges, Staff Attorney
For Consideration By: Finance Committee

AN ORDINANCE AMENDING VARIOUS SECTIONS OF CHAPTER 14 OF THE CITY OF ROGERS CODE OF ORDINANCES; PROVIDING FOR THE EMERGENCY CLAUSE; AND FOR OTHER PURPOSES.

WHEREAS, pursuant to the recommendation of the Rogers Planning Commission on May 19, 2020, the City Council finds it in the best interest of the City of Rogers to adopt “Warehouse Office” as a commercial use type in certain zoning districts; and

WHEREAS, the City Council directs that the City of Rogers Code of Ordinances be amended to reflect “Warehouse Office” as a new commercial use.

NOW, THEREFORE, BE IT ORDAINED, BY THE CITY COUNCIL OF THE CITY OF ROGERS, ARKANSAS:

Section 1: Chapter 14, Article VI, Division 2, Section 14-695, Subsection (b)(3), of the City of Rogers Code of Ordinances is amended to add Subsection “uu” to read as shown in the attached Exhibit “A” and Municode Corporation is hereby instructed to make said amendment;

Section 2: Chapter 14, Article VI, Division 2, Section 14-709, Subsection (b), of the City of Rogers Code of Ordinances is amended to include “Warehouse Office” as a conditional use in Table C2-1 and Municode Corporation is hereby instructed to make said amendment;

Section 3: Chapter 14, Article VI, Division 2, Section 14-710, Subsection (b), of the City of Rogers Code of Ordinances is amended to include “Warehouse Office” as a conditional use in Table C3-1 and Municode Corporation is hereby instructed to make said amendment;

Section 4: Chapter 14, Article VI, Division 2, Section 14-711, Subsection (b), of the City of Rogers Code of Ordinances is amended to include “Warehouse Office” as a conditional use in Table C4-1 and Municode Corporation is hereby instructed to make said amendment;

Section 5: Chapter 14, Article VI, Division 2, Section 14-712, Subsection (b), of the City of Rogers Code of Ordinances is amended to include “Warehouse Office” as a permitted use in Table WO-1 and Municode Corporation is hereby instructed to make said amendment;

Section 6 - Emergency Clause: That it is necessary to bring proposed uses of the property into conformance with the Rogers City Zoning Ordinances and the need to amend said City Code chapter is immediate in order to protect the public peace, health, safety, and welfare. An emergency is hereby declared to exist and this Ordinance shall be in full force and effect from the date of passage and approval;

Section 7 - Severability Provision: If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 8 - Repeal of Conflicting Provisions: All ordinances, resolutions or orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2020.

APPROVED:

C. GREG HINES, MAYOR

ATTEST:

JESSICA RUSH, CITY CLERK

Requested By: John McCurdy, Director Community Development
Prepared By: Bonnie Bridges, Staff Attorney
For Consideration By: Community Environment & Welfare Committee

EXHIBIT “A”

Sec. 14-695(b)(3)(uu)

uu. Warehouse Office is a secondary use classification encompassing office uses for companies and non-governmental organizations that require limited on-site storage and company vehicle parking. This use may include:

1. Indoor material and equipment storage; and
2. On-site parking of commercial vehicles.

ORDINANCE NO. 20-_____

**AN ORDINANCE ACCEPTING THE ANNEXATION OF CERTAIN TERRITORY TO
THE CITY OF ROGERS; APPROVING THE SCHEDULE OF SERVICES TO BE
EXTENDED TO SAID AREA AND THE DEVELOPMENT AGREEMENT
GOVERNING EXTENSION OF SERVICES; ASSIGNING SUCH TO WARDS; AND
FOR OTHER PURPOSES.**

WHEREAS, a petition was filed, pursuant to A.C.A. § 14-40-609, for the annexation of certain territory into the City of Rogers, Arkansas;

WHEREAS, the Benton County Assessor and the Benton County Clerk have completed the following:

- a. Verified the identity of the petitioner(s);
- b. Verified that there are no property owners included in the petition that do not wish to have their property annexed;
- c. Verified that the property or properties are contiguous with the City of Rogers;
- d. Verified that no enclaves will be created if the petition is accepted by the City of Rogers;
- e. Presented the petition and their respective verifications to the Benton County Judge; and

WHEREAS, the Benton County Judge has completed the following:

