

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION

_____	)	
UNITED STATES OF AMERICA and	)	
STATE OF ARKANSAS,	)	
	)	
Plaintiffs,	)	C.A. 2:14-cv-002266-PKH
	)	(Closed Case)
v.	)	District Judge P.K. Holmes, III
	)	
CITY OF FORT SMITH, ARKANSAS,	)	
	)	
Defendant.	)	
_____	)	

**AGREEMENT AND ORDER ON MODIFICATON TO CONSENT DECREE**

**BACKGROUND**

WHEREAS, Section 301(a) of the Clean Water Act (“CWA”), 33 U.S.C. § 1311(a), prohibits the discharge of any pollutants except as authorized by, and in compliance with, certain enumerated sections of the CWA, including Section 402 of the CWA, 33 U.S.C. § 1342, which authorizes the issuance of National Pollution Discharge Elimination System (“NPDES”) permits. On January 2, 2015, the United States, on behalf of the United States Environmental Protection Agency, and the State of Arkansas filed a civil action against the City of Fort Smith for numerous unpermitted and illegal discharges of untreated sewage from its sanitary sewer system (“sanitary sewer overflows” or “SSOs”) in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311, and for failing, among other things, to properly operate and maintain its collection system and to mitigate the impacts of SSOs in accordance with the City’s National Pollutant Discharge Elimination System (“NPDES”) Permit No. AR0033278 and NPDES Permit No. AR0021750.

WHEREAS, the parties negotiated the 2015 Consent Decree, entered as a judgment on April 6, 2015 (ECF No. 3-1), to resolve the claims in the Complaint. The Consent Decree has the express objectives of eliminating SSOs from the City’s wastewater collection and transmission system (“WCTS”) and the City’s proper operation and maintenance of its WCTS. (Decree ¶ 3). Among other requirements, the Consent Decree requires that the City complete the assessment and remediation of condition defects and capacity constraints in the WCTS over a period of twelve (12) years (by January 2, 2027) in accordance with interim deadlines for the work.

WHEREAS, SSOs have continued to occur since the Effective Date of the Consent Decree. The City has not met deadlines for work under the Decree since 2019 and the work is falling further behind while SSOs continue to occur. The City contends that it cannot meet the 12-year schedule and seeks a modification of the Consent Decree to extend the schedule for work. The City also contends that a potential extension of up to five (5) years that was available under Section V, Article Nine of the Consent Decree (Schedule Reconsideration Based on Financial Circumstances), upon a showing of financial burden, is insufficient.

WHEREAS, the City experienced a historic 500-year flood in 2019 which the City represents resulted in approximately \$14.2 million dollars in damage to key wastewater infrastructure including key pump stations and the City’s largest wet weather sewage storage basin (the Sunnymeade Basin), which was out of service for twenty-two (22) months.

WHEREAS, the City asserts that the occurrence of the 2019 flood of record coincides with the City falling behind the deadlines for work under the Decree because, among other things, the system damage forced the City to divert Consent Decree compliance dollars to repair the damage.

WHEREAS, the Federal Emergency Management Agency reimbursed the City \$10.6 million out of the \$14.2 million in damages with most of those funds not coming until December 2023 and the final payment not until May 2025.

WHEREAS, the City represents that it also suffered the effects of the global Covid-19 Pandemic beginning in 2020 and extending through 2022, which impacted the City's ability to meet Consent Decree requirements.

WHEREAS, the United States contends that Fort Smith did not provide adequate information to support its force majeure notices related to Covid-19 as required by the force majeure provisions in Section XIII of the Consent Decree.

WHEREAS, after engaging in the non-judicial dispute resolution process under the Consent Decree, in filings with the Court in October 2020, the City sought unilateral modification of the Consent Decree pursuant to F.R.C.P. 60(b)(1) and (6) to extend the schedule by eight (8) years and reduce work requirements. The United States opposed the City's modification request, and the Court ultimately denied the City's unilateral modification request in an Opinion and Order dated March 19, 2021 (ECF# 45).

WHEREAS, the City represents that it spent approximately \$136 million between 2015 to the end of 2024 toward Consent Decree requirements.

