



MAYOR
George B McGill

**ACTING CITY
ADMINISTRATOR**
Jeff Dingman

CITY CLERK
Sherri Gard

BOARD OF DIRECTORS
Ward 1 - Jarred Rego
Ward 2 - Andre' Good
Ward 3 - Lee Kemp
Ward 4 - George Catsavis
At-Large Position 5 - Christina Catsavis
At-Large Position 6 - Kevin Settle
At-Large Position 7 - Neal Martin

AGENDA - REVISED

Fort Smith Board of Directors STUDY SESSION

February 24, 2026 ~ 6:00 p.m.
Blue Lion
101 North 2nd Street – Back Room
Fort Smith, Arkansas

THIS MEETING IS BEING TELECAST LIVE AT THE FOLLOWING LINK:
https://fortsmithar.granicus.com/ViewPublisher.php?view_id=1

CALL TO ORDER

ITEMS OF BUSINESS

1. Review proposed Consent Decree modification ~ *Added to agenda by Acting City Administrator Jeff Dingman on Monday, February 23, 2026 ~ (City Administrator) ●*
2. Discussion regarding reinstatement of mosquito fogging operations ~ *G. Catsavis/Rego placed on a future study session agenda at the November 18, 2025 regular meeting ~ (Public Works)*
3. Review City of Fort Smith Fiscal Performance Policies ~ *Settle/Martin placed on a future study session agenda at the February 3, 2026 regular meeting ~ (Finance)*
4. Discuss audit provisions in third-party service provider contracts ~ *Settle/Martin placed on a future study session at the February 3, 2026 regular meeting ~ (City Administrator)*
5. Review Water Conservation Measures ~ *Requested by Director Martin at the August 19, 2025 regular meeting ~ (Water Resources)*
6. Discuss and review draft non-retail (wholesale) surplus user water agreement (*Water Resources*)
7. Review preliminary agenda of the March 3, 2026 regular meeting (*City Clerk*)

ADJOURN



MEMORANDUM



TO: Honorable Mayor and Members of the Board of Directors
CC: Paul Calamita, Jerry Canfield
FROM: Jeff Dingman, Acting City Administrator
DATE: February 23, 2026
SUBJECT: Proposed modification to the Consent Decree

SUMMARY

Added to the February 24, 2026 study session agenda is a discussion item to review the proposed Consent Decree modification document that was received from the US Department of Justice late in the day on Friday, February 20 and shared with the Board that evening. The document is attached, and includes the time extension and technical considerations that the City has been seeking for several years. The USDOJ/EPA and the State of Arkansas reviewed this document and sent it to the City for the Board's consideration. Both parties are in agreement on the language with the exception of one item still to resolve, that the city's attorney Paul Calamita will address.

Mr. Calamita's comments summarizing the key changes to the Consent Decree contained in this modification document are as follows:

- 11.5 year extension of the original 15-year deadline to complete all CD work.
 - Deadline extended from 1/1/27 to 6/30/38
- Memorializes that all of the City's Remedial Measures Plans have been approved by EPA (Page 9, Para 17)
- Allows the City to use engineering judgment to determine which NASSCO 4 or 5 defects either have caused or are likely to cause an SSO – triggering an obligation to resolve the defect. (Page 9, Para 18).
- Revises the requirement for the City to remediate specific numbers of sewer lines and manholes each year to a three-year average requirement. This will give the City important flexibility to prioritize its work rather than having to drop higher priority items to remediate an arbitrary number of sewer lines/manholes. Pages 9-10, Para 17.
- Makes it a condition of the modified Consent Decree that the City increase sewer rates by 3.5 percent annually through 2030 (as we have already done by ordinance). (Page 13).
- Requires that we raise rates in the years beyond 2030, as necessary, to comply with the requirements of the Consent Decree (unless there are other sources of funds to offset the need for rate revenue). (Page 13).
- Requires the City to submit a Financial Management Plan within 180 days after the Court enters the modification (Entry may occur in the June/July 2026 timeframe). The FMP will be updated, as warranted, in each annual report. Page 15, Para 62).
- Extended the deadline for the City to complete the Supplemental Environmental Project by 11.5 years - from 1/1/27 to 6/30/38. (Page 16, Para 5.)
- Added stipulated penalties if we fail to timely submit an annual report. (Page 17, Para 7).

- EPA agreed that any failure by the City to timely assert that a force majeure (beyond our control) event precluded compliance could be waived by EPA as opposed to current CD language that precludes the City's assertion of a force majeure event if timely notice is not provided. (Page 18, Para 122).
- EPA agreed to revise the dispute resolution procedure to impose a shot-clock on EPA to submit a statement of position should it disagree with a dispute raised by the City. This is a critical change that makes the Fort Smith CD consistent with virtually every other CD. Without the shot clock on EPA, the Agencies could prevent the City from obtaining Judicial review of disputes. (Page 19, Para 126)
- EPA agreed that changes in interim (not the final program end date of 6/30/38) deadlines of 12 months or less can be adopted as minor modifications rather than major modifications (requiring national public notice and approval by the Court). (Page 20, Para 10)

Mr. Calamita contends that his is a favorable Consent Decree amendment and recommends that the City approve and execute this (or substantively similar) document and then address any matter of stipulated penalties separately. This approach secures the critically-needed 11.5-year time extension for the completion of Consent Decree work. The City then could address any demands the USEPA may pursue related to stipulated penalties without deferring agreement on time extension and technical matters.

Mr. Calamita will attend the February 24 study session (remotely) to review the proposed modification document with the Board. The case teams for the United States and the State of Arkansas are prepared to recommend this draft as finalized for approval to officials at the USEPA, USDOJ, and the State with final settlement authority. Upon the City Board's agreement and approval of these terms, the final document will be circulated for signature first to the City and then to US and state officials. Once approved and signed by all parties, the DOJ will lodge the final document with the federal District Court and publish notice of the proposed Agreement in the Federal Register to meet public notice and comment requirements. Even after signature, the Agreement remains subject to final approval and entry as an order by the federal District Court and is not binding or effective until entry of that court order.

This modification is what the City has been working towards since the inception of the Consent Decree. This modification is the reason the City worked through the difficulties of developing a 10-year financial plan which included commitment to sales tax elections, issuing sales tax bonds, and adjusting sewer rates all while continuing to assess and remediate sewer system deficiencies and capacity issues.

Upon favorable discussion at the study session, staff will ask that the Board place a resolution on the March 3 regular meeting to consider approval of the proposed Agreement and Order on Modification to the Consent Decree, or substantively similar document. Please contact me if you have questions in advance of the discussion that I may either answer them directly or forward to Mr. Calamita to address in his remarks.

ATTACHMENTS

1. [February 20 2026 DOJ CD Modification Review Final Draft.docx](#)

**CONFIDENTIAL SETTLEMENT COMMUNICATION SUBJECT TO FRE 408:
Ps' Draft 6/5/2024; City 10.2.24 Revisions; Ps' Response/Revisions 07/02/2025; City Response
7/24/25; Plaintiffs' edits 9.11.25; CITY 9.23.25 Response; Plaintiffs' Revised 02.20.2026**

NEAR FINAL DRAFT FOR REVIEW: SUBJECT TO FINAL APPROVALS

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

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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

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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.

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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.

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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 1st thereafter, to support the operation and maintenance of the WCTS.

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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.

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'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. Unless resolved by the Court's Order of March 19, 2021 (Docket No. 45), agreement or payment, prior violations of Consent Decree terms remain subject to potential stipulated penalties under the Consent Decree.

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*

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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

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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):

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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

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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

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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*

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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

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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

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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 64-65 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*

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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 December 31, 2037.”*

8. Modifications to Section XIII (Force Majeure)

122. Delete: “ Failure to give such notice shall preclude City from asserting any claim of force majeure.” *Insert: “Failure to submit a timely or complete notice or claim*

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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.”

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.”

122. Delete first and second sentences of paragraph. Add new sentence at beginning of paragraph: “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.”

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. Add bold italicized language: 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

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negotiations shall be to resolve the dispute without further proceedings. The period for informal negotiations shall not exceed *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*

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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.

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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.

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

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FOR THE UNITED STATES OF AMERICA:

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FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY:

JEFFREY HALL
Assistant Administrator
Office of Enforcement and Compliance Assurance
United States Environmental Protection Agency

ROSEMARIE KELLEY
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FOR THE UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, REGION 6:

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Acting Regional Counsel
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United States Environmental Protection Agency, Region 6

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FOR THE STATE OF ARKANSAS

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FOR THE CITY OF FORT SMITH:

JEFF DINGMAN
Interim 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)		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
CMOM Quantities			
16	Annual small diameter gravity sewer lines cleaned (miles)		10% of total
17	Total unique small diameter gravity sewer lines cleaned since 2015 (miles)		100% per 10 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)		<i>100% per 12 years</i>
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>



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
CC: Maggie Rice, Deputy City Administrator
FROM: Matt Meeker, PE, Director of Public Works
DATE: February 18, 2026
SUBJECT: Reinstating Mosquito Fogging Operations

SUMMARY

On April 30, 2025, the Board of Directors approved a resolution discontinuing mosquito fogging operations. This resolution also directed staff to continue distributing larvicide pellets to the public for areas with standing water.

Fogging costs the City approximately \$73,000.00 annually, and staff regularly received complaints about these operations. Citizens routinely called with concerns that the chemicals used could be detrimental to the health and welfare of the public. Concerns were also raised about the negative impacts mosquito fogging has on the pollinator population.

After mosquito fogging was discontinued, the Board began receiving complaints that the program was no longer available. Directors George Catsavis and Jarred Rego requested that reinstatement of the mosquito fogging program be discussed at a Study Session, and such has been scheduled for February 24, 2026. If you have any questions or need further information, please let me know at your earliest convenience.



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
CC: Maggie Rice, Deputy City Administrator
FROM: Andrew Richards, Chief Financial Officer
DATE: February 19, 2026
SUBJECT: Review of City of Fort Smith Fiscal Performance Policies

SUMMARY

At a previous meeting, the Board of Directors asked that a review of the city's financial policies be placed for discussion at an upcoming study session. That discussion is on the agenda for the February 24, 2026 study session.

In order to assist the Board with the requested review, I have attached Section 2.66 - Fiscal Performance Policies of the Fort Smith, AR Code of Ordinances. Please let me know if you have any questions.

ATTACHMENTS

1. [2.66 Fiscal Performance Policies.pdf](#)

Sec. 2-166. - Fiscal performance policies.

The fiscal performance policies represent an effort to establish written policies to guide the city's financial management and decision-making practices. They are designed to help contain the costs of city government, as well as to strengthen the financial capacity of the city to provide and maintain effective services and programs.