- a. Reviewed the petition and verifications for completeness and accuracy;
- b. Determined that no enclaves will be created by the annexation;
- c. Confirmed that the petition contains a schedule of services;
- d. Found that the land to be annexed shall include certain dedicated public roads and rights of way abutting or traversing said property;
- e. Issued an order articulating these findings and forwarded the petition and order to the contiguous City of Rogers for consideration; and

WHEREAS, it is the desire of the Rogers City Council that said territory be annexed.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ROGERS, ARKANSAS THAT:

Section 1: The following described territory, contiguous to the City of Rogers, be and the same is hereby accepted as part of, and annexed to and made a part of the City of Rogers, Arkansas:

PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) AND PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWENTY-SIX (26), TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTY-ONE (31) WEST OF THE FIFTH PRINCIPAL MERIDIAN, BENTON COUNTY ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 26, SAID POINT BEING A COMPUTED POINT IN ROBERTS ROAD; THENCE ALONG THE EAST LINE OF SAID SE 1/4 OF THE SE 1/4 AND ALONG SAID ROBERTS ROAD, S02°27'09"W A DISTANCE OF 208.71 FEET TO THE **POINT OF BEGINNING**, SAID POINT BEING A COMPUTED POINT IN ROBERTS ROAD; THENCE CONTINUING ALONG SAID EAST LINE AND SAID ROBERTS ROAD, S02°27'09"W A DISTANCE OF 556.00 FEET TO A POINT; THENCE LEAVING SAID EAST LINE AND SAID ROBERTS ROAD, S89°59'09"W 417.80 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE S02°27'09"W A DISTANCE OF 321.63 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE N87°12'48"W A DISTANCE OF 1567.81 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE N02°38'02"E A DISTANCE OF 1104.04 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985" ON THE NORTH LINE OF SAID SW 1/4 OF THE SE 1/4; THENCE ALONG THE NORTH LINES OF SAID SW 1/4 OF THE SE 1/4 AND THE SE 1/4 OF THE SE 1/4, S87°17'29"E A DISTANCE OF 1564.32 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE LEAVING SAID NORTH LINE, S02°27'09"W A DISTANCE OF 208.71 FEET TO A SET IRON PIN WITH CAP "PLS 1156"; THENCE S87°17'29"E A DISTANCE OF 417.40 FEET TO THE **POINT OF BEGINNING**, CONTAINING 45.15 ACRES, MORE OR LESS. SUBJECT TO THE RIGHT OF WAY OF ROBERTS ROAD ON THE EAST SIDE THEREOF, AND ALL RIGHTS OF WAY, EASEMENTS OR RESTRICTIVE COVENANTS OF RECORD OR FACT

LAYMAN'S DESCRIPTION: Approximately 45.15 acres West of Roberts Road, South of Haxton / Pleasant Grove Road and South of the new Bentonville school;

Section 2: In addition, and also hereby accepted as part of, and annexed to and made a part of the City of Rogers, Arkansas is Right of Way as described in the attached **Exhibit "A"** and depicted in the attached **Exhibit "B"**;

Section 3: That the following schedule of services shall be extended to the area by the City of Rogers within the statutorily required three (3) year period after the date of annexation becomes final, as follows:

- a. Law Enforcement,
- b. Life Safety, and
- c. Water and Sewer Services (by and through the Rogers Waterworks and Sewer Commission and the Rogers Water Utilities);

subject to the terms and conditions of that certain Development Agreement between the City of Rogers, the Rogers Waterworks and Sewer Commission, the Rogers Water Utilities, the Fennell Family Trust Dated August 5, 2016, and Sedona Falls, LLC, which is attached as **Exhibit "C"** and made part of this Ordinance and incorporated herein by reference as if repeated here word for word.

Section 4: The Mayor and City Clerk are hereby authorized to enter into the Development Agreement, attached as **Exhibit “C”** on behalf of the City. If the requirements for extension of services as stated in the Development Agreement are not met, then neither the City, nor the Commission, nor the Rogers Water Utilities will have any obligation to extend services.

Section 5: That the above described territory shall be annexed to and made a part of Ward 3 of the City of Rogers, and the same shall henceforth be a part of said ward as fully as existing parts of said ward;

Section 6: That the above described lands are suited for RSF zoning and same should be and are hereby zoned RSF as above described;

Section 7: That the aforesaid real property should be added to the Rogers Comprehensive Growth Map and designated as “Neighborhood”.