WHEREAS, the City represents that the estimated total cost of Consent Decree and NPDES permit compliance has increased, indexed for inflation, to almost \$800 million through 2038.

WHEREAS, the Parties are engaged in dispute resolution under Section XIV of the Consent Decree concerning the City's claims of force majeure due to Covid-19 and the City's request for modification of the Consent Decree.

WHEREAS, the City has agreed to withdraw its dispute resolution within 10 days of the entry of this modification of the Consent Decree.

WHEREAS, Plaintiffs and the City have continued to discuss the City's noncompliance with the Consent Decree schedule and potential modifications of the Consent Decree. During those discussions, the City has provided extensive financial information to the United States. Given the lapse of time since the Effective Date of the Consent Decree in April 2015, the City's inability to meet interim deadlines for performance of work in the absence of additional funding, the asserted force majeure events, and the significant increase in the cost of compliance, it is apparent to the Parties that the City will not meet the 12-year deadline for completion of the work by January 2, 2027. The Parties, therefore, have agreed to modify the interim deadlines and extend the final deadline for completion of work in the Consent Decree by eleven (11) years and six months (for a total Consent Decree term of 23.5 years) subject to the conditions set forth below. The modification requires that the City prioritize efforts to eliminate recurring and high volume SSOs consistent with the provisions below.

WHEREAS, the City acknowledges that, as of January 2025, its sewer rate and dedicated sales tax revenues were insufficient to fund the remediation and maintenance work required by this Decree under the current 12-year schedule or even under the modified 23.5 year compliance schedule set forth herein.

WHEREAS, the City raised sewer rates during the period of 2015 – 2017 [such that the average monthly household wastewater bill increased 159 percent (assuming 5 CCF/month or 3,740 gallons) from \$18.08 in 2014 to \$46.75 in 2017.

WHEREAS, the City asserts that this increase was estimated to provide adequate funding for the Consent Decree program at the original program cost. The City did not again raise sewer

rates during the years 2018 to June 2025 but, instead, adopted a Sales and Use Tax in 2022 to help fund the Consent Decree.

WHEREAS, the City enacted a Sales and Use Tax (“SUT”) extension, Ordinance 20-22, approved by voters in May 2022, that dedicated a portion of the SUT revenues to Consent Decree projects on a pay-as-you-go basis. In the absence of a court order requiring greater rate increases, the ordinance prohibited rate increases before June 2025 and then allowed increased sewer rates thereafter by 3.5% annually through May 31, 2030. The Ordinance also precludes the use of the dedicated SUT revenue to finance bonds.

WHEREAS, Plaintiffs’ agreement to the schedule modifications herein is in reliance on the City’s commitment to raise additional funding adequate to complete the Consent Decree work in accordance with the modified schedule.

WHEREAS, in response to discussions among the Parties, the City has taken affirmative measures to raise additional funding for sewer operation and maintenance and for Consent Decree work.

WHEREAS, on February 21, 2025, the City enacted Ordinance 18-25 which requires annual sewer rate increases of 3.5% per year for 2025 through 2030 commencing June 1, 2025, and increasing each January 1<sup>st</sup> thereafter, to support the operation and maintenance of the WCTS.

WHEREAS, on February 21, 2025, the City Board of Directors passed a resolution to submit to public vote on May 13, 2025, Ordinance 19-25 amending SUT Ordinance 20-22 (levying a 0.75% sales tax) to extend the expiration date of the SUT from December 31, 2030 to December 31, 2059, and to authorize the use of five-eighths (5/8) of the revenue from this SUT (equaling .625 of one percent) to fund sewer system improvements and Consent Decree work

and to repay and secure up to \$385 million in bonds to finance Consent Decree capital projects. On May 13, 2025, City of Fort Smith voters approved Ordinance 19-25.

WHEREAS, on February 21, 2025, the City Board of Directors passed a resolution to submit to public vote on May 13, 2025, Ordinance 20-25 amending SUT Ordinance 72-58 (levying a one percent sales tax for streets, bridges and draining) to extend this SUT through December 31, 2059, and to authorize the use of three-eighths (3/8) percent of revenue from this SUT (equaling .375 percent of one percent) for sewer system improvements and Consent Decree work and to repay and secure bonds issued to finance Consent Decree capital projects. On May 13, 2025, City of Fort Smith voters approved Ordinance 20-25.