While some of the policy statements are specific and may limit certain types of financial practices, the policy statements are not intended to restrict the ability and responsibility of the board of directors to manage emergency or unusual service delivery needs above or beyond the limitation established by the fiscal performance policies.

(a) *Revenue policies.*

- (1) The city will strive to maintain a diversified and stable revenue base that will equitably distribute the burden of supporting city services and will protect the city from short-term fluctuations in any one revenue source.
- (2) The city will estimate revenues on an objective and reasonable basis. Revenues will be projected on a two year basis with an annual update. This projection will be used for operating budget preparation.
- (3) The city will use one-time or special purpose revenues for capital expenditures or for expenditures required by the revenue, and not to subsidize recurring personnel, or operation and maintenance costs.
- (4) The city will establish and periodically review all user charges, licenses and fees at a level related to the cost of providing the services. Such charges, licenses and fees will be reviewed and established where possible so that those who directly benefit from a service principally pay for it.
- (5) The city will set and maintain water, sewer and sanitation rates at levels that support the total direct and indirect costs of the enterprise, including debt service and capital maintenance.
- (6) The city will annually review, and revise where necessary, its indirect cost allocation formula on an objective and reasonable basis.
- (7) The city will maintain timely collection systems and implement necessary enforcement strategies to collect revenues from available sources.
- (8) The city will give priority to those revenue alternatives which involve the least collection and administrative cost, per dollar raised, to the city government.
- (9) They city will seek a balanced revenue base through active support of area economic development, diversification, and retention efforts.

(b)

Operating expenditure/expense policies.

- (1) The city administrator will propose, and the board of directors will adopt, a balanced operating budget in which budgeted expenditure/expenses don't exceed reasonably estimated revenues for the fiscal year. Basic and essential services provided by the city will receive first priority for funding. The city will utilize unallocated fund balance to balance the annual budget only in times of emergency or fiscal and economic hardship. The monies from the fund balance can only be allocated by board of directors approval. additional funding will be assigned according to city-wide goals established by the board of directors and comprehensive plan policies.
- (2) The city will estimate expenditures/expenses on an objective and reasonable basis. Operating expenditures/expenses will be projected on a two-year basis with an annual update.
- (3) The city will establish service measurements for all program areas, when feasible. The service measures will reflect the demand, workload capability and projected outcomes for the program to accomplish its goals and objectives.
- (4) Annual budgets shall be legally adopted for the four operating funds: general fund, street maintenance fund, water and sewer operating fund and the sanitation operating fund. Project budgets shall be approved for major capital projects.
- (5) The city will provide access to appropriate retirement plans and other post-employment benefits (OPEB) for its employees. The city will make contributions for eligible employees at the level defined for the respective retirement plans. The city will make contributions to the OPEB trust plan when funds are available.
- (6) The city will encourage delivery of services by other public and private organizations whenever and wherever greater efficiency, effectiveness and service can be expected, as well as to develop and internally use technology and productivity advancements that will help reduce or avoid increasing personnel costs. The intent is to control personnel costs as a proportion of the total budget, to more productively and creatively use available resources, and to avoid duplication of effort and resources.
- (7) The city will maintain a budgetary control system to help it adhere to the adopted budget, and will prepare and maintain a system of regular fiscal reports comparing actual revenues and expenditures/expenses to budgeted amounts.
- (8) All budgets shall be adopted on a basis consistent with generally accepted accounting principles (GAAP) except for depreciation expense in the applicable funds.
- (9) All appropriations lapse at yearend. Any encumbrance at yearend may be re-appropriated by the board of directors in the subsequent year.
- (10)

The legal level of budgetary control is the departmental program level. Operational budgetary control is maintained at the program level. All departments will be given the opportunity to participate in the budget process.

(c) *Capital improvement policies.*

- (1) The city will prepare annually and update a five year capital improvements program (CIP) which will provide for the orderly maintenance, replacement, and expansion of capital assets.
- (2) The CIP will identify long-range capital projects and capital improvements of all types which will be coordinated with the annual operating budget to maintain full utilization of available revenue sources.
- (3) The CIP will reflect for each project the likely source of funding, the priority ranking of each project and attempt to quantify the project's impact to future operating expenditures/expenses.
- (4) The city will determine and follow the most cost-effective financing method for all capital projects. The city will pursue federal, state and other funding to assist in financing capital projects and improvements.
- (5) All equipment, projects and improvements, other than infrastructure, with a value equal to or greater than \$20,000.00 per unit and an estimated life greater than or equal to 3 years will be capitalized for financial reporting purposes. Items below this threshold may be capitalized on a case-by-case basis. Infrastructure assets are those that are provided by the street sales tax fund and include streets, bridges and drainage projects. All land and rights-of-way are capitalized for infrastructure projects. The project cost is capitalized for projects greater than or equal to \$250,000.00 and are grouped by project year. Individual infrastructure projects are capitalized separately if the project totals greater than or equal to \$5.9 million.
- (6) Capital projects and improvements will be constructed to:
 - a. Protect or improve the city's quality of life.
 - b. Protect or enhance the community's economic vitality.
 - c. Support and service new development.

(d) *Debt policies.*

- (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.

- (2) The scheduled maturity of bond issues should not exceed the expected useful life of the capital projects or improvements financed.
 - (3) The city will consider refunding outstanding bonds if one or more of the following conditions exist:
 - a. Present value savings are at least three percent with certain exceptions, of the par amount of the refunding bonds.
 - b. The bonds to be refunded have restrictive or outdated covenants.
 - c. Restructuring debt is deemed to be desirable.
 - (4) The city will seek credit enhancements, such as bond insurance or letters of credit, when necessary for cost-effectiveness.
 - (5) The city will monitor compliance with bond covenants, adhere to Federal arbitrage regulations, and abide by the provisions of Securities and Exchange Commission (SEC) Rule 15c 2-12 concerning primary and secondary market disclosure. The city will also monitor bond issues by adhering to its Post-Issuance Compliance Manual required by the IRS. This manual includes the requirements for monitoring bond offering transactions by the underwriter.
 - (6) The city will encourage and maintain communications with financial bond rating agencies and continue to strive for improvements in the city's bond rating.
 - (7) The city will require that the total annual payments for debt service not exceed 25 percent of total operating revenues of the applicable fund.
 - (8) The city will evaluate the benefits of conducting financings on a competitive or negotiated basis. Negotiated financings may be used where market volatility or the use of an unusual or complex financing or security structure is a concern with regard to marketability.
 - (9) The city will coordinate its debt issuances with other local government agencies in an effort to review overlapping debt in the community.
- (e) *Reserve policies.*
- (1) The city will maintain an operating contingency reserve to:
 - a. Provide for temporary funding of unforeseen needs of an emergency or nonrecurring nature.
 - b.

Permit orderly budgetary adjustments when revenues are lost through the action of other governmental bodies.

- c. Serve as local match for public or private grants.
 - d. Meet unexpected small increases in service delivery costs.
 - e. Maintain an adequate cash flow.
- (2) The contingency reserve will be maintained at not less than 20 percent of estimated operating expenditures/expenses. Prior approval of the board of directors shall be required before spending contingency funds.
- (3) If the contingency reserve balance falls below the 20 percent level for a current year budget, then the following steps will be taken by the appropriate departments:
- a. If the contingency reserve is between 15 percent and 19.99 percent, then capital reductions will be required.
 - b. If the contingency reserve is between ten percent and 14.99 percent, then operating and capital reductions will be required.
 - c. If the contingency reserve is between five percent and 9.99 percent, then personnel reductions, including services will be implemented.
 - d. If the contingency reserve is less than five percent, then personnel, operating and capital reductions will take place. Service levels may be significantly reduced if this scenario occurs.
- (4) If the contingency reserve balance exceeds 25 percent, the city may consider utilizing the funds above this amount for one-time capital projects or other non-recurring expenditures that support city goals or comprehensive plan policies.
- (5) The city will develop an equipment reserve fund, and will appropriate funds to it annually to provide for the timely replacement of equipment. The reserve will be maintained in an amount adequate to finance the replacement of equipment. The replacement of equipment will be based upon the adopted equipment replacement schedule. The schedule will be updated annually.
- (f) *Investment and cash management policies.*
- (1) The city's cash management system will be designed to accurately monitor and forecast revenues and expenditures/expenses in order to invest funds to the fullest extent possible. All cash and investments, other than accounts required by bond covenants, will be maintained in a single cash and investment pool. Interest revenue will be allocated to each investing fund consistent with fund ownership.
- (2) The city's investment and cash management program will be governed by the following investment objectives in order of priority:

- a. Preservation and safety of the principal;
 - b. Liquidity; and
 - c. Yield.
- (3) The city will limit its investments to the safest type of securities permitted by Arkansas statutes. These shall include the following:
- a. Direct obligations of the United States Government;
 - b. Obligations of agencies and instrumentalities created by act of Congress and authorized thereby to issue securities or evidences of indebtedness, regardless of guarantee of repayment by the United States Government;
 - c. Obligations the principal and interest of which are fully guaranteed by the United States Government or an agency or an instrumentality created by an act of Congress and authorized thereby to issue such a guarantee;
 - d. Obligations the principal and interest of which are fully secured, insured, or covered by commitments or agreements to purchase by the United States Government or an agency or instrumentality created by an act of Congress and authorized thereby to issue such commitments or agreements;
 - e. General obligations of the states of the United States and of the political subdivisions, municipalities, commonwealths, territories, or insular possessions thereof;
 - f. Obligations issued by the State Board of Education under authority of the Arkansas Constitution or applicable statutes;
 - g. Warrants of political subdivisions of the State of Arkansas and municipalities thereof having maturities not exceeding one year;
 - h. Prerefunded municipal bonds, the principal and interest of which are fully secured by the principal and interest of a direct obligation of the United States Government;
 - i. The sale of federal funds with a maturity of not more than one business day;
 - j. Demand, savings, or time deposits or accounts of any depository institution chartered by the United States, any state of the United States, or the District of Columbia, provided funds invested in such demand, savings, or time deposits or accounts are fully insured by a federal deposit insurance agency;
 - k. Repurchase agreements that are fully collateralized by direct obligations of the United States Government, and general obligations of any state of the United States or any political subdivision thereof, provided that the repurchase agreement shall provide for the taking of delivery of the collateral, either directly or through an authorized custodian; and
 - l.

Securities of, or other interest in, any open-end type investment company or investment trust registered under the Investment Company Act of 1940, and which is defined as a "money market fund" under 17 C.F.R. § 270.2a-7, provided that the portfolio of the investment company or investment trust is limited principally to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that the investment company or investment trust shall take delivery of the collateral either directly or through an authorized custodian.

