

**CONFIDENTIAL SETTLEMENT COMMUNICATION
SUBJECT TO FRE 408: US DRAFT 6/5/2024**

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, to resolve the claims in the Complaint. The Consent Decree has the express

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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 1/2/2027) 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 the 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 resulted in approximately \$15 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. The occurrence of the 2019 flood coincides with the City falling behind the deadlines for work under the Decree.

WHEREAS, the City also suffered the effects of the global Covid-19 Pandemic beginning in 2020 and extending into 2021. In addition, the emergence of the omicron variant in late 2021 resulted in an “omicron wave” in January and February 2022 which, at its peak, according to Epidemiology professor David Dowdy, MD, PhD ’08, ScM ’02 involved the highest weekly number of {Covid 19} cases and nearly the highest weekly number of deaths of the entire pandemic. SOURCE Johns Hopkins Bloomberg School of Public Health report

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“Covid in 2022: A Year-End Wrap-Up.” The more than two-year impact of Covid further impacted the City’s ability to start and/or complete Consent Decree required projects. The global supply chain issues, the difficulty obtaining construction materials, and the difficulty in getting construction contractors all served to delay the work outlined in the Consent Decree. These events were beyond the City’s control.

WHEREAS, the City spent approximately \$148 between 2015 to the end of 2023 toward CD compliance.

WHEREAS, the City raised sewer rates 167% between 2015-2017, borrowed money, and convinced voters to adopted an eight year sales and use tax in 2022 which is restricted to fund work in compliance with the Consent Decree.

WHEREAS, the City asserts that the cost of Consent Decree and NPDES permit compliance has increased to almost \$800 million through 2036.

WHEREAS, Plaintiffs and the City have continued to discuss the City’s noncompliance with the schedule and potential modifications of the Consent Decree. During those discussions, the City has been providing updated financial information to the United States. Given the lapse of time since the Effective Date of the Consent Decree in April 2015, and the City’s limited progress in meeting interim deadlines for performance of work, 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 as set forth below. The Parties recognize that an extension of the work schedule will delay a primary objective of the Decree, the goal of the elimination of SSOs throughout the WCTS. The modification will ensure that the City will

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prioritize efforts to eliminate recurring and high volume *dry weather SSOs as well as SSOs that occur during wet weather events (up to a 2-year, 6-hours storm event)* consistent with the *provisions* below.

WHEREAS, the City acknowledges that its current sewer rate and *dedicated sales* tax revenues are insufficient to fund the remediation and maintenance work required under this Decree under the current schedule or under the modified work schedule set forth herein. The City last raised its sewer rates in 2017. The City enacted a Sales and Use Tax (“SUT”) extension in May 2022, Ordinance 20-22, *that was approved by voters. (Under Arkansas law, sales tax increases or extensions must be approved by voters)* that allocates all revenue to the Consent Decree projects on a pay-as-you-go basis. That ordinance prohibits *any* increases to the sewer rate through May 31, 2025, limits adjustments to *sewer* rates thereafter to 3.5% through May 31, 2030, and precludes the use of SUT revenue to finance bonds. The City acknowledges that it must raise additional funding through its sewer rate, *borrowing, or additional taxes* in order to complete the work within the modified schedule. Plaintiffs’ agreement to the schedule modifications herein is in reliance on the City’s commitment to raise additional funding adequate to complete the work within the term of the modified schedule with the goal of *maintaining rate payer affordability below 2.0 percent Median Household Income (MHI)*.

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. *All stipulated penalties for missed deadlines under the original Consent Decree will be considered settled and the United States and the State of Arkansas will not seek or demand payment of potential penalties for missed Consent Decree project deadlines prior to the entering of this modification agreement.*
2. **Modifications to Paragraphs 9, 10, 17, 18 in Section V of the Consent Decree for Condition Remedial Measures (new language in italics):**

“9. The following eight Articles constitute the actions that City shall undertake or continue to undertake to achieve the Objectives of this Consent Decree, as stated in Section II. City shall implement all ongoing WCTS investigations, analyses, and Remedial Measures consistent with sound engineering practices, City’s best professional judgment, industry standards, and the guidance manuals identified in this Section of the Consent Decree. Subject to the provisions of this Consent Decree, all actions required under Section V of this Consent Decree shall be completed *no later than December 31, 2036.*”

10. City shall conduct Sewer System Assessments ("SSAs") for the Gravity Sewer Lines and manholes in the WCTS, as presented in the last column of **Appendix C** ("SSA Status"). The SSA activities shall identify structural defects and any other non-structural defects in the WCTS that have caused or significantly contributed to previous SSOs or that are likely to cause or significantly contribute to the future occurrence of

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SSOs. The SSAs on the Gravity Sewer Lines and manholes set forth in **Appendix C shall be completed no later than December 31, 2024.**

a.....[no change]

b.....[no change]

c.....[no change]

d.....[no change].