WHEREAS, on February 21, 2025, the City Board of Directors resolved to submit to public vote on May 13, 2025, an ordinance authorizing the issuance of bonds by “the City of Fort Smith in the maximum principal amount of \$385,000,000 to finance costs of betterments and improvements to the City’s sewer system including particularly, without limitation, consent decree sewer improvements, and, in order to pay the bonds, the pledge of 37.5% of collections received by the City of a 1% local sales and use tax within the City levied by the City under Ordinance No. 72-85 of the City adopted August 13, 1985, as amended, and the pledge of 83.3% of the collections received by the City of a 0.75% local sales and use tax within the City levied by the City under Ordinance No. 20-22 of the City adopted February 22, 2022, as amended. ‘Consent decree sewer improvements’ include projects required by the Consent Decree with the United States Environmental Protection Agency, the United States Department of Justice and the Arkansas Department of Environmental Quality addressing the City's compliance with the federal Clean Water Act involving dry and wet weather overflows from the sewer system. The

bonds may be issued at one time or in series from time to time.” On May 13, 2025, City residents voted to approve the bond proposal on the ballot.

WHEREAS, the City issued bonds in the amount of \$100 million on October 30, 2025, with all \$100 million of the funds raised to be applied to Consent Decree capital projects. The remainder (up to \$285 million) of the bonds will be issued in the 2026 through 2029 timeframe.

WHEREAS, the City anticipates that it will need a second bond issuance of a similar amount (currently estimated at \$320,000,000) in or about 2031 for Consent Decree capital projects and represents that it will take appropriate steps to obtain the additional financing as needed commencing in or about 2031.

WHEREAS, the City commits to using the allocated SUT revenues remaining after payment of bond obligations to fund Consent Decree work.

WHEREAS, the City currently estimates that the bond proceeds, together with SUT revenues remaining after bond payment obligations, will provide sufficient funds to enable the City to complete Consent Decree capital projects and other Consent Decree requirements within the modified Consent Decree term.

ACCORDINGLY, the Parties propose and seek this Court’s approval to modify the 2015 Consent Decree as set forth in this *Agreement and Order On Modification to Consent Decree* (“Agreement and Order”).

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

**MODIFICATIONS TO CONSENT DECREE**

1. Modifications to the Consent Decree pursuant to this Agreement and Order are to be applied prospectively only after the Effective Date of the Agreement and Order and do not excuse prior violations of Consent Decree terms. Unless resolved by agreement or payment,

prior violations of Consent Decree terms remain subject to potential stipulated penalties under the Consent Decree. The City reserves the right to argue that certain violations were resolved by the Court's Order of March 19, 2021 (ECF No. 45), and Plaintiffs reserve the right to argue to the contrary.

**2. Modifications to Paragraphs 9, 17, 18 in Section V of the Consent Decree for Condition Remedial Measures (new language in italics):**

9. Modifying one sentence: "Subject to the provisions of this Consent Decree, all actions required under Section V of this Consent Decree shall be completed no later than *June 30, 2038.*"

17. *Condition Remedial Measures from SSA Activities (Including Basin 12). City shall submit a Remedial Measures Plan for Basin 12 with or before the first Annual Report to remediate all defects in Basin 12 ranked 4 or 5 (applying the NASSCO rating systems as set forth in Appendix A). Commencing no later than the day after the Date of Lodging, City shall conduct SSA activities on Basins and/or Sub-basins identified in Appendix C, in accordance with Article One of Section V. After completing the SSA activities for the period from the Date of Lodging through December 31, 2015, and for every Calendar Year thereafter, City shall develop an annual Remedial Measures Plan for the repair or replacement of (1) all Pipe Segments and manholes discovered through the SSA to be rated 4 or 5 in accordance with the NASSCO condition rating systems (as set forth in Appendix A), and (2) all other Pipe Segments and manholes discovered through the SSA to be rated 1-3 in accordance with the NASSCO condition rating systems in the SSA if determined by the City's professional engineer to have defects that have caused or significantly contributed to previous SSOs or that are likely*