Section 8: That thirty (30) days after passage and publication or posting of this Ordinance as authorized by law, the annexation shall be final and the property shall be within the corporate limits of the City of Rogers, except as otherwise ordered by the Circuit Court pursuant to a cause of action filed within said thirty (30) day period;

Section 9: Notice - Within forty-five (45) days of the effective date of this ordinance the City Clerk shall provide written notice, along with complete documentation, to the County Clerk of each county in which the territory is affected;

Section 10: Severability Provision - If any part of this Ordinance is held invalid, the remainder of this Ordinance shall continue in effect as if such invalid portion never existed; and

Section 11: Repeal of Conflicting Provisions - All Ordinances, Resolutions, or Orders of the City Council, or parts of the same, in conflict with this Ordinance are repealed to the extent of such conflict.

PASSED this _____ day of _____, 2020.

APPROVED:

C. GREG HINES,
Mayor

Attest:

JESSICA RUSH, City Clerk

Requested by: Bill Watkins

Prepared by: Bonnie Bridges, Staff Attorney

For Consideration By: Community Environment & Welfare Committee

EXHIBIT "A"

FILED

2019 MAY 28 AM 10:37

Right of Way description for Roberts Road for CC2019-09 annexation
A 50 foot right of way, being 25 feet on either side of the following center line:
BOSS, HARRELL
CO & PROBATE CLERK
BENTON COUNTY, AR

Commencing at the Northeast corner of the SE1/4 of the SE1/4 of Section 26, Township 19 North, Range 31 West Benton County, AR; thence S2°27'20"W 208.71 feet to the Point of beginning; thence continuing S2°27'20"W 556.00 feet to the Point of terminus.

2019 1804

FILED

2019 MAY 28 AM 10:37

BETSY HANKEEL
OF SPRINGFIELD, CLERMONT

128

 ROW to be Annexed

☐ Parcels

Sections

Exhibit “C”

DEVELOPMENT AGREEMENT **Roberts Road Annexation and Development**

This DEVELOPMENT AGREEMENT (this “Development Agreement”) is made as of the ____ day of _____, 2020 (the “Effective Date”), by and between the CITY OF ROGERS, ARKANSAS, (“the City”), the ROGERS WATERWORKS AND SEWER COMMISSION (“the Commission”), the ROGERS WATER UTILITIES (“RWU”); and JAMES R. FENNELL AND TRACI D. FENNELL, Co-Trustees of the Fennell Family Trust dated August 5, 2016, (“Owner”) and SEDONA FALLS, LLC, its successors and assigns (“Developer”) (together “Owner/Developer”) The City, the Commission, RWU, and Owner/Developer shall collectively be referred to herein as the “Parties” and singularly as a “Party”.

W I T N E S S E T H

WHEREAS, Owner/Developer are the owner and prospective developer of certain real property in Benton County, Arkansas, as more completely and initially described in Exhibit “A” attached hereto and made a part hereof (the “Property”);

WHEREAS, Owner/Developer desires to annex the Property into the City and develop the Property for use as a single family residential subdivision, which development will include public improvements desired, preferred, or required by the City to be extended to, made, maintained, and funded by Owner/Developer to or upon the Property;

WHEREAS, as a condition to the annexation of the Property, the City requires certain assurances from Owner/Developer that Owner/Developer will bear all costs and expenses incurred in the extension of water and sewer services to the Property in accordance with the City’s Code of Ordinances, and adequate to serve the proposed development, including the construction of a lift station of adequate capacity to serve the Property as developed, and for the improvements to Roberts Road as represented by Developer, and that such assurances run with the land; and

WHEREAS, the Parties desire to enter into this Development Agreement to set forth their mutual responsibilities, obligations, and understandings herein.

NOW, THEREFORE, for and in consideration of the mutual exchange of the covenants and agreements hereinafter set forth, the sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Development Ordinances. The Owner/Developer shall in good faith comply with all Large Scale Development Ordinances (the “Ordinances”) which apply to and regulate the development of the Property. Pursuant to the Ordinances, or, as the case may be, in addition and supplemental to the Ordinances, Owner/Developer covenants and agrees to perform the following at its sole cost and expense:

a. Extension of water service to the Property from its present terminus to the Property in accordance with the terms and conditions of Rogers Water Utilities’ Special Contract for Facilities Extensions as may then be in effect and as may be modified for Owner/Developer’s particular development;

b. Extension of sanitary sewer service from its present terminus to the Property in accordance with the terms and conditions of Rogers Water Utilities' Special Contract for Facilities Extensions as may then be in effect and as may be modified for Owner/Developer's particular development;

c. Provide a site for and construct any required sewer lift station as may be necessary to manage and serve the sewer capacity generated or proposed to be generated by the development of the Property in accordance with the terms and conditions of Rogers Water Utilities' Special Contract for Facilities Extensions as may then be in effect and as may be modified for Owner/Developer's particular development; and

d. Acquire any necessary rights of way and improve the full width of Roberts Road from the South boundary of the Bentonville Public Schools property to the South boundary of the Property. Improvement of Roberts Road by Owner/Developer shall be a paved surface in full compliance with City street standards.