- m. The city may invest no more than 20 percent of its portfolio in any single investment of the following types:
 - 1. Corporate debt obligations, including commercial paper;
 - 2. Revenue bond issues of any state of the United States or any municipality or any political subdivision thereof;
 - 3. Industrial development bonds for corporate obligors issued through any state of the United States or any political subdivision thereof;
 - 4. Securities of, or other interests in, an open-end or closed-end management type investment company or investment trust registered under the Investment Company Act of 1940, provided that the portfolio of such an investment company or investment trust is limited to United States Government obligations and to repurchase agreements fully collateralized by United States Government obligations, and provided further that any such investment company or investment trust shall take the delivery of the collateral either directly or through an authorized custodian; and
 - 5. Securities or other interests issued, assumed, or guaranteed by the International Bank for Reconstruction and Development, the Inter-American Development Bank, the European Bank for Reconstruction and Development, the Asian Development Bank, or the African Development Bank.
- (4) Clear title to the principal of and collateral backing for any investment will be maintained by the city or by a third-party safekeeping agent under agreement to the city.
- (5) The city may specify monthly interest payment in order to enhance cash flow and investment return.
- (6) The city administrator, or his designated representative, will provide the mayor and board of directors with quarterly information concerning cash position and investment performance. The information shall include, as a minimum, type of investment, maturity date, face value, rate of interest, amount of interest received during the accounting period, and institution where the funds are invested.
- (7)

A request for banking services will be issued when it is deemed necessary to provide services as required by the city, but not less frequently than every five years. The request will be made to all qualified banks located within the city limits that are capable of providing the level of services required. Banking services may continue with a selected bank if the services provided are maintained at an acceptable level and reasonable cost.

- (8) The standard of prudence to be applied by the investment officials shall be the "prudent person rule" and shall be applied in the context of managing an overall portfolio. Under the prudent person rule, investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion and intelligence exercise in the management of their own affairs, but for investment, considering the probable safety of their capital as well as the probable revenue to be derived.

(g) *Financial reporting policies.*

- (1) The city will adhere to a policy of full and open public disclosure of all financial activity. The budget will be prepared in a manner to maximize its understanding by citizens and elected officials. Copies of financial documents will be made available to all interested parties. opportunities will be provided for full citizen input prior to final decisions on the budget.
- (2) The City's accounting system will maintain records on a basis consistent with the accepted accounting standards of the Governmental Accounting Standards Board (GASB), Government Accounting Office (GAO), Financial Accounting Standards Board (FASB), and the State of Arkansas.
- (3) The City Administrator or his designee will prepare regular quarterly and annual financial reports presenting a summary of financial activity by major types of funds and programs.
- (4) The city will employ an independent public accounting firm to perform an annual audit, and will make the annual audit available to the general public, bond and financial consultants, and other interested citizens and organizations. The audit shall be completed and submitted to the city within 180 days of the close of the fiscal year.
- (5) The city will prepare an annual budget document that provides a basic understanding of the city's planned financial operations for the coming fiscal year. Copies of the proposed and final budget will be made available to all interested parties and opportunities will be provided for citizen input prior to final adoption of the budget.
- (6) The city will provide all financial documents to the internal and external auditors and city representatives will not improperly influence the conduct of audits.

(Ord. No. 79-19, § 1(att.), 9-3-2019; Ord. No. 82-22, § 1, 9-20-2022)

State Law reference— Investment of Public Funds, A.C.A. §§ 19-1-505, 23-47-401.



MEMORANDUM

TO: Honorable Mayor and Members of the Board of Directors
FROM: Jeff Dingman, Acting City Administrator
DATE: February 19, 2026
SUBJECT: Discussion regarding audit provisions in third-party service provider contracts

SUMMARY

At a previous meeting, the Board asked for discussion of performing audits for all third-party services providers who provide public services on behalf of the city via a services or management contract.

The most discussed example at the moment is of course the management agreement in place for operating the waterpark. Other examples include the agreement to manage the city's convention center, agreements for animal shelter services, agreements to provide senior citizen services and any other arrangement where the city contracts a third party to provide public services on its behalf. Many agreements we put in place contain language that permits the city to seek an audit. Several providers with which the city contracts already have their own audit requirements (Area Agency on Aging, for example).

This discussion is included on the agenda for the February 24, 2026 study session. Please contact me if you have questions regarding this agenda item.



MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
CC: Maggie Rice, Deputy City Administrator
FROM: Lance A. McAvoy, Director of Water Resources
DATE: February 16, 2026
SUBJECT: Review Water Conservation Measures

SUMMARY

At the August 19, 2025, regular Board of Directors Meeting, Director Neal Martin requested a study session to review and discuss the current water conservation measures available to the City through the current Code of Ordinance Chapter 25, Article V, Division 1, Section 25-125 and Division 2, Sections 25-136 through 25-143.

The City ended water conservation on a non-emergency basis once the new Lake Fort Smith Dam was completed and the lake was filled in late 2006 or 2007. Most recent use of an emergency water conservation measure was in August 2025. The City declared an emergency to enact Phase II water conservation, as allowed in Section 25-143, due to a major water line break that impacted the water levels in the in-town water reservoirs and tanks.

Attached are the sections out of the City of Fort Smith's Municipal Code of Ordinance as referenced above, and a copy of a presentation on the City's Water Conservation Measures. During the February 24, 2026, Study Session, the focus of the for the presentation and discussion will be on the penalties for not following the water conservation measures and enforcement of water conservation when it is declared (slides 18 to 21).

Please contact me if you have any questions or need additional information.

ATTACHMENTS

1. [Fort_Smith_Water_Conservation_Ordinance.pdf](#)
2. [Review Water Conservation Measures 2026.pdf](#)

Sec. 25-125. Limitations and prohibitions when conservation measures not in effect.

During time periods when water conservation measures are not in effect, the following limitations or prohibited uses of water shall be in effect:

- (1) No person shall use water for the irrigation or watering of lawns, turf, shrubs, plants, trees or gardens to such an extent as to allow water to escape from user's premises onto public property, such as alleys or streets, nor onto another person's property.
- (2) No person shall irrigate or water lawns, turf, shrubs, plants, trees or gardens between the hours of 11:00 a.m. and 6:00 p.m. (not applicable to greens and tee boxes on golf courses).
- (3) No person during the course of cleaning or washing motor vehicles, aircraft, building exteriors, sidewalks, walkways, driveways, patios, decks, fences, parking lots, tennis courts, or other similar types of hard surfaces, with a hose or other equipment, will allow the flow of water to be used or uncontrolled at the point of use, or to continue if unattended, such that water is wasted.
- (4) No person shall use potable water for any construction activity that cannot be performed using nonpotable water unless approved by the director of utilities, or his designated representative, and, if required by same, shall be conducted under the direct supervision of an employee of the city utilities department.
- (5) No person shall use water from a fire hydrant unless approved by the director of utilities, or his designated representative, and, if required by same, shall be conducted under the direct supervision of an employee of the city utilities department. Any such use shall be registered through a city-owned meter issued under a permit for a specific use, time period, location and, if further specified, for a maximum volume of use.

(Code 1992, § 25-125; Ord. No. 40-07, § 8, 6-5-2007; altered in 2019 recodification)

DIVISION 2. WATER CONSERVATION

Sec. 25-136. Findings; purpose.

It is hereby determined that in order for the city to provide and maintain a sufficient and manageable water supply and distribution system for human consumption, sanitation and fire protection, and to ensure the safety and well-being of the users of water provided by the city, it is necessary to manage water service demands on the water supply, transmission and distribution systems of the city by limiting water consumption through restrictions and prohibitions on the use of city water during certain times of the year as set out below.

(Code 1976, § 31-42(a); Code 1992, § 25-136; Ord. No. 31-92, § 1, 5-5-1992)

Sec. 25-137. Definitions.

For the purpose of this division, the following terms shall have the meanings given herein:

Contract water users includes all persons and entities (with the exception of Van Buren, Arkansas, which is required to adopt conservation measures at least as restrictive as those of this city) who purchase water from the city for individual use, resale and/or redistribution outside the corporate limits of the city, the term "contract water users" shall include the following:

City of Barling

Town of Chester.

City of Lavaca.

City of Mountainburg.

Cedarville Water Users Association.

Winslow Water Users Association.

U.S. Army (Fort Chaffee).

Highway 71 Water Users Association.

64-71 Highway Water Company.

Rural Water District No. 2 of Pocola.

Town of Arkoma.

LeFlore County Rural Water District No. 2.

Sequoyah County Rural Water District No. 4.

Users of water includes all persons and entities who use and/or purchase water provided by the city, including contract water users.

(Code 1976, § 31-42(b); Code 1992, § 25-137; Ord. No. 31-92, § 2, 5-5-1992)

Sec. 25-138. Phase I.

This section shall apply to all users of water from the city. An initial conservation phase (Phase I) shall go into effect when lake levels drop to a capacity of 55,000 acre-feet (60 percent) and shall continue until lake levels remain above 56,000 acre-feet (61 percent) for 15 consecutive days. Phase I conservation measures shall consist of the following restrictions and prohibitions on the use of city water:

- (1) The following uses of water are permitted at locations with even-numbered addresses on even-numbered days of the month only and at locations with odd-numbered addresses on odd-numbered days of the month only: lawn watering;

watering of shrubs, plants, trees and gardens; the washing of motor vehicles, trailers, airplanes or boats (not applicable to commercial car washes); filling of swimming pools or fountains; and washing of building exteriors.

- (2) No person shall use water as provided in subsection (1) of this section to such an extent as to allow water to escape from his premises onto public property, such as alleys or streets, nor onto another person's property.
- (3) Golf course watering and other commercial irrigation from city sources shall be done only to the extent necessary to preserve turf and other plant life and at such times during the day as to minimize water loss due to evaporation.
- (4) The use of water from fire hydrants at any time for construction purposes, fire drills or routine hydrant testing is prohibited. Only nonpotable water may be used for dirt compaction, earth moving operations or street base course construction.
- (5) The washing of sidewalks, walkways, driveways, patios, parking lots, concrete tennis courts and other hard-surfaced areas by hosing or by use of water directly from faucets or other city sources is prohibited. Food processing and food service establishments may engage in such use of water only to the extent necessary to maintain and preserve the public health, and in compliance with any state or federal regulations. Restaurants and other food service establishments may hose or wash only walkways immediately adjacent to entrances and not beyond ten feet of entrances and not beyond ten feet of garbage facilities, food delivery or food serving areas.
- (6) No person shall irrigate or water lawns, turf, shrubs, plants, trees or gardens between the hours of 10:00 a.m. and 7:00 p.m. (not applicable to greens and tee boxes on golf courses).
- (7) The city shall have the authority to install flow restriction devices on those lines to contract water users which exceed their contractual allocation. Installation of flow restriction devices shall require specific approval of the board of directors before installation.