*to cause or significantly contribute to the future occurrence of SSOs. The City shall provide this SSA condition score information in tabular format to EPA and ADEQ as currently required in the Consent Decree at Section X (Reporting). For defects rated as NASSCO 1-3, the City shall use engineering judgment to determine the specific Remedial Measures required, if any, for each Pipe Segment and manhole identified through application of the remediation decision process presented in Appendix D. City shall submit each Remedial Measures Plan to EPA and ADEQ in accordance with Section XX (“Notices”) for review and approval on or before March 31 of the second Calendar Year following the Calendar Year in which the SSA that identified the need for those Remedial Measures was performed through 2024. City may commence design and construction of Condition Remedial Projects identified prior to EPA’s approval of the Remedial Measures Plan. The City completed submission of its Remedial Measures Plans for SSA work completed through 2024, and all Remedial Measures Plans have been approved by EPA as of August 12, 2025.*

*18. Beginning in 2026, the City shall complete condition remedial measures on a minimum of 40,000 LF of sewer lines and 200 manholes by December 31 of each Calendar Year and document the progress in the Annual Reports. The City shall further complete remedial measures on a three-year cumulative total of 150,000 LF of sewer lines and 750 manholes by December 31, 2028, a cumulative total of 300,000 LF of sewer lines and 1,500 manholes by December 31, 2031, and a cumulative total of 450,000 LF of sewer lines and 2,250 manholes by December 31, 2034. All Remedial Measures enumerated in each Remedial Measures Plan, including the Remedial Measures Plan for Basin 12, shall be completed as soon as technically feasible, but no*

*later than June 30, 2038. After completion of the 2018 SSA Remedial Measures Plan work, City shall prioritize the remedial measures to be completed in each Calendar Year using engineering judgment considering the following factors: (1) SSO history; (2) the risk of sewer failure based upon the NASSCO condition rating information and sewer break/repair history; (3) the consequence of sewer failure; and (4) maintenance history of sewer line breaks and cleaning. The City shall reevaluate risk factors on an annual basis. The City shall address the remediation of defects discovered in Private Service Lines through SSA efforts, including those in areas where SSAs were performed prior to the Date of Lodging, or as otherwise become known to City in each Calendar Year in accordance with Paragraph 54. The Annual Report for each Calendar Year shall enumerate all Remedial Measures completed (including the amount and general location(s) of pipe and manholes remediated/replaced and shall enumerate the status of Private Service Line defect remediation efforts in that Calendar Year as approved in the City's current Private Service Line Defect Remediation Program.*

**3. Modifications to Paragraphs 32, 33, 41, 47 in Section V of the Consent Decree for Capacity Remedial Measures (new language in italics):**

**32. New paragraphs a., b. and c. are added to Paragraph 32 after final sentence of current paragraph:**

- a. Using the updated hydraulic model, the City will reassess the remedial capacity improvements needed to eliminate the model predicated SSOs for a 2-year, 6-hour storm event and will upsize the sewer pipes that do not have a 2-*

*year, 6-hour service level to at least a 5-year, 6-hour level of service capacity when possible without creating downstream sewer overflows or other adverse system impacts.*

*b. The City shall complete the following four (4) priority Capacity Remedial Measures (CRM) projects that are located within the four sewer basins identified below to provide these areas with a 5-year, 6-hour level of service capacity. The four CRM projects are Basin 12 Phase 1 Capacity Project, Basin FL01 Capacity Project, Basin FL02 Capacity Project, and Basin 004 Capacity Project.*

*c. The City shall update the Capacity Remedial Measures Plan (CRMP) by addendum using the updated hydraulic model results and confirm which capacity-related project listed in Appendix E2 it will construct and what additional capacity projects, if any, beyond those listed in Appendix E2, it will construct and submit the revised portions of the CRMP to EPA and ADEQ by June 30, 2026.*

33.d. “Completion dates for the additional individual capacity Remedial Measures projects identified under Subparagraph 33.c. above, such that any additional Remedial Measures are completed no later than **June 30, 2038**. City shall explain how it prioritized these projects based upon the risk and consequences of SSOs likely to occur until these capacity Remedial Measures are completed; and . . .”