Nothing herein shall be interpreted to create an obligation in Owner/Developer to develop the Property. The obligations of Owner/Developer as provided above shall only be applicable when and as the Property is developed. The City and the Commission agree to make the services described above available for connection by Owner/Developer as described, but only, when and if, Owner/Developer actually develops the Property. Neither the City, nor the Commission, nor RWU shall have any obligation to extend water service, sewer service, or any other service to the Property absent Owner/Developer's development of the Property and Owner/Developer's payment for the extension of water service, sewer service, and other services as described herein above.

2. In the event that the Commission, on the recommendation of RWU, should determine that its system and the public would be better served by the construction of a regional lift station facility with a capacity in excess of that necessary to serve the development of the Property, Owner/Developer shall pay a fee to RWU in an amount equal to the estimated total cost, including land acquisition or contribution, for the construction of a local lift station designed to serve only the development of the Property.

3. Fees to City, Commission, and Rogers Water Utilities. Owner/Developer will pay all applicable, customary, and standard 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 in accordance with all applicable Ordinances of the City of Rogers, the rules, regulations, procedures, and specifications of the Commission and the Rogers Water Utilities, and any other applicable law, as they now exist or as they may be hereafter amended, said ordinances, rules, regulations, procedures, specifications, and applicable laws, being incorporated herein and made part of this Agreement. Owner/Developer will pay all customary and standard development fees charged by the City.

4. Obligations to Run with the Land. This Development Agreement shall be recorded in the Benton County Real Estate Records, shall act as a covenant running with the land, and shall be binding upon Owner or Developer and their heirs, successors, and assigns. Owner/Developer covenants and represents that it owns 100% of the property subject to this Agreement and that this covenant meets the requirements of Ark. Code. Ann. §18-12-103. Owner/Developer, on behalf of itself and its successors and assigns, covenants and agrees that the Property shall not be developed absent compliance by Owner/Developer, or by its successors and assigns, with the Owner/Developer's obligations to extend water service, sewer service, and other services as stated herein above to the Property at Owner/Developer's sole costs and expense (or the sole cost and expense of Owner/Developer's successors and assigns).

5. No Implied Obligations. It is expressly agreed that nothing contained in this Development Agreement shall be construed to contain a covenant, either expressed or implied either (a) by Owner/Developer to commence the development of the Property within a fixed time or (b) to create any obligation of the City, the Commission, or RWU not consistent with this Agreement. Neither the City, nor the Commission, nor RWU have any obligation to extend water service, sewer service, or any other services to the Property absent Owner/Developer's development of the Property and Owner/Developer's payment of the costs and expenses for extension of services as stated herein above. Owner/Developer, on behalf of itself and its successors and assigns, hereby waives and relinquishes the benefit of any statute, rule, regulation, ordinance, or other provision of law that might require the City, the Commission, or RWU to extend services to the property within a certain period of time, including, without limitation, the provisions of Ark. Code. Ann. § 14-40-609 (b) (2) (F). Owner/Developer, on behalf of itself and its successors and assigns, promises and covenants that it will not bring any suit, action or proceeding against the City, the Commission, or RWU to enforce any provision of any statute, rule, regulation, or ordinance that conflicts with the provisions of this Agreement or requires any action on the part of the City, the Commission, or RWU that conflicts with the City's, the Commission's, or RWU's rights under this Agreement. Owner/Developer, on behalf of itself and its successors and assigns, shall indemnify and hold harmless, the City, the Commission, and RWU from all causes of action, claims, demands, liabilities, losses, costs, or expenses for any loss, including reasonable attorneys' fees, contained in, or arising from, any suit, action, or proceeding brought in violation of this Agreement.

6. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be mailed by certified or registered mail, return receipt requested and postage prepaid, or reputable overnight delivery service with proof of delivery, addressed as follows:

If to City:	City of Rogers Attn: Mayor Greg Hines 301 W. Chestnut Rogers, AR 72756
With a copy to:	City Staff Attorney City of Rogers 301 W. Chestnut Rogers, AR 72756
If to Owner/Developer:	Sedona Falls LLC (address) James R. Fennell and Traci D. Fennell Co-Trustees of the Fennell Family Trust 310 Sicily Dr. Centerton, AR 72719
With a copy to:	Bill Watkins Watkins, Boyer, Gray & Curry, PLLC 1106 W. Poplar St. Rogers, AR 72756
If to Commission or RWU	Rogers Waterworks and Sewer Commission Rogers Water Utilities

With a copy to:

Attn: Brent Dobler, Superintendent
601 S. 2nd Street
Rogers, AR 72756
Robert Frazier
Frazier Law Firm, PLC
219 W. Chestnut
Rogers, AR 72756

Notice shall be deemed to have been given upon receipt. Refusal of delivery for any reason shall be deemed receipt.

7. Modification. No modification of this Development Agreement shall be valid or binding unless such modification is in writing, duly dated, and signed by the Parties.

8. No Partnership and Third-Party Rights. This Development Agreement does not create any obligation or relationship such as a partnership, joint venture, or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to “partners” or other similar terms will not be deemed to alter, amend, or change the relationship between the parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities, and obligations of the parties as to a new, specifically defined legal relationship. Nothing in the Contract shall operate as, or be construed as, a waiver, limit, modification, nullification, or alteration, of the tort immunity and other rights and immunities granted to RWU, the Commission, and the City pursuant to Ark. Code. Ann. §21-9-301 and other applicable law.

9. Successors and Assigns. Owner/Developer, the City, the Commission, and RWU respectively bind themselves, their partners, successors, and assigns to the other party hereto and to the heirs, successors, and assigns to such parties in respect to the covenants, agreements and obligations contained herein. By any conveyance of the Property, Owner and Developer shall, by operation of law, assign their rights and obligations under this Development Agreement to their heirs, successors, and assigns to the Property and this Development Agreement shall run with the land as provided above.

10. Choice of Law; Forum. This Development Agreement shall be interpreted and construed in accordance with the laws of the State of Arkansas, and any dispute with respect to it and the rights and duties thereby created shall be litigated in Benton County, Arkansas. The term “Law” as used herein shall include the laws of the State of Arkansas, without regard to its choice of law rules.

11. Incorporation of Recitals, and Exhibits. The recitals set forth above, to herein and the exhibits attached hereto are hereby incorporated herein by reference as if set forth in full in the body of this Development Agreement.

12. Approval by City Council and Commission. This Development Agreement shall not be binding upon the City, the Commission, RWU, or Owner/Developer unless and until approved by the Rogers City Council and the Commission in conjunction with the adoption and approval by the Rogers City Council of an ordinance annexing the Property into the City and zoning the Property as RSF.

13. Waiver. The City, the Commission, RWU, and Owner/Developer waive all claims against each other for consequential damages arising out of or relating to the Development Agreement. This mutual waiver includes damages incurred by a Party for rental expenses, for losses of use, income, profit, financing, business, and reputation, and for loss of management or employee productivity or of the services of such persons.

14. Enforceability. If any term, covenant, or condition of this Development Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of the Development Agreement, or the application of such terms, covenants,

or conditions to persons or circumstances, other than those as to which are held invalid or unenforceable, shall not be affected thereby, and each and every remaining term, covenant or condition of the Development Agreement shall be valid and enforced to the fullest extent permitted by law.

15. Headings. Article, section, and paragraph headings are for convenience only and may not be construed as part of the Development Agreement, any Addendums, or as a limitation on the scope of the particular sections.

16. Open Records (FOIA) Requests. The Parties agree and acknowledge that this Development Agreement is subject to Arkansas laws relating to open records (FOIA).

17. Entire Agreement. This Development Agreement contains the entire agreement of the parties, and all prior communications, oral or written, are without any force and effect as it is the specific intent of the parties that this Agreement alone sets forth the terms on which the parties have mutually agreed. Each party specifically agrees that it enters into this Development Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other party. Each party agrees that this Development Agreement is the result of good faith arm's length negotiations. ANY REPRESENTATION OF OWNER/DEVELOPER'S AGENTS OR ANY THIRD PARTY WHICH IS NOT INCORPORATED IN THIS DEVELOPMENT AGREEMENT SHALL NOT BE BINDING UPON OWNER/DEVELOPER AND SHOULD BE CONSIDERED AS UNAUTHORIZED. This Development Agreement shall not be amended or added to in any way except by written instruments executed by all Parties or their respective successors in interest.

