

# CITY OF PEA RIDGE

## WATER UTILITIES

### CITY OF PEA RIDGE WATER UTILITIES FACILITIES EXTENSION AGREEMENT

Implemented by Ord. No. 838 on February 20th, 2024  
Effective Date; March 21st, 2024

This Facilities Extension Agreement is entered into by the Pea Ridge Water Utilities of the City of Pea Ridge, Arkansas, (“Pea Ridge Water Utilities” or “PRWU”),  
\_\_\_\_\_ and \_\_\_\_\_, (“Applicant”).

#### Recitals

**WHEREAS** the Pea Ridge Water Utilities is the municipal water and sewer utility of the City of Pea Ridge, Arkansas, consisting of the water department and the sewer department, operated under common management.

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

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

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

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

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

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

**WHEREAS** Applicant is willing to pay for the costs of the facilities and is willing to dedicate the facilities to the Pea Ridge Water Utilities, and the City of Pea Ridge, Arkansas upon acceptance of the facilities in accordance with the terms of this Agreement; and

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

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

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

2. **Definitions.**

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

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

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

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

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

*Public Portion (of water service lines)* means any portion of water service lines constructed pursuant to this Agreement that is intended to become, upon dedication by Applicant and acceptance by PRWU, public property and will be part of the “Utility System” as defined in the Code of Ordinances of the City of Pea Ridge, Arkansas. The public portion of water service lines does not include any portion of the “Customer System”.

*Public Portion (of sewer service lines)* means any portion of sewer service lines constructed pursuant to this Agreement that is intended to become, upon dedication by Applicant and acceptance by PRWU, public property and will be part of the public sewer system. The point of demarcation between the public portion of the sewer system and the customer’s system is the sewer wye, connection valve, or the manhole where the sewer service line connects to the public sewer collection system, unless an E-One grinder station(s) is required and agreed upon.

*Pea Ridge City Code* means the most recent edition or revision of the Code of Ordinances of the City of Pea Ridge, Arkansas.

*Standard Specifications* means the most recent edition or revision of the *City of Pea Ridge Water Utilities Standard Specifications and Details* published by the PRWU.

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

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

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

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

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

8. **Applicant's Engineer.** Applicant designates

\_\_\_\_\_ «Engineer\_Contact\_First»  
\_\_\_\_\_ «Engineer\_Contact\_Last»  
\_\_\_\_\_ «Engineer\_Contact\_License» of  
\_\_\_\_\_ «Engineer\_Firm» as Engineer,

who will provide the engineering services described herein above.

9. **Planning Agency Review.** Applicant shall give notice of Applicant's proposed facilities by submitting the plans for facilities which have been approved by PRWU to the appropriate planning agency for review as follows: (1) the City of Pea Ridge Planning Commission and City Council if any part of the project is located within the territorial jurisdiction of said Planning Commission; (2) the Benton County Planning Commission if any part of the facilities are to be located outside of the territorial jurisdictions of the Pea Ridge Planning Commission or any other municipality's planning commission; (3) the Pea Ridge City Council if facilities are to be located outside of the

Pea Ridge city limits. Applicant shall not commence construction of the facilities prior to review and approval by any and all planning agencies having jurisdiction.

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

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

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

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

14. **Large Scale Development Fees Required.** Large Scale Development Fees (LSD Fees) **will be required** in accordance with the Code of Ordinances of the City of Pea Ridge. Based on extensions to Water/Sewer Mains. Payable to City of Pea Ridge Water Utilities.

Large Scale Fees are as such;

WATER:	2" Through 4" Connection To Main	\$1,000.00
	6" Connection To Main	\$1,500.00
	8" Connection To Main	\$2,500.00
	Connection Over 8" To Main	\$3,500.00
SEWER:	6" Through 12" Gravity Main Connection	\$1500.00
	2" Through 8" Force Main Connection	\$1500.00

(Materials And Labor Furnished By Developer/Owner/Contractor)

(Fees Must Be Paid To Pea Ridge Water Before Final Plat/Asset or Easement Dedication Can Proceed To City Council For Acceptance.)

The LARGE SCALE DEVELOPMENT fees listed above are not tap fees & do not include the cost of constructing the water service meters. Costs for taps, water/sewer, that need to be done by PRWU, are based on the Fee Schedule (Ordinance #823) and must be paid to PRWU before the service tap(s) can be scheduled.

15. **Inspection Fee.** All extensions of water mains and sewer mains, and the public portion of any water service lines or sewer service lines, proposed to become part of the public water system or public sewer system, require inspection by PRWU to ensure conformance with the *Standard Specifications*. No service fees will be assessed for the initial and follow-up inspection. Should Applicant, Applicant's Engineer, or Applicant's utility contractor cause the need for additional inspections or unreasonable amounts of time to be expended by PRWU's personnel due to nonconforming work or lack of performance by the Engineer, Applicant shall pay to PRWU the sum of \$250.00 per day or \$100.00 per hour, whichever amount is greater, for each day that a PRWU representative inspects Applicant's work hereunder. The hourly rate for Saturday, Sunday, and holidays shall be 150% of the aforesaid rates. Inspections are for the sole benefit of PRWU, and no services are provided for the Applicant, either directly or implied. Inspections by PRWU shall not relieve the Applicant of the duty to provide inspection as specified in paragraphs 6 and 7 herein above. Applicant shall pay to PRWU all other costs for services rendered by PRWU, including but not limited to, disinfection, collecting and testing samples, performance testing and connections to mains if any of these functions are performed by PRWU personnel or if PRWU personnel assist the applicant or its agent.