**41.b** Change “eight (8) Calendar Years” to “**ten (10) Calendar Years**”.

41.c Change “Ten (10) Years from Date of Lodging” to “*Twelve (12) Years from Date of Lodging.*”

44.c Change “eight (8) years” to “*ten (10) years*”

47. Add new 47.d. “*City shall identify on the City webpage the ADEQ webpage in which ADEQ publishes the City’s SSO reporting information and shall provide sufficient information, including the City’s NPDES permit numbers, to facilitate the public’s ability to locate the City’s reported SSO events on the ADEQ webpage.*”

**4. Modifications to Section V (J) of the Consent Decree – Article Nine: Schedule Reconsideration Based on Financial Circumstances.**

Article Nine, comprised of the Heading and Paragraphs 58-65, is deleted and replaced with the following:

***“Article Nine: Requirement to Raise Funds for Consent Decree work and Use Best Efforts to Fund the Work within the Modified Schedule.***

***58. Defendant shall take all appropriate and necessary measures to ensure adequate funding for completion of the remedial requirements set forth in this modified Section V through use of its sewer rate, debt, and taxing authorities. Defendant’s failure to provide adequate funding shall not be a defense to any failure to comply with this Agreement and Order, the Consent Decree, its permits, or the CWA.***

***59. a. The City has enacted Ordinance 18-25 setting annual sewer rate increases of 3.5% for the years 2025 through 2030. The City agrees that the current schedule of rates through 2030, in the absence of other funding sources described herein, is inadequate to fund the Consent Decree work and sewer***

*operation and maintenance costs. The City will increase sewer rates during the remaining modified term of this Consent Decree (2025 – 2038) as necessary to meet operation and maintenance and Consent Decree obligations when other funding sources are insufficient.*

*b. During the modified term of the Consent Decree, any downward adjustment to these rates or failure to enact these rates, unless approved in writing by EPA and ADEQ, upon a demonstration by the City satisfactory to EPA and ADEQ that it has other funding sources sufficient to meet its Consent Decree and operation and maintenance obligations, shall constitute a violation of the requirement to adequately fund the work upon which this Agreement and Order is conditioned, and a violation of Paragraphs 58, 59 and 61 of this Agreement and Order. Any reduction in sewer rates from the 3.5% adopted through 2030 shall be a major modification subject to notice and approval by the Court in accordance with Section XXIII.*

*60. For purposes of Section 9 of Fort Smith Ordinance No. 20-22, upon entry by the Court, this Agreement and Order constitutes an Order of the Court requiring the City to increase its sewer rates consistent with Paragraphs 58, 59 and 61. For purposes of Fort Smith Municipal Code of Ordinances Sec. 25-234, the rates set forth above are subject to additional rate increases when necessary to provide for sewer system operation and maintenance and, when other sources of funding are insufficient, for the payment of the principal of and interest on the bonds issued to finance Consent Decree capital projects.*

*61. Consistent with Fort Smith Code of Ordinances Sec. 2-166 (d) (1) and (2), in order to expedite the remediation of condition defects and capacity constraints, as required in Section V of the Consent Decree, and to leverage revenues from the sewer rates and City sales and use taxes, the City shall take all appropriate and necessary measures, subject to state law, to secure debt financing or grants for the costs of capital projects required by the Consent Decree through the open bond market, and/or the State Revolving Fund (“SRF”), and other available sources of state and federal loans or grants. The City represents that it is taking financing steps beginning in 2025 using SUT revenues to raise approximately \$100 million for Consent Decree projects on the open bond market through the issuance of one or a series of capital improvement bonds (\$100 million in late October 2025 and up to another \$285 million between 2026 and 2029) and that it will issue additional bonds up to an additional \$320 million beginning in or about 2031 to fund Consent Decree capital projects. The City shall timely complete requisite financing applications to qualify for such debt financing or grants and make best efforts to address any deficiencies identified by lending authorities that would preclude or limit SRF or other debt financing (which may include raising sewer rates at a greater percentage than is identified in Paragraph 59 above). For purpose of Article Nine as modified herein, “appropriate and necessary measures” include, but are not limited to, measures taken to raise rates; levy taxes; and apply for loans, grants, and bonds; as well as any necessary procedural steps, such as to call for an election, referendum, or hearing, where required by State or local law.*