IN WITNESS WHEREOF, this Development Agreement has been executed on the date above written.

CITY:

CITY OF ROGERS

ARKANSAS

ATTEST:

CITY CLERK

By: _____

Name: C. Greg Hines

Title: Mayor

DEVELOPER:

SEDONA FALLS, LLC

By: _____

Name: _____

Title: _____

OWNER:

the Fennell Family Trust dated
August 5, 2016

By: _____

James R. Fennell, Co-Trustee

By: _____

Traci D. Fennell, Co-Trustee

THE COMMISSION:

Rogers Waterworks and Sewer Commission

By: _____

Kathy McClure, Chairman

RWU:

Rogers Water Utilities

By: _____

Brent Dobler, Superintendent

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared **James R. Fennell and Traci D. Fennell**, to me well known or satisfactorily proven to be the Trustee of the Fennel Family Trust dated August 5, 2016, parties in the foregoing instrument and state that the had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared _____, to me well known or satisfactorily proven to be the manager or managing member of **Sedona Falls, LLC**, a party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared **Kathy McClure**, to me well known or satisfactorily proven to be the Chairman of the Rogers Waterworks and Sewer Commission, a party in the foregoing instrument and state that she had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss
COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared **Brent Dobler**, to me well known or satisfactorily proven to be the superintendent of Rogers Water Utilities, a party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)

)ss

COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared **C. Greg Hines**, to me well known or satisfactorily proven to be the Mayor of the City of Rogers, Arkansas, a party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

ACKNOWLEDGMENT

STATE OF ARKANSAS)

)ss

COUNTY OF BENTON)

ON THIS DAY before the undersigned, a Notary Public, duly qualified and acting in and for the County and State aforesaid, personally appeared **Jessica Rush**, to me well known or satisfactorily proven to be the City Clerk of the City of Rogers, Arkansas, a party in the foregoing instrument and state that he had executed the above and foregoing instrument for the consideration, uses and purposes therein stated.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this ____ day of _____, 2020.

NOTARY PUBLIC

My Commission Expires:

EXHIBIT "A"

THE PROPERTY

A PART OF THE SOUTHEAST QUARTER (SE 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) AND PART OF THE SOUTHWEST QUARTER (SW 1/4) OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION TWENTY-SIX (26), TOWNSHIP NINETEEN (19) NORTH, RANGE THIRTY-ONE (31) WEST OF THE FIFTH PRINCIPAL MERIDIAN, BENTON COUNTY ARKANSAS AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF THE SE 1/4 OF THE SE 1/4 OF SAID SECTION 26, SAID POINT BEING A COMPUTED POINT IN ROBETS ROAD; THENCE ALONG THE EAST LINE OF SAID SE 1/4 OF THE SE 1/4 AND ALONG SAID ROBERTS ROAD, S02°27'09"W A DISTANCE OF 208.71 FEET TO THE **POINT OF BEGINNING**, SAID POINT BEING A COMPUTED POINT IN ROBERTS ROAD; THENCE CONTINUING ALONG SAID EAST LINE AND SAID ROBERTS ROAD, S02°27'09"W A DISTANCE OF 556.00 FEET TO A POINT; THENCE LEAVING SAID EAST LINE AND SAID ROBERTS ROAD, S89°59'09"W 417.80 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE S02°27'09" A DISTANCE OF 321.63 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE N87°12'48"W A DISTANCE OF 1567.81 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE N02°38'02"E A DISTANCE OF 1104.04 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985" ON THE NORTH LINE OF SAID SW 1/4 OF THE SE 1/4; THENCE ALONG THE NORTH LINES OF SAID SW 1/4 OF THE SE 1/4 AND THE SE 1/4 OF THE SE 1/4, S87°17'29"E A DISTANCE OF 1564.32 FEET TO A FOUND IRON PIN WITH CAP "MIKE JAMES RLS 985"; THENCE LEAVING SAID NORTH LINE, S02°27'09"W A DISTANCE OF 208.71 FEET TO A SET IRON PIN WITH CAP "PLS 1156"; THENCE S87°17'29"E A DISTANCE OF 417.40 FEET TO THE **POINT OF BEGINNING**, CONTAINING 45.15 ACRES, MORE OR LESS. SUBJECT TO THE RIGHT OF WAY OF ROBERTS ROAD ON THE EAST SIDE THEREOF, AND ALL RIGHTS OF WAY, EASEMENTS OR RESTRICTIVE COVENANTS OF RECORD OR FACT.