(Code 1976, § 31-42(c); Code 1992, § 25-138; Ord. No. 31-92, § 3, 5-5-1992; Ord. No. 40-07, § 4, 6-5-2007)

Sec. 25-139. Phase II.

- (a) This section shall apply to all users of water from the city. An advanced conservation phase (Phase II) shall go into effect when the following conditions occur:
 - (1) The total usable water storage above the lowest intake valves in the city's impoundment lakes decreases to 36,000 acre-feet (39 percent). This phase shall be implemented under these conditions when the lake levels remain below these levels for three consecutive days; or

-
- (2) The total amount of water in the city's water system storage reservoirs remains below 50 percent of total storage capacity for three consecutive days.
- (b) The city administrator, or his designated agent, is hereby authorized and directed to compile and record the data necessary to determine when the conditions of subsection (a)(1) or (a)(2) of this section have been met. Upon such determination that the conditions have been met, the city administrator, or his designated agent, shall notify all users of water from the city, by any reasonable means, which may include, but is not limited to media coverage, that the conditions of subsection (a)(1) or (a)(2) of this section have been met and that the conservation measures of Phase II are in effect. The city administrator, or his designated agent, is hereby authorized and directed to ensure compliance with and enforcement of the Phase II conservation measures set forth in subsection (c) of this section.
- (c) Phase II conservation measures shall consist of Phase I measures plus the following restrictions and prohibitions on the use of city water.
- (1) The watering of shrubs, plants, trees and gardens is permitted only by hand-held hose and should be limited to the minimum amounts necessary to sustain plant life. Such watering is permitted at locations with even-numbered addresses on even-numbered days of the month only and at locations with odd-numbered addresses on odd-numbered days of the month only. All lawn and turf watering from city sources is prohibited.
- (2) Golf course watering and other commercial irrigation from city sources shall be done only to the extent necessary to preserve turf and other plant life. Golf courses are permitted to water only greens and tee boxes from city sources. Golf course fairway and rough watering and school football and baseball field watering from city sources is specifically prohibited.
- (3) All washing of motor vehicles, trailers, airplanes, boats or building exteriors is prohibited, except at commercial car washes and licensed commercial vehicle dealerships. Licensed commercial dealerships shall limit washing to Tuesday and Friday only. The filling of swimming pools or outdoor fountains and outdoor fountain operation are prohibited.
- (d) The restrictions and prohibitions of Phase II shall be removed when the lake levels remain above 41,000 acre-feet (45 percent) for 15 consecutive days.
- (e) The city administrator, or his designated agent, is hereby authorized and directed to compile and record the data necessary to determine when the conditions of subsection (d) of this section have been met. Upon such determination that the conditions have been met, the city administrator or his designated agent shall notify all users of water from the city by any reasonable means, which may include but is not limited to media coverage, that the conservation measures of Phase II are no longer in effect.

(Code 1976, § 31-42(d); Code 1992, § 25-139; Ord. No. 31-92, § 4, 5-5-1992; Ord. No. 40-07, §§ 5, 6, 6-5-2007)

Sec. 25-140. Implementation.

- (a) This section shall apply to all users of water from the city. Whenever an emergency exists, as determined by the city administrator, or his designated agent, by reason of a shortage of water, limited distribution facilities or any other circumstances which make it necessary to immediately conserve water, there is hereby delegated to the city administrator or his designated agent the authority to implement the conservation measures of Phase I and/or Phase II and other conservation measures which are necessary to maintain potable water for essential public health and safety functions.
- (b) These emergency measures shall remain in effect until the next regularly scheduled meeting or special meeting of the board of directors, at which time the board shall decide whether it is necessary to continue the measures.

(Code 1976, § 31-42(e); Code 1992, § 25-140; Ord. No. 31-92, § 5, 5-5-1992)

Sec. 25-141. Surcharges.

This section shall apply to contract water users (as defined in section 25-137). Contract water users are subject to surcharges for water conservation purposes, which surcharges shall be determined from time to time and on file in the office of the city clerk.

(Code 1976, § 31-42(f); Code 1992, § 25-141; Ord. No. 30-92, § 6, 5-5-1992; Ord. No. 31-92, § 6, 5-5-1992)

Sec. 25-142. Penalties for noncompliance.

The failure to comply with or a violation of any requirements contained in this section by any user of water from the city is hereby declared to be unlawful, and any user of water subject to the jurisdiction of the city, upon being convicted of such unlawful act, shall be deemed guilty of a misdemeanor and shall be fined in accordance with the following schedule:

- (1) *First violation.* Not less than \$50.00 nor more than \$200.00.
- (2) *Second violation.* Not less than \$250.00 nor more than \$500.00.
- (3) *Third violation and each subsequent violation.* \$500.00.

It is declared to be unlawful to tamper with or disable any meter used to register the water usage of any user of water from the city, and any individual or user of water convicted of violating this provision shall be deemed guilty of a misdemeanor and shall be fined in accordance with section 1-9.

(Code 1976, § 31-42(g); Code 1992, § 25-142; Ord. No. 31-92, § 7, 5-5-1992; Ord. No. 40-07, § 10, 6-5-2007)

Sec. 25-143. Authority to implement additional conservation measures.

This section shall apply to all users of water from the city. Whenever an emergency exists as determined by the city administrator, or his designated agent, by reason of a shortage of water, limited distribution facilities or any other circumstance which make it necessary to immediately conserve water, there is hereby delegated to the city administrator, or his designated agent, the authority to implement conservation measures additional to the provisions of this division which are determined to be necessary to maintain potable water for essential public health and safety functions. These emergency measures shall remain in effect until the next regularly scheduled meeting, or special meeting, of the board of directors at which time the board shall decide whether it is necessary to continue said measures.

(Code 1992, § 25-143; Ord. No. 40-07, § 9, 6-5-2007)

Secs. 25-144—25-150. Reserved.

Review of Water Conservation Measures 2026



Why Water Conservation?



Reduce the demand for water



Improve efficiency in use and reduce losses and waste of water, and



Improve land management practices, such as landscaping, soil improvement, and stormwater retention, to conserve water

Current Water Conservation Measures

Municipal Code Chapter 25, Article V,
Division 1, Section 25-125 and
Division 2, Sections 25-136 to 25-143

AWWA M52 Manual “Water
Conservation Programs: A Planning
Manual”

ANSI/AWWA Standard G480-25
“Water Conservation and Efficiency
Program Operation and Management

Current Water Conservation Measures

Conservation-Oriented Pricing:

- The more water used the more the customer pays
- Dedicated irrigation rate

Water Waste Policy

- Irrigation water runoff from a property prohibited
- Irrigation that occurs at a prohibited day and/or time
- Washing of hard surfaces regulated

Public Education

Daily Water Conservation Measures (Sec. 25-125)



Irrigation or watering of lawns, turf, shrubs, plants, trees or gardens to such an extent as to allow water to escape from user's premises onto public property



No irrigation or watering lawns, turf, shrubs, plants, trees or gardens between the hours of 11:00 a.m. and 6:00 p.m.



Water flow will be controlled and attended when cleaning or washing motor vehicles, aircraft, building exteriors, sidewalks, walkways, driveways, patios, decks, fences, parking lots, tennis courts, or other similar types of hard surfaces with a hose or other equipment

Daily Water Conservation Measures (Sec. 25-125)

Prohibits the use of potable water for any construction activity that cannot be performed using nonpotable water unless approved by the Director of Water Resources, or his designated representative, and, if required by same, shall be conducted under the direct supervision of an employee of the city

No person shall use water from a fire hydrant unless approved by the Directors of Water Resources and Public Works, and shall be registered through a city-owned meter issued under a permit for a specific use, time period, and location

Phase I Water Conservation (Sec. 25-138)

Currently the capacity of the lakes initiates Phase I Water Conservation

When the total lake volume drops below 61% Phase I Water Conservation automatically begins

Phase I Water Conservation ends when lake levels remain above 61% for 15 consecutive days

Phase I Water Conservation Prohibitions

1. Water use is permitted at locations with even-numbered addresses on even-numbered days of the month only and at locations with odd-numbered addresses on odd-numbered days of the month only
 - Watering lawns, shrubs, plants, trees and gardens
 - Washing of motor vehicles, trailers, airplanes or boats (not applicable to commercial car washes)
 - Filling of swimming pools or fountains
 - Washing of building exteriors

Phase I Water Conservation Prohibitions

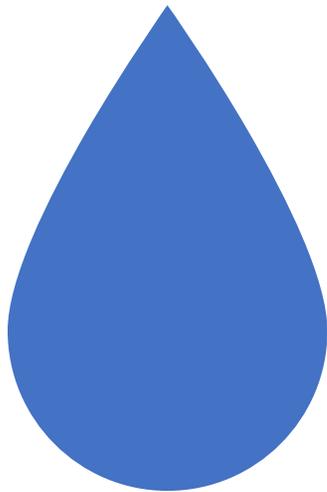
2. Use water to such an extent as to allow water to escape from his premises onto public property, such as alleys or streets, nor onto another person's property
3. Golf course watering and commercial irrigation shall be done only to the extent necessary to preserve turf and other plant life and minimize water loss due to evaporation
4. Use of water from fire hydrants at any time for construction purposes, fire drills or routine hydrant testing is prohibited

Phase I Water Conservation Prohibitions

5. Washing of sidewalks, walkways, driveways, patios, parking lots, concrete tennis courts and other hard-surfaced areas by hosing or by use of water directly from faucets or other city sources is prohibited
 - Food processing and services may wash only to preserve public health and comply with federal/state regulations
 - Restaurants and other food service establishments may hose or wash only walkways immediately adjacent to entrances and not beyond ten feet of entrances and not beyond ten feet of garbage facilities, food delivery or food serving areas

Phase I Water Conservation Prohibitions

6. No person shall irrigate or water lawns, turf, shrubs, plants, trees or gardens between the hours of 10:00 a.m. and 7:00 p.m. (not applicable to greens and tee boxes on golf courses)
7. The city shall have the authority to install flow restriction devices on those lines to contract water users which exceed their contractual allocation. Installation of flow restriction devices shall require specific approval of the board of directors before installation.