*62. Financial Management Plan. Within one hundred eighty (180) Days after the Effective Date of this Agreement and Order, the City shall develop and submit to the*

*EPA a Financial Management Plan for financing the Consent Decree work. The Financial Management Plan, including all subparts described below, shall be reviewed by the City on at least an annual basis and updated to remain current. The updated Financial Management Plan or any updated subparts must be submitted to the EPA with the next Annual Report due under Section X (Reporting). The Financial Management Plan shall include the following subparts:*

- a. Capital Projects Budget. A Capital Projects Budget for Consent Decree Projects and non-Consent Decree wastewater projects shall be developed. The budget shall include projected annual costs and proposed funding for all planned wastewater capital projects (including projected costs for completion of the minimum annual sewer miles and manhole rehabilitation required under the Consent Decree) through 2038, an assessment of current funding, service rates, SUT projections, any revenue shortfalls, staff and equipment shortcomings, and a description of what additional funding is needed for the Wastewater Utility to safely and reliably provide wastewater services and complete the Consent Decree work on schedule. The budget shall be incorporated into the Financial Management Plan in accordance with this Paragraph. The City shall provide a detailed list of Consent Decree and non-Consent Decree wastewater capital projects included in the budget.*
- b. Debt and Grant Applications and Awards. Upon the Effective Date of this Agreement and Order, the City shall maintain records of any debt, SRF and grant applications or bond offerings and monies received (hereinafter "Debt*

*and Grant Records") for the purpose of managing the WCTS operation and maintenance and capital improvements required under the Consent Decree.*

*c. Rates Study. If the City conducts a rate study that recommends higher wastewater rates than the rates set forth in Par. 59 above, then the City shall include this information in its Financial Management Plan along with an explanation of the City's proposed response to the rate study.*

**Paragraphs 63-65 remain blank [reserved].**

**5. Modification to Section VIII (Supplemental Environmental Project): Paragraph 72.**

**72.** Change "eleven (11) years from Date of Lodging" to "*no later than June 30, 2038.*"

**6. Modification to Section X (Reporting): Modifications to Paragraphs 90 and 92 on Annual Reporting Requirements to add the following language:**

**90.** Addition of sentences to end of Paragraph: "*Each Annual Report submitted after the Effective date of the Agreement and Order shall include updates to the Financial Management Plan set forth in revised Paragraph 62, detailing progress on funding the work, including annual rate increases and revenues, SUT revenues, status of bond/SRF applications, grants, and budgets for operation and maintenance costs and Consent Decree and non-Consent Decree capital improvement projects for the report year and next year. The City shall post each Annual Report and each Financial Management Plan update on its public-facing webpage within 14 Days of submittal to EPA and ADEQ. The Annual Reports and updated Financial Management Plan shall remain on the public-facing webpage for a minimum of three (3) years.*"

92. New Paragraph 92.e:

e. *“A summary table of remedial work accomplishments and Consent Decree compliance as set forth in Exhibit A to this Agreement and Order (Consent Decree Gravity Sewer and Manhole Assessment and Rehabilitation Compliance Table) which summarizes in quantifiable terms (linear feet repaired/replaced and number of manholes repaired/replaced) work completed in the report year and in the aggregate since January 2, 2015.”*

7. Revisions to Stipulated Penalty Provisions:

104. Regarding Annual Reports, . . . .

1st to 30th day	\$2,000
31st to 60th day	\$2,500
61st day and beyond	\$3,000

106. Failure to Meet Deadline for Completion of Remedial Requirements . . .

Change “later than twelve (12) years from Date of Lodging” to *“later than June 30, 2038.”*