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. 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 initial SSA activities for the period from the Date of Lodging through December 31, 2015, and for every Calendar Year thereafter, City shall develop a 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 (rated as a 1-3 in accordance with the NASSCO condition rating systems) and determined by 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. City shall submit that Remedial Measures Plan to EPA and ADEQ in accordance with Section XX ("Notices"). EPA will have three (3) months from the day of submittal to approve or comment on the Remedial Measures Plan, and after the three (3) month period, no comments from EPA will constitute approval by EPA of the Remedial Measures Plan by the City. City may commence design and

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construction of Condition Remedial Projects identified prior to EPA's approval of the Remedial Measures Plan.

18. *City shall complete condition remedial measures on a minimum of 45,000 LF of sewer lines and 140 manholes by December 31 of each Calendar Year and document progress in the Annual Reports. City shall complete remedial measures on a total of 150,000 LF of sewer lines and 500 manholes by December 31, 2027, a cumulative total of 300,000 LF of sewer lines and 1,000 manholes by December 31, 2030, and a cumulative total of 450,000 LF of sewer lines and 1,500 manholes by December 31, 2033. 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 December 31, 2036. City shall prioritize the remedial measures to be completed in each Calendar Year, after the designed 2018 SSA work is constructed, 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 based upon the potential economic, environmental, social and system criticality impacts and size of the population served; (4) the impact on areas of potential environmental justice concerns; and (5) maintenance history records of sewer line breaks and cleaning. The City shall reevaluate risk factors and business risk exposure score for each sewer asset on an annual basis. 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*

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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 the business risk exposure score of the sewer segments and manholes rehabilitated) 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. In determining the condition Remedial Measures, City shall:

a. Determine the condition score of all Pipe Segments as set forth in Appendix C and as set forth in Paragraph 10, using the NASSCO condition rating systems and determined by City's Professional Engineer to have caused or significantly contributed to previous SSOs or that are likely to cause or significantly contribute to the future occurrence of SSOs (as set forth in Appendix A), and shall provide this condition score information in tabular format to EPA and ADEQ as currently required in the Consent Decree Section X; and

b. For defects rated as a 1-3 in accordance with the NASSCO condition rating systems, the City shall use engineering judgment to determine the specific Remedial Measures required, if any, for each Pipe Segment and manhole identified under Subparagraph 18.a. above through application of the remediation decision process presented in Appendix D.

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:

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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 level of service to at least a 5-year, 6-hour level of service capacity.

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:

1) Basin 12 Phase 1 Capacity Project

2) Basin FL01 Capacity Project

3) Basin FL02 Capacity Project

4) Basin 004 Capacity Project.

c. The City will 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 shall construct and what additional capacity projects, if any, beyond those listed in Appendix E2 it shall construct and submit the revised portions of the CRMP to EPA and ADEQ by March 31, 2025.

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 **December 31, 2036**. 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 “twelve (12) 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”

d.

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.

a. The City shall implement sewer rate increases from the prior year on an annual basis during the modified term of this Decree at no less than the following percentages for each calendar/fiscal year unless such rate increases are not necessary to raise the required funding for the City to remain on schedule to complete the remedial measures including if the City obtains offsetting revenue from additional

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borrowing, grant funds, additional Sales and Use Tax revenues, etc. The City agrees that these increases, apart from other funding measures, are necessary to adequately fund the Consent Decree work based on Plaintiff United States Environmental Protection Agency's long-term financial modeling results (September 2024). The rate increases were determined from discussions with the City and Plaintiffs in accordance with EPA's 2024 Guidance for Financial Capability Assessment and Schedule Development. The City agrees to raise sewer rates between 2025 to 2036 to fund the projects necessary to achieve compliance with the Consent Decree, as modified as follows (unless the City has funding from another source such that the rate increases specified below for after 2030 can be reduced). In the event that funds are raised for Consent Decree work through debt issuance including bonds, loans, including WIFIA loans and SRF loans and/ or through extensions or increases in dedicated sales taxes, the City may reduce rate increases (but not below 3.5%) for any period after 2030 to offset the additional non-rate-derived program funds. For example if \$100 million is raised through borrowing (or other source), the City may apply enough borrowing to 2031 to offset the rate difference between the 2031 rate increase shown below and 3.5%. If less than the full amount of the borrowing (for example \$25,000,000) is required for the offset of rate increases down to 3.5% for 2031 or any subsequent year, any amount in excess of the amount required for the reduction of the rate increase (in this example \$75,000,000) for 2031 may be applied to 2032 and subsequent years in the same process. When the funds raised are fully used against a rate increase, the rate increases will revert to the scheduled amounts, however the City will retain the option to raise additional funds for Consent Decree construction and the same right of offset