Phase II Water Conservation (Sec. 25-139)

- Total usable water storage above the lowest intake valves in the city's impoundment lakes decreases 39%. This phase shall be implemented under these conditions when the lake levels remain below these levels for three consecutive days
- Total amount of water in the city's water system storage reservoirs remains below 50 percent of total storage capacity for three consecutive days
- Phase II Water Conservation ends when lake levels remain above 45% for 15 consecutive days

Phase II Water Conservation Prohibitions

- Phase II conservation measures shall consist of Phase I measures
- 1. Watering of shrubs, plants, trees and gardens is permitted only by hand-held hose and limited to the minimum amounts necessary to sustain plant life
 - Permitted at locations with even-numbered addresses on even-numbered days of the month only
 - Permitted at locations with odd-numbered addresses on odd-numbered days of the month only
 - All lawn and turf watering from city sources is prohibited.

Phase II Water Conservation Prohibitions

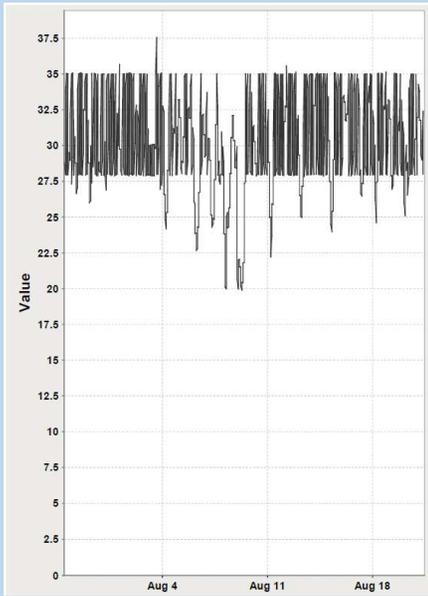
2. Golf course watering and other commercial irrigation shall be done only to the extent necessary to preserve turf and other plant life. Golf courses are permitted to water only greens and tee boxes. Golf course fairway and rough watering and school football and baseball field watering is specifically prohibited.
3. All washing of motor vehicles, trailers, airplanes, boats or building exteriors is prohibited, except at commercial car washes and licensed commercial vehicle dealerships. Licensed commercial dealerships shall limit washing to Tuesday and Friday only. The filling of swimming pools or outdoor fountains and outdoor fountain operation are prohibited.

Emergency Water Conservation (Sec. 25-140)

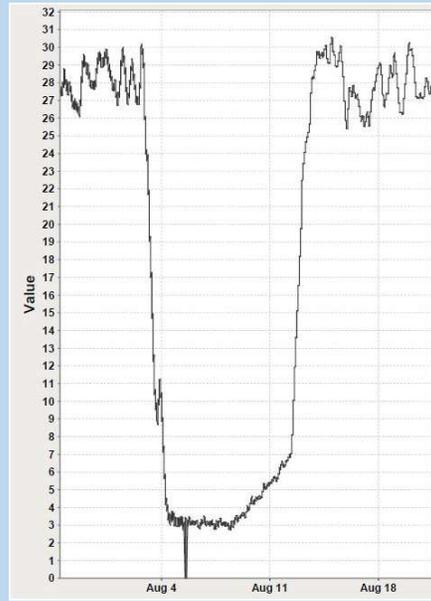
- “Whenever an emergency exists, as determined by the city administrator, or his designated agent, by reason of a shortage of water, limited distribution facilities or any other circumstances which make it necessary to immediately conserve water, there is hereby delegated to the city administrator or his designated agent the authority to implement the conservation measures of Phase I and/or Phase II and other conservation measures which are necessary to maintain potable water for essential public health and safety functions.”

Emergency Water Conservation (Sec. 25-140)

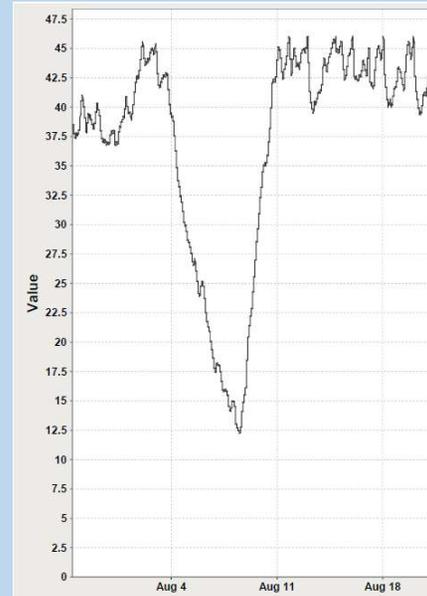
- “These emergency measures shall remain in effect until the next regularly scheduled meeting or special meeting of the board of directors, at which time the board shall decide whether it is necessary to continue the measures.”



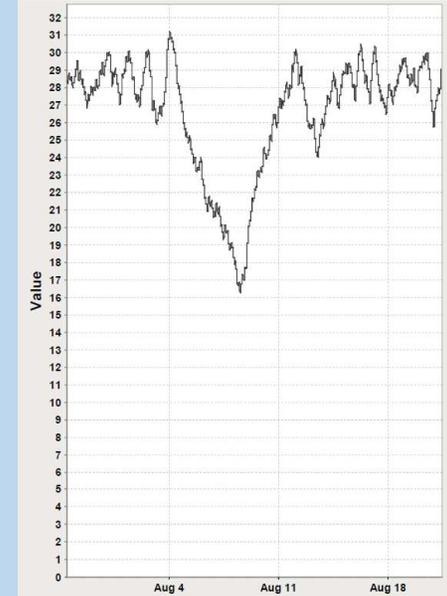
Fianna Hills Tank 2025



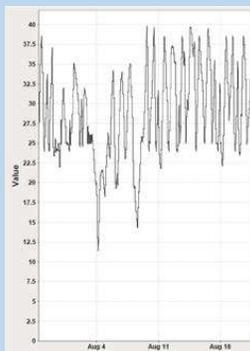
Luce Tank 2025



Jack Freeze Tank 2025

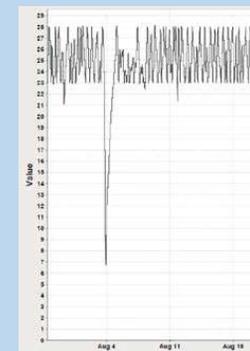


Wildcat Mt. 2025



Howard Hill
Tank 2025

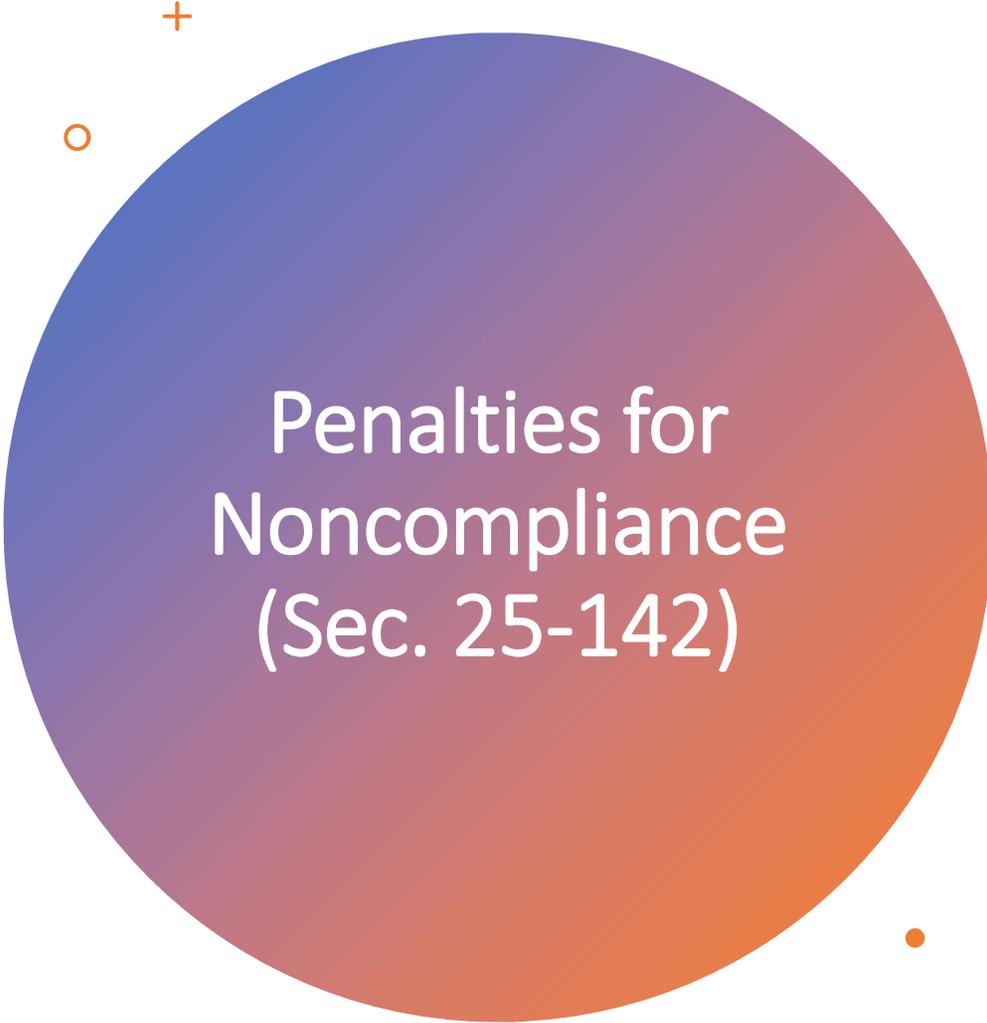
Chaffee
Crossing Tank
2025



Contract Water User Surcharges (Sec. 25-141)

- This section shall apply to contract water users (as defined in section 25-137). Contract water users are subject to surcharges for water conservation purposes, which surcharges shall be determined from time to time and on file in the office of the city clerk.