8. Modifications to Section XIII (Force Majeure)

122. Delete first two sentences: [City shall provide notice to the United States and to the State orally or by electronic or facsimile transmission as soon as possible, but not later than five (5) business days after the time City first knew of, or by the exercise of best efforts, should have known of, a claimed force majeure event. City shall also provide written notice, as provided in Section XIX of this Consent Decree (“Notices”), within fourteen (14) days of the time City first knew of, or by the exercise of best efforts, should have known of, the event.] **Add:** “The City shall

**provide written notice to the United States and to the State no later than fourteen (14) business days after the time the City first knew of, or by the exercise of best efforts, should have known of the claimed force majeure event.”** The notice shall state the reason(s) for the delay, its anticipated duration, City’s past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and City’s rationale for attributing any delay to a force majeure event. [Delete - Failure to give such notice shall preclude City from asserting any claim of force majeure.] *Add: “Failure to submit a timely or complete notice or claim regarding an event precludes City from asserting any claim of force majeure regarding that event, provided, however, that EPA may, in its unreviewable discretion, excuse such failure if it is able to assess to its satisfaction whether the event is a force majeure, and whether City has exercised its best efforts, under Paragraph 121.”* City shall be deemed to know of any circumstance of which City, its Consultants, Contractors, or any entity controlled by City knew or, through best efforts, should have known.

**123:** Add after second sentence: *“EPA will notify City in writing of the length of the extension, if any, for performance of the obligations affected by the Force Majeure event.”*

**124.** Add after first sentence: *“The United States, after consultation with the State, will provide written notice to the City with an explanation of its determination that the City is not entitled to the requested force majeure relief.”*

**9. Modifications to Section XIV (Dispute Resolution), Paragraphs 126-128:**

**126.** Informal Dispute Resolution. Any dispute which arises under or with respect to this Consent Decree shall first be the subject of good-faith informal negotiations between the parties to the dispute. The goal of the informal negotiations shall be to resolve the dispute without further proceedings. The period for informal negotiations shall not exceed [~~delete: thirty (30)~~] **Add: “sixty (60) Days (or one hundred-twenty (120) Days if the dispute concerns a request for modification of Consent Decree terms)”** from the time the dispute arises, unless: (1) the United States, after consultation with the State, in its sole discretion, determines that a shorter period shall be allowed due to an immediate threat to the environment, or (2) all parties to the dispute agree in writing to an extension. The dispute shall be considered to have arisen when City sends the United States and the State a written "Notice of Dispute." The Notice of Dispute shall contain a concise statement of the issue or issues in dispute. If informal negotiations result in an agreement between the parties to the dispute, then those parties shall state the agreement in a single document in writing. **Delete last sentence:** [“ If informal negotiations do not result in an agreement between the parties to the dispute, then the United States, after consultation with the State, shall provide to City in writing an opinion on the disputed issue or issues.”] **Add: “If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States shall be considered binding unless, within 60 Days after the conclusion of the informal negotiation period, Defendant invokes formal dispute resolution procedures as set forth below.”**

**127. Formal Dispute Resolution.**

**Delete** first sentence: [ City shall invoke formal dispute resolution procedures within thirty (30) Days after issuance and receipt of the United States written opinion on the dispute by serving on the United States and the State a written "Statement of Position" regarding the matter in dispute.] **Add:** “*City shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by sending the United States and the State a written Statement of Position regarding the matter in dispute.*” City's Statement of Position shall include, but need not be limited to, any factual data, analysis, or opinion supporting its position and any supporting documentation on which it relies.

128. Change ”30” to “60” in first sentence: The United States, after consultation with the State, shall serve its Statement of Position within *sixty (60)* Days after receipt of City's Statement of Position. The United States' . . .

**10. Modification to Section XXIII (Modification) Paragraph 154.**

**154. XXIII MODIFICATION:** Add sentence at end of paragraph: “*An agreed extension of Section V interim deadlines [not the final deadline] will be considered a non-material modification if no greater than twelve months. Extensions of Section V interim deadlines greater than twelve months, or successive extensions of the same deadline that in total exceed twelve months, may be determined by the Plaintiffs to be a material modification.*”

11. All provisions of the 2015 Consent Decree unaffected by the modifications in this Agreement and Order shall operate in conjunction with these revised provisions. Except as specifically provided in this Agreement and Order, all other terms and conditions of the Consent Decree will remain unchanged and in full effect. In the event of a conflict between the modifications in this Agreement and Order and the Consent Decree, the modifications in this Agreement and Order shall control.