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against rate increases specified below shall be available. The City may, in any year, spend more than the amount necessary to reduce the rate increases to 3.5% on Consent Decree construction without reducing the amount available to carry forward for future rate increase offsets. For example, if the rate offset amount is \$25,000,000 but the City is able to perform Consent Decree construction of \$50,000,000, the \$25,000,000 will be the amount to be used up in the offset calculation.

YEAR	RATE INCREASE	
2025	3.5%	
2026	3.5%	
2027	3.5%	
2028	3.5%	
2029	3.5%	
2030	3.5%	
2031	18%	
2032	18%	
2033	16%	
2034	15%	
2035	12%	

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b. Within ninety (90) days after the Effective Date of this Agreement and Order, the City shall enact an ordinance setting sewer rates for years 2025-2036 in accordance with the rate schedule set forth above in Paragraph 58.a. During the 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, or upon a showing by the City that it has other funds from loans, sales taxes or other sources to offset the downward adjustment to no less than 3.5%, 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 and 60 of this Agreement and Order.

59. 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 and 60. For purposes of Ark. Code. Ann. § 14-235-223, the rates set forth above are necessary in each year for the payment of the proper and reasonable expense of operation, repair, replacements, and maintenance of the sewage system of the municipality. For purposes of Fort Smith Municipal Code of Ordinances Sec.25-234, the rates set forth above, after any permitted adjustment to the rates resulting from additional funds as described in Paragraph 58 are necessary to provide for the operation and maintenance of the system and for the payment of the principal of and interest on the bonds to be issued to finance the construction, subject to additional increases when necessary, to provide for the operation and maintenance and for the payment of the principal of and interest on the bonds. The rates set forth in Paragraph 58 above, and as adjusted as needed under

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Paragraph 60, are necessary under Fort Smith Code of Ordinances Sec. 2-166 (a) (5) and authorized under Fort Smith Code of Ordinances Sec. 25-41.

60. Consistent with Fort Smith Code of Ordinances Sec. 2-166 (d) (1) and (2)¹, 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 SUT, the City [Utility, or the Board, as appropriate,] shall take all appropriate and necessary measures to secure debt financing for a substantial portion of the costs of capital projects required by the Consent Decree through the open bond market, the State Revolving Fund (“SRF”), and other available sources of state and federal loans or grants. 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 the SRF or other 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 58 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.

¹ “The city will issue debt to finance or refinance capital improvements and long-term fixed assets or other costs directly associated with financing a project which have been determined to be beneficial to a significant proportion of citizens in Fort Smith and for which repayment sources have been identified. Debt issuance shall be used only after considering alternative funding sources such as project revenues, federal and state grants and special assessments.” Sec. 2-166 (d) (1)

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61. No less than one year prior to the expiration of the SUT, unless the City provides an alternative source of funding adequate to pay for the completion of Consent Decree work within the modified schedule herein, the City shall take the necessary procedural steps, subject to state law, to extend the SUT set forth in Fort Smith Ordinance No. 20-22 (as revised to continue at least the five-eighths (5/8) percent rate dedicated to the Consent Decree) for at least the remaining term of the Consent Decree as modified by this Agreement and Order. If the SUT is not revised in accordance with this Paragraph, the City shall provide alternative sources of funding (which may include additional sewer rate increases above those set forth in Paragraph 58) to ensure completion of the work within the term of the Consent Decree as modified by this Agreement and Order.

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 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*

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minimum annual sewer miles and manhole rehabilitation), 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.

b. Rates Study. If the City conducts a rate study that recommends higher wastewater rates than the rates set forth in Par. 58 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."

c. Add the following new Paragraph 63:

63. "The Parties agree that the December 31, 2036 program completion date is based upon a number of mutual assumptions about key factors including but not limited to program costs, availability of State loan funds, the cost of debt financing, the extension and increase in the dedicated sales and use tax, system growth, and contractor availability. If any of these key assumptions become materially erroneous to the City's detriment, the parties agree that the City may propose a corresponding adjustment to the implementation schedule which may be approved by the agencies as a minor modification as long as final compliance does not extend beyond December 31, 2038.