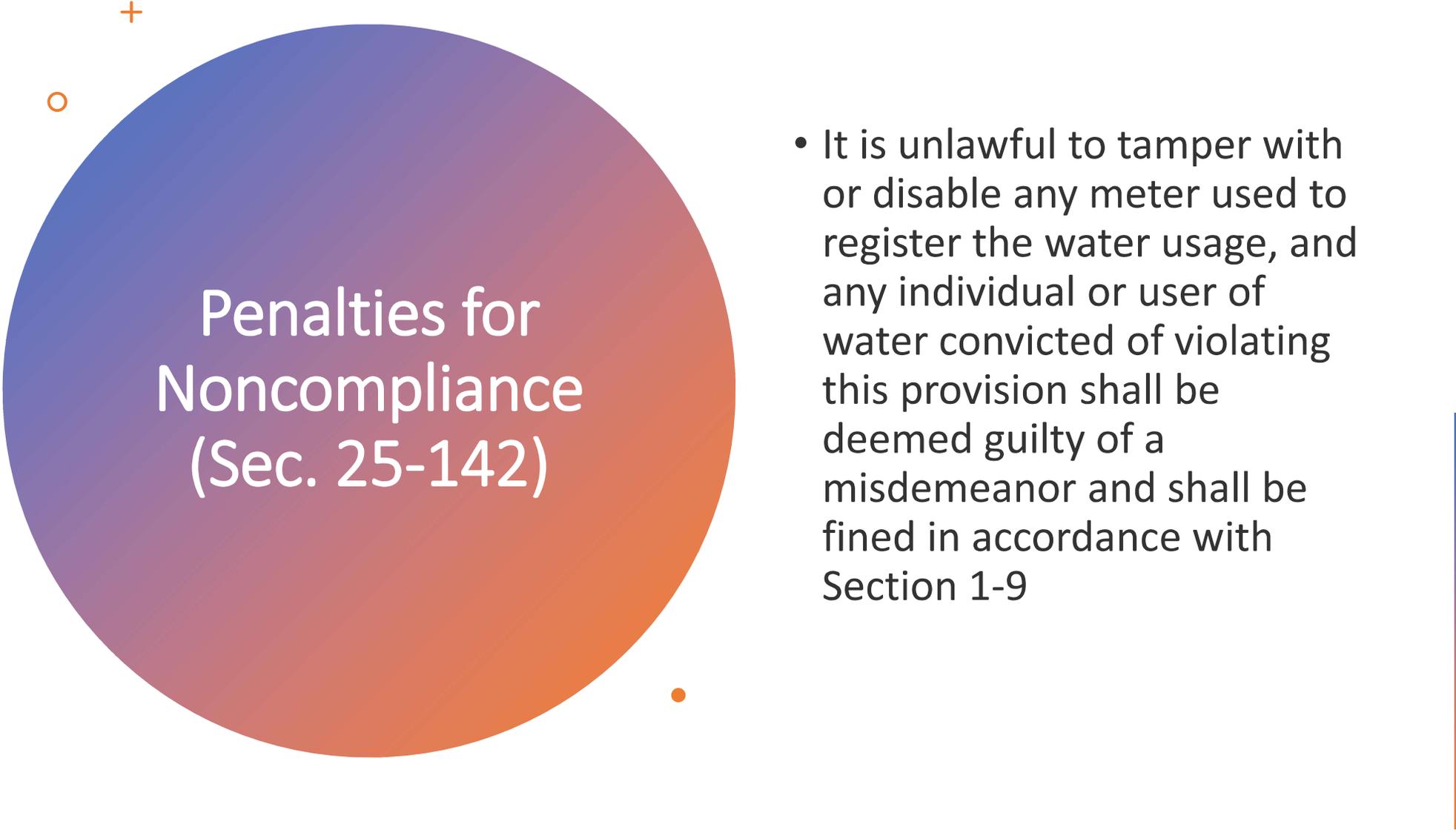


Penalties for Noncompliance (Sec. 25-142)

- Failure to comply with or a violation of any requirements of Phase I or Phase II water Conservation, upon being convicted and deemed guilty of a misdemeanor will be fined accordingly:
 1. First violation. Not less than \$50.00 nor more than \$200.00.
 2. Second violation. Not less than \$250.00 nor more than \$500.00.
 3. Third violation and each subsequent violation. \$500.00.

Enforcement of Water Conservation Measures

- If someone is not following water conservation measures, a Citation must be issued
- The Citation gives that person their day in court to defend not following the water conservation measures
- Only if found guilty of not following the water conservation measures are they penalized as noted on the previous slide
- Who writes the Citation and enforces water conservation measures?
(Police, Fire and Neighborhood Services are the only departments who currently write Citations)



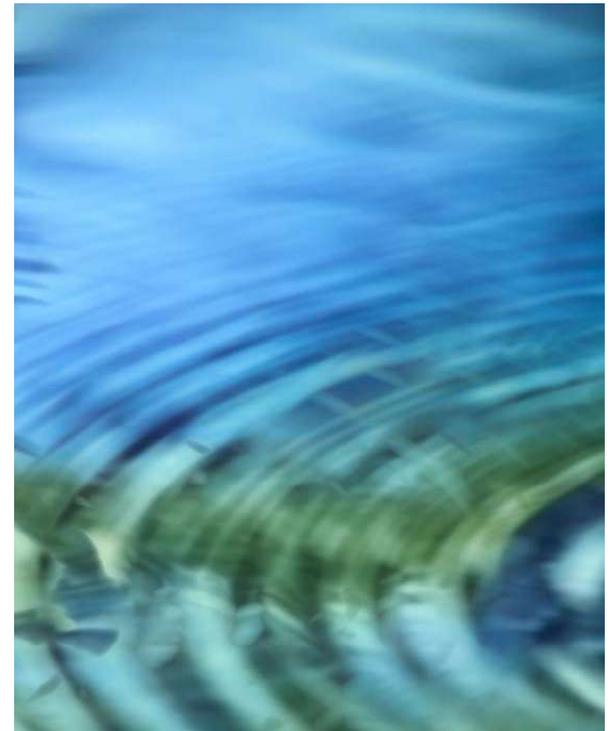
Penalties for Noncompliance (Sec. 25-142)

- It is unlawful to tamper with or disable any meter used to register the water usage, and any individual or user of water convicted of violating this provision shall be deemed guilty of a misdemeanor and shall be fined in accordance with Section 1-9

Authority to implement additional conservation measures (Sec. 25-143)

Whenever an emergency exists by reason of a shortage of water, limited distribution facilities or any other circumstance which make it necessary to immediately conserve water, the city administrator, or his designated agent, has the authority to implement additional conservation measures which are determined to be necessary to maintain potable water for essential public health and safety functions

These emergency measures shall remain in effect until the next regularly scheduled meeting, or special meeting, of the board of directors at which time the board shall decide whether it is necessary to continue said measures





Questions





MEMORANDUM

TO: Jeff Dingman, Acting City Administrator
CC: Maggie Rice, Deputy City Administrator
FROM: Lance A. McAvoy, Director of Water Resources
DATE: February 16, 2026
SUBJECT: Review and Discussion of the Draft Non-Retail (Wholesale) Surplus User Water Agreement

SUMMARY

In 2024, the City of Fort Smith passed water rate adjustments for both retail and non-retail customers. Since that time, City staff has worked with the City Attorney to develop a new, standardized non-retail surplus water user agreement for use with all such customers. The past agreements contained different requirements and also varied in the length of term of the agreement. The Draft Non-Retail Surplus User Water Agreement will be presented at the February 24, 2026, Board of Directors' Study Session.

The City has three wholesale water users who currently have special conditions in their contracts and would not currently fall under the non-retail surplus water user category. Those three wholesale customers are Barling Water Department which has a contract current until 2032, Van Buren who has a special contract that designates them as an ordinary water user due to the Lee Creek water rights they provided Fort Smith in 1984, and Fort Chaffee MTC which has a special designation due to the land deeded over to Fort Smith. These three water users do not have a maximum amount of water they may purchase from the City.

A non-retail surplus water user (User) is a wholesale purchaser of water from Fort Smith. When the User entered into agreement with the City, they did so as a surplus water user meaning, they were purchasing the excess water the City can produce and does not use during the year. Currently, the City does have a surplus during most of the year, and there are no other available sources of drinking water for these Users.

Most of our non-retail surplus water user agreements have long since expired. The table below provides the current status of each agreement.

User	Start Date of Last Agreement	End Date of Last Agreement	Term of Last Agreement	Active or Expired
Arkoma Water Company	02/19/2013	02/19/2033	20	Active
Cedarville Water Users	02/01/1994	02/01/2004	10	Expired
Rural District #7	06/01/1993	06/01/2003	10	Expired
Concord Water Users	05/17/1994	05/17/2004	10	Expired
Highway 71 Water User	05/02/2000	05/05/2005	5	Expired
City of Mountainburg	10/16/1956	10/16/1959	3	Expired
Town of Chester	05/06/1980	05/06/2000	20	Expired
Winslow Water Depart.	07/17/1984	07/17/1989	5	Expired
Central Water Users	05/03/2006	05/03/2026	20	Active
Franklin Sebastian	01/20/2009	01/20/2029	20	Active

To standardize the agreements, the following are some of the stipulations included in the proposed draft agreement.

- The agreement includes a ten percent (10%) penalty for late water bill payments and defines what late payment is considered. All Water Bills are "...due and payable by User within twenty (20) days from the date of issuance."
- The User's water rate will be adopted by City of Fort Smith ordinance. The City did this in 2024, establishing different rates for those Users North of the Arkansas River and those South of the Arkansas River. The City may also adopt a "Wholesale Surplus User Water Rate Ordinance" with these agreements in effect and will provide the User with the new rate thirty (30) days prior to the rate going into effect.
- The User will be required to provide certain operating data to Fort Smith on an annual basis. This includes water sales by the User to its customers.
- The User must maintain its system and as a part of that, must take all steps necessary to reduce its water loss to twenty percent (20%) by the end of the fifth year of the agreement after its execution date. Failure to reduce water loss year-over-year will result in surcharges being assessed by Fort Smith on the User.
- The agreement allows for one percent (1%) growth per year by the User. The User may, at the end of the initial five (5) year period request additional water volume and Fort Smith has the discretion as to whether or not that request is granted.

- Surcharges for exceeding any one of the maximum limits set forth in the agreement are as follows:

Percent Exceedance of Annual, Monthly, or Daily Maximum Volume	Percent Surcharge
>0% - 5%	10%
>5% - 15%	20%
>15%	30%

- The User is financially responsible for all equipment associated with the provision of water to the User (i.e. appropriate vaults, regulating valves, approved backflow prevention assemblies, specified meters, and communication equipment for properly registering the flow of water). Additionally, any vaults and meters and other equipment used at connection points to Fort Smith's system shall be the property of Fort Smith and Fort Smith, at User's sole expense, shall maintain, test, upgrade, and replace any of said equipment.
- Fort Smith has the right to terminate the agreement with the User should the situation arise that Fort Smith does not have a sufficient supply of water to meet the needs of the retail and ordinary wholesale customers of the Fort Smith Water System.
- The agreement is for a period of ten (10) years and at the end of that time a new ten (10) year agreement may be requested by the User.
- Failure of the User to follow City of Fort Smith Water Conservation will result in a surcharge to the User.
- Sets forth what is required by the User during period of Water Conservation as declared by Fort Smith.
- Restricts the size of meters and thus water usage in the User's system.
- Holds Fort Smith harmless should there be any claim on or against the User's water system.
- Specifies the User is not eligible for leak adjustments from Fort Smith.
- Restricts Users from selling water to new systems not already attached to the User's systems. For example, Mountainburg has permission to sell water to parts of Chester but could not sell water to Alma.
- Sets the City Administrator as the point of contact for communications and disputes that may arise during the term of the agreement.