12. The Effective Date of the Agreement and Order is the date that the Court approves and enters the Agreement and Order.

13. This Agreement and Order shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Department of Justice policy and described at 28 C.F.R. § 50.7. The United States and the State of Arkansas reserve the right to withdraw or withhold consent if comments by the public regarding the Agreement and Order disclose facts or considerations which indicate that the Agreement and Order is inappropriate, improper, or inadequate. This Paragraph does not create any rights exercisable by any person other than the United States. The City agrees not to oppose or appeal the entry of this Agreement and Order.


SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_ 2026.

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P.K. HOLMES, III  
U.S. DISTRICT JUDGE

FOR THE UNITED STATES OF AMERICA:

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**CAROL  
KING**

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CAROL KING  
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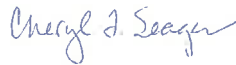
**CAROL KING**  
Acting Division Director  
Water Enforcement Division  
Office of Civil Enforcement  
Office of Enforcement and Compliance Assurance  
United States Environmental Protection Agency

FOR THE UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY, REGION 6:

**SHERRY  
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Office of Regional Counsel  
United States Environmental Protection Agency, Region 6



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**KRISTINE  
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FOR THE CITY OF FORT SMITH:



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ATTACHMENT A

Consent Decree Gravity Sewer and Manhole Assessment and Rehabilitation Compliance Table

ID	Report Item	Quantity	
<b>Baseline Quantities</b>			
1	Report Year (CY)		
2	Total gravity sewer lines (miles)		
3	Total small diameter gravity sewer lines (<24-inch diameter) (miles)		
4	Total large diameter gravity sewer lines (>or =24-inch diameter) (miles)		
5	Gravity Sewer Lines SSA complete <i>since 2015</i> (miles)		X / 405
6	Total gravity sewer lines with NASSCO PACP condition rating of 4 or 5 <i>since 2015</i> (miles)		
7	Total manholes with NASSCO MACP condition rating of 4 or 5 <i>since 2015</i> (each)		
<b>Annual Remedial Quantities</b>		<b>Completed</b>	<b>CD Required</b>
8	Annual sewer line remedial work (linear feet)		40,000
9	Annual MH remedial work (each)		200
10	Three-year cumulative sewer line remedial work (linear feet)		150,000 / 300,000 / 450,000 /
11	Three-year cumulative MH remedial work (each)		750/ 1,500 / 2,250 /
12	Total cumulative sewer line remediation since 2015 (linear feet)		All NASSCO 4 and 5
13	Total cumulative manhole remediation since 2015 (each)		All NASSCO 4 and 5
14	Annual Basin 12 sewer line remedial work (linear feet)		See previous year Annual Report
15	Cumulative Basin 12 sewer line remedial work completed (linear feet)		≈57,441
<b>CMOM Quantities</b>			
16	Annual small diameter gravity sewer lines cleaned (miles)		<b>10%</b> of total
17	Total unique small diameter gravity sewer lines cleaned since 2015 (miles)		100% per <b>10</b> years
18	Annual large diameter gravity sewer lines cleaned (miles)		
19	Total unique large diameter gravity sewer lines cleaned <i>since 2015</i> (miles)		

20	Annual Continuing SSA <i>miles of non-plastic pipe</i> completed (miles)		<b>100% per 12 years</b>
21	<i>Annual Continuing SSA completed for plastic small diameter, fully CIPP-lined non-plastic small diameter pipe and large diameter gravity sewers(miles)</i>		<b>100% per 20 years</b>
22	Total Continuing SSA miles completed (miles)		
23	<i>Annual Continuing SSA Manhole Inspections completed</i>		
24	<i>Total Continuing SSA Manhole Inspections</i>		<b>100 % per 10 years</b>