16. **Consent to Proceed.** Once PRWU has received this signed Agreement, as well as the following, a *Consent to Proceed* construction of facilities to be dedicated to the City of Pea Ridge, will be issued. PRWU requires the following to issue such *Consent to Proceed* letter,

- a). Ark. Dept. of Health Approval Letter.
- b). A stamped set of Ark. Dept. of Health Approved Plans
- b). Any Road Cut/Bore Permits, or copies thereof.
- c). Signed Easements, if required, to be presented by PRWU to City Council for acceptance.
- d). Copy of Contractors Arkansas License with proper certifications.

Beginning construction without *Consent to Proceed* will result in PRWU's denial of acceptance of project once completed.

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

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

19. **Contractor Licensure;**

(a) *General Contractor Constructing Facilities.* If the general contractor is constructing the facilities, a written construction contract must exist between the general contractor and the Applicant. The general contractor shall provide a copy of a valid Arkansas Contractors License with proper classification for Municipal Utility construction to PRWU.

(b) *Subcontractor Constructing Facilities.* If a subcontractor will be constructing the facilities, a written contract must exist between the subcontractor and the general contractor for construction of the facilities. A written construction contract must also exist between the general contractor and the Applicant. The subcontractor may, at discretion of PRWU, be required to provide a copy of a valid Arkansas Contractors License with proper classification for Municipal Utility construction to PRWU.

(c) *Applicant Constructing Facilities.* If the Applicant is serving as its own contractor for construction of the facilities, the Applicant shall provide a copy of a valid Arkansas Contractors License with proper classification for Municipal Utility construction to PRWU, if crossing parcel lines and facilities are to be dedicated for public use.

20. **Dedication of Facilities.** Upon completion of the construction of the facilities and acceptance by PRWU, ownership of the facilities shall vest by this Agreement in the City of Pea Ridge, Arkansas, for the use of PRWU, and the acceptance of the Pea Ridge City Council of the Asset dedication. The facilities shall become a part of the City of Pea Ridge municipal water system, sewer system, (or both), as applicable. PRWU shall have the right to connect to and to make extensions from the facilities without payment to or permission from Applicant.

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

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



23. **Compliance.** Applicant acknowledges that providing water service from the facilities, or connections thereto, will not be commenced by PRWU prior to Applicant fulfilling all its obligations in strict accordance with the terms of this Agreement including the payment of all amounts due to PRWU. Applicant 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 Pea Ridge, the rules, regulations, procedures, and specifications of the Pea Ridge Water Utilities, and any other applicable law, as they now exist or as they may be hereafter amended. Applicant will comply with all applicable Ordinances of the City of Pea Ridge, the rules, regulations, procedures, and specifications of the Pea Ridge 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.

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

25. **No Joint Venture.** This Agreement is made at arm's length between independent 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.

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

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

28. **Conflict.** In case of conflict between this Agreement and other controlling laws and regulations, priority of interpretation shall be in the following order:

- a) Signed Facilities Extension Agreement;
- b) Any listed and numbered addenda;
- c) Special provisions;
- d) Arkansas Department of Health approved construction drawings;

- e) Project specific details;
- f) City of Pea Ridge Water Utilities Standard Specifications;
- g) City of Pea Ridge General Design Standards;
- h) City of Pea Ridge Municipal Code;
- i) PRWU written notice to proceed to the Contractor;
- j) Maintenance bonds;

29. **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 litigation concerning this Agreement shall lie exclusively in the state or federal courts embracing Benton County, Arkansas, unless another venue is specified by law.

30. **No Obligation of Indemnity by PRWU; Tort Immunity Not Waived.** The parties hereto agree that the City of Pea Ridge and PRWU have no obligation of indemnity of any type (whether contractual, equitable, or otherwise denominated) to Applicant under this Agreement. Nothing in the 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 PRWU, and the City of Pea Ridge, Arkansas pursuant to Ark. Code. Ann. §21-9-301 and other applicable law.

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

If given to PRWU, notice shall be sent to:

Utility Manager  
City of Pea Ridge Water Utilities  
P.O. Box 29  
Pea Ridge, AR 72756

If given to Applicant, notice shall be sent to:

[Insert Notice Address]

32. **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.

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

34. **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.

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

\_\_\_\_\_  
("Applicant")

By: \_\_\_\_\_  
date

**PEA RIDGE WATER UTILITIES OF THE CITY OF PEA RIDGE, ARKANSAS**

By: \_\_\_\_\_  
Utility Manager date