The entire draft agreement is attached for review by the Board of Directors.

The current water rate for Users North of the Arkansas River is \$2.52/CCF and for Users South of the Arkansas River is \$3.04/CCF. These rates were established during the last water rate study completed in 2024. Staff recommend using these rates as they were established using a legally defensible methodology for wholesale rates and include cost of the maintenance of the treatment plants, transmission lines, treatment cost, pumping cost, and for those South of the Arkansas River, maintenance associated with the portion of the distribution system and storage used by those Users. These were adopted by Ordinance 111-24.

Please contact me if you have any questions or need additional information.

ATTACHMENTS

1. [20260216_Surplus Water Agreement excluding VB.pdf](#)

NON-RETAIL SURPLUS USER WATER AGREEMENT

This Non-Retail Surplus User Water Agreement (“Agreement”) is made and entered into as of the ____ day of _____, 20____, by and between the City of Fort Smith, Arkansas, hereinafter referred to as "Fort Smith", and the _____, a non-retail surplus water customer of Fort Smith, hereinafter referred to as the "User." Fort Smith and User may be collectively referred to herein as the “parties.”

WITNESSETH:

WHEREAS, clean, potable drinking water is a vital resource and is required for public health and safety;

WHEREAS, Fort Smith acknowledges that water resources must be protected, managed and conserved by all who benefit from the treatment and conveyance of water from Lake Fort Smith and Lee Creek;

WHEREAS, Fort Smith has the ability to supply water to the User as Fort Smith currently has surplus capacity but not in such quantity that water may be wasted or otherwise managed irresponsibly; and

WHEREAS, the parties desire to arrange for the sale and purchase of water under the terms and provisions expressed in this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements and covenants hereinafter set forth, the parties agree as follows:

1. Subject to the restrictions on maximum use, water loss, connections, and all other restrictions contained herein, Fort Smith agrees to supply and deliver to User treated drinking water for the customers of User's independently owned and operated water system.
2. For water sold and delivered to User on or after the date of this Agreement,

User agrees to pay Fort Smith the rate as set forth in the Fort Smith water rate ordinance in effect on the date of execution of this Agreement by Fort Smith. Thereafter, rates shall be adjusted as set forth in the most current water rate ordinance in effect by Fort Smith. Notice of rate adjustments will be provided to the User thirty (30) days prior to the effective date of said rate adjustment. Fort Smith will submit to User a bill each calendar month for water delivered during the preceding calendar month (“Water Bill”) and payment of such Water Bill shall be due and payable by User within twenty (20) days from the date of issuance. Any Water Bill not paid in full by the due date shall be subject to a ten percent (10%) penalty. The total amount of the Water Bill, plus penalty, shall be subject to interest at the rate of ten percent (10%) per annum or the maximum rate allowed by law, whichever is less, beginning forty (40) days from the date of issuance until paid.

It is agreed by the parties that, in the event Fort Smith adopts by ordinance a water rate for all of Fort Smith's wholesale surplus customers (“Wholesale Surplus User Water Rate Ordinance”), the User’s rate for delivered water as set forth in this paragraph shall be adjusted to the rate established in the Wholesale Surplus User Water Rate Ordinance. Upon thirty (30) days written notice to User by Fort Smith of the adoption, or intention to adopt, of a Wholesale Surplus User Water Rate Ordinance, the rate established by said ordinance shall become effective. Fort Smith's current water rate ordinance or a Wholesale Surplus User Water Rate Ordinance may provide for surcharges for usage in excess of the total usage or demand provisions of Paragraph 3.

3. (a) It is understood by the parties that User will be consuming surplus water currently available from Fort Smith. The parties further agree that the volumes and delivery rates set forth herein are intended to allow a reasonable amount of water loss from the User’s system and a reasonable growth rate of the User’s system. As such, demonstrable water losses of twenty percent (20%) and a cumulative growth rate over the first five years of five percent (5%) shall be the baseline for determining User’s volume

limits set forth below. If the User’s combined water loss and growth is greater than twenty-five percent (25%) of its average water sales to the User’s customers, the volume limits stated in Table 1 shall be applicable to User during the initial five (5) year period of this Agreement so that User’s water volumes will be reduced to reflect the required maintenance of the User’s system to achieve the water loss and growth to a volume limit that is not greater than twenty-five percent (25%) of the User’s average water sales to the User’s customers.

User may request in writing increases to volume and/or delivery rate provisions for the second five (5) year period of this Agreement to meet User's needs required by system growth if increases to volume and/or delivery rate are supported by the annual reporting submitted by User in accordance with Section 12 of this Agreement. Fort Smith will respond within thirty (30) days either approving the request in full or in part or denying the request in full. User agrees and covenants that it will limit its level of consumption of water from Fort Smith so that it shall not exceed, at any time, the consumption level(s) during time periods as set forth herein. It is further agreed that User's maximum annual usage of water from Fort Smith shall not exceed the volume as stated in Table 1 in hundred cubic feet (ccf) for the first five (5) year period of this Agreement. Furthermore, User’s maximum monthly usage shall not exceed the volume as stated in Table 1 in hundred cubic feet (ccf).

Table 1: Maximum Volumes

Year	Annual Volume Limit (ccf)	Monthly Volume Limit (ccf)	Daily Volume Limit (ccf)
2026	Current		
2027	Reduce or Same		
2028	Reduce or Same		

2029	Reduce or Same		
2030	Sale +25%		

As set forth above, reduction of User’s volume limits is necessary to reduce water loss in the User’s system. Any failure of User to comply with the volume limits will be subject to provisions of Paragraph 3 (c) of this Agreement.

(b) User further agrees that the rate of demand of its system on Fort Smith's transmission or distribution systems shall not exceed ____ gallons per minute (“GPM Limit”) at any time. User shall operate its system so as not to place, cause or contribute to any maximum hour demand on Fort Smith's transmission or distribution systems. User shall provide adequate storage within its own system to meet its maximum hour demands.

(c) In the event User exceeds any one of the maximum limits set forth in this Agreement, Fort Smith shall have the option to take any or all of the following actions:

(1) Assess a surcharge for the entire volume utilized by the User for that period of maximum volume exceedance in the amount set forth in Table 2; or,

Table 2: Surcharge Assessment for Exceeding Maximum Volume

Percent Exceedance of Annual, Monthly, or Daily Maximum Volume	Percent Surcharge
>0% - 5%	10%
>5% - 15%	20%
>15%	30%

(2) On ten (10) days written notice by registered mail to User, terminate Fort Smith's water supply to User, subject to User's right to supply information regarding the alleged excess use to the City Administrator of Fort Smith. This notice requirement shall not limit Fort Smith's right to immediately terminate water supply to User in the event of an emergency or other exigent circumstances.

(d) It is understood by the parties that User has no obligation to purchase any minimum amounts of water from Fort Smith. However, User agrees that in the event User purchases no water from Fort Smith for a period of twelve (12) or more consecutive months, Fort Smith may, at its sole election, terminate this Agreement.

4. User agrees to provide, at its expense and in accordance with Fort Smith's specifications and AWWA standards, appropriate vaults, regulating valves, approved backflow prevention assemblies, specified meters, and communication equipment for properly registering the flow of water, in hundred cubic feet, delivered at sites approved in writing by Fort Smith. User agrees that any vaults and meters and other equipment used at connection points to Fort Smith's system shall be the property of Fort Smith and Fort Smith, at User's sole expense, shall maintain, test, upgrade, and replace any of said equipment. User will maintain and, as necessary replace, regulating valves and backflow prevention assemblies on its distribution system at its own expense

5. It is agreed that User will make no connections to Fort Smith's system other than at sites approved by Fort Smith. It is agreed by User that Fort Smith, or any of its agents, employees, or contractors, shall have unlimited rights of access to such points of connection and physical facilities for maintenance or replacement of vaults and meters, for meter readings and for any other purpose of this Agreement.

6. It is understood by the parties that the treated water delivered to User hereunder

is considered not presently needed by the retail and wholesale customers of the water system of Fort Smith. If, at any time, in the opinion of the governing body of Fort Smith, Fort Smith does not have a sufficient supply of water to meet the needs of the retail and wholesale customers of the water system of Fort Smith, Fort Smith (in addition to the other provisions of this Agreement) shall have the right to terminate this Agreement and discontinue the sale of water to User upon thirty (30) days written notice to User. Otherwise, and unless the Agreement is terminated pursuant to other provisions of this Agreement or pursuant to breach by of one of the parties, this Agreement shall have a term of ten (10) years commencing with the date first set forth above (“Initial Term”). The Agreement may be renewed for an additional ten (10) years (“Renewal Term”) by Fort Smith, in its sole discretion, after receiving written notice from User, delivered by registered mail, requesting an extension of the Agreement at least ninety (90) days in advance of the expiration date of the Initial Term. The Renewal Term is subject to revised maximum volumes which may be established by Fort Smith.

7. It is understood by the parties that rates charged will be in accordance with AWWA cost of service standards and/or any applicable laws of the State of Arkansas pertaining to drinking water rates. It is further agreed by User that rates charged to User will be calculated based upon Fort Smith's cost of supplying water to User plus a reasonable rate of return. It is further agreed by User that the rate charged shall also reflect User's status as a surplus water user and the absence of an obligation by User to purchase minimum quantities from Fort Smith. User agrees that such costs shall include maximum day and maximum hour costs if User utilizes those levels of service and demand and/or volume charge. It is further understood by the parties that water conservation surcharges shall apply pursuant to Fort Smith Municipal Code Sections 25-136 through 25-143, as may be amended by Fort Smith.

8. On failure by User to pay any Water Bill for water delivered by the due date stated thereon, Fort Smith shall have the right, after giving ten (10) days written notice by registered mail to User, to terminate or reduce the water supply volume to User by

means of the valves installed at any point of connection or by any other means. Within the ten (10) day period, User may request a hearing before the City Administrator of Fort Smith to present information regarding the alleged failure to pay the Water Bill for recommendation to be presented to the Board of Directors for final action.

9. Fort Smith agrees to provide User with customary water quality data as required by Federal standards. It is understood by the parties that User may request water quality data up to three (3) additional times per year. Fort Smith will provide reasonable notice to User of any sudden change in water quality.

10. (a) In the event that the governing body of Fort Smith determines that there is a shortage of water to be supplied to the users of Fort Smith's water system and declares the imposition of certain "water conservation" conditions on the supply of water to substantially all of Fort Smith's non-retail surplus customers such as User, User covenants that it will impose and enforce such conditions on all customers of its water system. User further covenants that it will impose and enforce conservation measures at least as stringent as Fort Smith places on its retail customers.