Paragraphs 64-65 remain blank [reserved].

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

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72. Change “eleven (11) years from Date of Lodging” to “*no later than December 31, 2036.*”

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

- **Addition of sentences to end of Paragraph 90:** *“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 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.”*
- **New Paragraph 92.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. Modifications to Section XII of the Consent Decree (Stipulated Penalties): Paragraphs 108 and 109.

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108. For each SSO that reaches Waters of the United States or Waters of the State, Fort Smith shall be liable to pay a stipulated penalty as follows:

<u>If SSO occurs in</u>	<u>Penalty Per <i>SSO Event</i></u>
Calendar Years 2015-2020	\$500
Calendar Years 2021- 2028	\$1,500
Calendar Years 2029 and Beyond	\$
	<i>Less than 100 Gallons: \$ 100</i>
	<i>Between 101 to 1,000 gallons: \$ 500</i>
	<i>Between 1,001 to 10,000 gallons: \$1,500</i>
	<i>Between 10,001 to 100,000 gallons: \$3,000</i>
	<i>Greater than 100,000 gallons: \$5,000</i>

109. SSOs that Do Not Reach Waters of the United States or Waters of the State of Arkansas. For each SSO that does not reach either waters of the United States or Waters of the State of Arkansas, Fort Smith shall be liable to pay a stipulated penalty as follows:

<u>If SSO occurs in</u>	<u>Penalty Per Violation. <i>24-hour Occurrence</i></u>
Calendar Years 2015-2020	\$350
Calendar Years 2021- 2028	\$500
Calendar Years 2029 and Beyond	\$\$750

Plaintiffs agree to consider the City's compliance with its approved CMOM program when determining whether to seek stipulated penalties for SSOs

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8. Modifications to Section XIII of the Consent Decree (Force Majeure): Paragraphs 122 and 124.

122. Change first and second sentences to read, “The City shall provide notice to the United States and to the State electronically or by facsimile transmission as soon as possible, but 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 utilizing the Force Majeure form as provided by the United States and the State for filing force majeure.”

124. Add after first sentence, “The United States and the State will provide a written justification as to the factors that were used to determine the denial of any force majeure.”

9. Modifications to Section XIV of the Consent Decree (Dispute Resolution): Paragraphs 126.

126. Change the last sentence to read: “..., then the United States, after consultation with the State, shall provide the City in writing its Statement of Position on the disputed issues or issues within forty-five (45) days after receipt of City’s written Notice of Dispute.”

10. 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.***

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

12. 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

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described at 28 C.F.R. § 50.7. [Notice and comment provision of the State] The United States reserves the right to withdraw or withhold its 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

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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 _____ 2024.

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

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FOR THE UNITED STATES OF AMERICA:

TODD KIM
Assistant Attorney General
Environment and Natural Resources Division
U.S. Department of Justice

KENNETH G. LONG
Senior Attorney
D.C. Bar No. 414791
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, DC 20044-7611
Ph (202) 514-2840
Fax: (202) 616-6548
Kenneth.long@usdoj.gov

[FOR U.S. EPA]

[FOR ARKANSAS]

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FOR THE CITY OF FORT SMITH:

CARL GEFFKEN
City Administrator
623 Garrison Avenue
Fort Smith, AR 72901
(479)-784-2201
cgeffken@fortsmithar.gov

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ATTACHMENT A

Consent Decree Gravity Sewer and Manhole Assessment and Rehabilitation Compliance Table

ID	Report Item	Quantity	
Baseline Quantities			
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)		
Annual Remedial Quantities		Completed	CD Required
8	Annual sewer line remedial work (linear feet)		45,000
9	Annual MH remedial work (each)		150
10	Three-year cumulative sewer line remedial work (linear feet)		150,000 / 300,000 / 450,000 /
11	Three-year cumulative MH remedial work (each)		500 / 1,000 / 1,500 /
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
CMOM Quantities			
16	Annual small diameter gravity sewer lines cleaned (miles)		8% of total
17	Total unique small diameter gravity sewer lines cleaned since 2015 (miles)		100% per 12 years
18	Annual large diameter gravity sewer lines cleaned (miles)		
19	Total unique large diameter gravity sewer lines cleaned <i>since 2015</i> (miles)		

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20	Annual Continuing SSA <i>miles of non-plastic pipe</i> completed (miles)		
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>		<i>100% per 20 years</i>
22	Total Continuing SSA miles completed (miles)		
23	<i>Annual Continuing SSA Manhole Inspections completed</i>		
24	<i>Total Continuing SSA Manhole Inspections</i>		<i>100 % per 10 years</i>