(b) User agrees to engage in continued public education efforts regarding water conservation with its users.

(c) Fort Smith may establish a temporary maximum water volume for the User during the water conservation period.

(d) In the event of a breach of this provision of this Agreement, Fort Smith shall have the rights as set forth in Paragraph 3(c).

11. (a) User agrees and covenants that it shall not deliver water to any customer of its water system for any structure not plumbed in accordance with the provisions of the 2018 Plumbing Code and inspected by an inspector licensed by the State.

(b) User agrees that it will not permit the installation of nor deliver water to any customer who has installed a water meter larger than two (2) inches, or

combination of water meters capable of delivering water at a flow rate exceeding that of a two (2) inch meter, unless User obtains the prior written approval of Fort Smith for the customer desiring the installation thereof. Such requests shall be provided to Fort Smith in writing by User, delivered by registered mail, and shall at a minimum, state the desired meter size, the daily average, peak day and annual water consumption flow rate expected by the customer. User shall also provide as part of its request for the customer, a statement indicating User's opinion of the impact that the addition of this customer to its system will have on User's storage and delivery systems, and any other information which may be pertinent to the request.

(c) User agrees and covenants that it shall not deliver water to any customer of its water system who, after the first date set forth above: (1) commences any use or development of any parcel of real property within the area served by the water system of User and which is within a five (5) mile radius of the then existing Fort Smith city limits and which is also not located within the corporate limits of any incorporated municipality without complying with all the planning and development requirements of the Fort Smith Unified Development Ordinance (UDO) as if said land had been located within the corporate limits of Fort Smith; or, (2) who has commenced such use or development of any parcel of real property within the area served by the water system of User and which is also within a two (2) mile radius of the then existing Fort Smith city limits and which is also not located within the corporate limits of any incorporated municipality without complying with all land development requirements contained in the UDO. The provisions of this subparagraph shall not be construed as a limitation upon any legally enforceable right or duty of Fort Smith to administer its planning and development ordinances apart from this Agreement within or outside the area mentioned in this paragraph. The provisions of this subparagraph shall not apply to User unless User is now, or in the future becomes, subject to the planning jurisdiction provisions of Fort Smith.

(d) It is agreed the User has the right to provide service to any customer located within the current service area of User or within a one (1) mile radius as established by the service area map reflected on Exhibit "B" attached hereto.

(e) In the event that any area served by User's water system is annexed into the corporate limits of a neighboring municipality or User either transfers or acquires a portion of a water system that is not as of the date of this Agreement a part of User's water system, User shall immediately provide written notice by registered mail to Fort Smith of such annexation, transfer or acquisition. User's notice shall, at a minimum, state User's opinion of the impact that the annexation, transfer or acquisition shall have on User's storage and delivery systems and water purchases from Fort Smith.

12. User agrees and covenants to provide annual reporting to Fort Smith which shall contain the following information:

(a) Number of residential customers, number of commercial/industrial customers, amounts of water billed by User to its system customers and to any other water retailer, and volumes of water acquired from any other supplier or produced by User.

(b) User shall provide a copy of its long-range planning document required by the Arkansas Department of Health according to 20 CAR §140-106(j) within one year after the initial date of this Agreement. If User does not now have a long-range plan as required by the Arkansas Department of Health, User shall initiate the development of a long-range plan and provide a copy of the same upon its completion or within three (3) years from the date first set above, whichever is the earlier date. User shall submit a report to Fort Smith as to what actions User has taken to improve its delivery and storage systems to meet the requirements of its long-range plan. This report shall be submitted before the last day of January each year during the term of this Agreement with the first report due after the submission of User's long-range plan to Fort Smith.

(c) In addition to the long-range planning document referenced in

Paragraph 12(b) above, User shall also use a qualified registered professional engineer to evaluate its current water delivery and storage systems to determine what actions and recommendations should be undertaken together with an implementation schedule to eliminate or reduce User's peak hourly demand from Fort Smith's delivery system. This evaluation report shall be submitted to Fort Smith within one year after the effective date of this Agreement. User's actions to implement the recommendations of this evaluation shall be reported to Fort Smith before the last day of January each year during the term of this Agreement with the first report due after the submission of User's initial reporting.

(d) User shall maintain records and documentation to accurately determine and report all unaccounted water system losses during the previous calendar year period. The report shall state, at a minimum, what the unaccounted water system losses were for the previous calendar year and what actions User has taken to reduce and control these losses. This report shall be submitted before the last day of March each year during the term of this Agreement.

(e) User shall provide to Fort Smith a copy of its current water conservation measures and will further provide Fort Smith with revisions thereto within thirty (30) calendar days after their adoption. User shall maintain records and documentation sufficient for it to accurately determine and report the effectiveness of its water conservation measures for the previous calendar year. The report shall state, at a minimum, the total number of customers served by User, the total amount of water sold to its customers, the per capita usage and any enforcement measures taken to assure compliance with its water conservation measures. This report shall be submitted before the last day of March each year during the term of this Agreement.

(f) User shall provide to Fort Smith a copy of a map depicting the area in which User maintains facilities for providing retail water service. User shall also

provide to Fort Smith a copy of a map depicting the similar area of any customer of User which further resells to additional customers water initially sold by Fort Smith to User. User shall provide Fort Smith with a copy of the described maps before the last day of January each year during the term of this Agreement and specifically identify by notation any changes from the previous year.

13. User shall install a backflow prevention assembly at each point of connection to Fort Smith's water system. The backflow prevention assembly shall be from a manufacturer accepted by Fort Smith, and its installation, maintenance, testing and certification shall be in strict accordance with Fort Smith's cross-connection program requirements. The installation, maintenance, testing and certification of each backflow prevention assembly shall be at User's sole expense. User shall also provide notice to Fort Smith of any deficiency or notification to, or from, the Arkansas Department of Health relating to any unsafe condition within its water system. Such notices shall be provided to Fort Smith immediately upon discovery of, or notification regarding, such condition.

14. (a) User further agrees that Fort Smith's commitment to provide water is contingent on the ability of Fort Smith to produce water. It is expressly agreed that Fort Smith shall not be responsible to User, or to the inhabitants or owners of property or to customers of User's water system, for any property damage or personal injury resulting from the supply of impure water, or a failure to furnish water under this Agreement, or a failure to provide any notice described in this Agreement. It is expressly recognized that the water supply may be temporarily discontinued in conjunction with required maintenance activities or with reference to the construction of improvements or additions to Fort Smith's water production, transmission and/or distribution systems.

(b) It is agreed that User will defend and hold Fort Smith harmless against, and indemnify Fort Smith from, any claim, action, demand, loss, damage, liability or judgment

which might be brought or obtained against Fort Smith by reason of any negligent act on the part of User in the operation, construction or maintenance of User's water system or by reason of the failure of Fort Smith to furnish water resulting in property damage or personal injury to any customer of User's system.

15. User further agrees that Fort Smith is not responsible for leaks that occur beyond the water meter on the User's distribution system. User agrees any leaks that occur in its water system shall be considered water used by User and User's customers. Fort Smith will not provide leak adjustments for water loss due to User leaks.

16. This Agreement shall be binding upon the successors of the parties hereto. This Agreement shall not be assignable by either party without the prior written consent of the other party hereto. It is agreed that in the event of any occurrence rendering User incapable of performing under this Agreement, any successor of User, whether the result of legal process, assignment, or otherwise, shall succeed to the rights, responsibilities and obligations of User hereunder.

17. Other than those entities listed in Exhibit "1" attached hereto, User agrees that during the term of this Agreement it will not deliver water unto and will not enter into any written or oral, expressed or implied, contract with any corporation, customer, user, municipality, or water district whose purpose is or would be to resell the same water to other customers without Fort Smith's prior, expressed written concurrence.

18. User agrees that it will comply with the provisions of Title VI of the Civil Rights Act of 1964 (P. L. 88-352) and in accordance with Title VI of that Act, no person in the United States shall, on the grounds of race, color and national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity conducted by User and that User will immediately take any measures to effectuate this portion of the Agreement.

19. Except with reference to shutoff curtailment notices and User's right for hearing before the Fort Smith City Administrator within ten (10) days of said shutoff notice as described in Paragraph 8, the following provisions shall apply to all other disputes arising under the terms of this Agreement. If either party to the Agreement contends that the other has violated the terms of this Agreement, the party may issue a dispute letter addressed to the representative of the other party at the address indicated in Paragraph 20 of this Agreement. The letter shall describe the alleged violation of the Agreement. Within ten (10) business days of receipt of such letter, the other party shall reply to the dispute in writing. If the matter is not resolved by the exchange of correspondence, a meeting shall be held between the chief administrative official of the User and the Fort Smith City Administrator, or his designated agent, within thirty (30) calendar days of the reply letter of the other party. At such meeting, the parties shall, in good faith, attempt to resolve the dispute. User acknowledges that the resolution of a dispute agreed to by Fort Smith City Administrator may be subject to review and approval by Fort Smith's Board of Directors. Only after completion of the forgoing procedures shall the parties have the right to resort to judicial remedies which, as indicated in Paragraph 22, must be brought within the Fort Smith District of Sebastian County Circuit Court.

20. Any notice(s) and/or report(s) required to be given by the provisions of this Agreement shall be effective as delivered to the following persons at the indicated addresses:

Fort Smith

City Administrator
City of Fort Smith
P. O. Box 1908
Fort Smith, AR 72902

User

<Contact>
<User>
<Address>
<City, State Zip>

21. It is expressly agreed that the failure of either party to exercise a particular remedy allowed by this Agreement at the time of breach or thereafter shall not be construed as waiver of such breach nor as a waiver of such term or provision of the Agreement.

22. Enforcement or interpretation of any portion of this Agreement shall be governed by the laws of the State of Arkansas. Any litigation relating to this Agreement brought by either party shall be filed and prosecuted in the Sebastian County Circuit Court, Fort Smith District.

IN WITNESS WHEREOF, the parties, pursuant to resolutions of their respective governing bodies, have caused this Agreement to be executed effective as of the first date set forth above by the Mayor and City Clerk of Fort Smith and the authorized officers of the User.

CITY OF FORT SMITH, ARKANSAS

Mayor

ATTEST:

City Clerk

<USER>

<Contact>

ATTEST:

<User>

EXHIBIT 1

Existing corporations, associations, municipalities or water districts now served by
User:

1. City of Lavaca
2. City of Charleston
3. River South Rural Water District (that portion of RSRWD's system south of the Arkansas River)