

City of Fayetteville Staff Review Form

2019-0120

Legistar File ID

3/5/2019

City Council Meeting Date - Agenda Item Only
N/A for Non-Agenda Item

Tim Nyander

2/13/2019

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends the approval of a Contract for Sanitary Sewer Service between the Cities of West Fork, Arkansas and Fayetteville, Arkansas.

Budget Impact:

N/A	N/A
Account Number	Fund
N/A	N/A
Project Number	Project Title
Budgeted Item? NA	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? NA	Item Cost \$ -
Budget Adjustment Attached? NA	Budget Adjustment \$ -
	Remaining Budget \$ -

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF MARCH 5, 2019

TO: Mayor and City Council

THRU: Water & Sewer Committee

FROM: Tim Nyander, Utilities Director

DATE: February 13, 2019

SUBJECT: **Contract for Sanitary Sewer Service between the Cities of West Fork, Arkansas and Fayetteville, Arkansas**

RECOMMENDATION:

Staff recommends the approval of a Contract for Sanitary Sewer Service between the Cities of West Fork, Arkansas and Fayetteville, Arkansas.

BACKGROUND:

The City of West Fork owns and operates its own complete wastewater collection system. Their treatment facility needs major improvements, and it is more economical for them to pay the City of Fayetteville to accept, treat and discharge sewage collected by West Fork.

DISCUSSION:

The City of Fayetteville's treatment facilities have sufficient capacity to accept and treat the wastewater from West Fork. The City of West Fork will be responsible for constructing a sewer pumping station and all piping and conveyance facilities required to deliver wastewater from West Fork to the point of connection to Fayetteville's sewer collection system. The City of Fayetteville will operate the lift station and maintain a flowmeter in the station that will record the volume of sewage being pumped to Fayetteville. In order for the design and construction activities to commence, the City of West Fork must (1) enter into a formal agreement with the City of Fayetteville by signing a sewer service agreement with Fayetteville, and (2) incorporating the City of Fayetteville's pretreatment ordinance into their sewer use ordinance.

BUDGET/STAFF IMPACT:

None.

Attachments:

Contract for Sanitary Sewer Service

**CONTRACT FOR SANITARY SEWER SERVICE
BETWEEN THE CITIES OF
WEST FORK, ARKANSAS AND FAYETTEVILLE, ARKANSAS**

THIS CONTRACT is agreed to and entered into this ____ day of _____, 2019, by and between the City of Fayetteville, Arkansas, a municipal corporation, hereinafter called Fayetteville, and the City of West Fork, Arkansas, a municipal corporation, hereinafter called West Fork.

WHEREAS, Fayetteville owns and operates its own complete wastewater collection, treatment and discharge system which serves not only Fayetteville citizens, businesses and residences, but the cities of Farmington, Elkins, Greenland and portions of Johnson; and

WHEREAS, West Fork owns and operates its own complete wastewater collection, treatment and discharge system which is in need of modernization, improvement and enlargement; and

WHEREAS, rather than investing a very large sum to sufficiently modernize and enlarge the capacity of its sewer treatment and discharge system, West Fork wishes to discontinue its treatment and discharge system, but maintain and improve its own sewer collection system and pay the City of Fayetteville to accept, treat and discharge sewage collected by West Fork; and

WHEREAS, Fayetteville's wastewater treatment facility should have sufficient capacity to treat current and reasonably foreseeable sewage flows for the next 15 years generated in its corporate city limits, within the corporate city limits of customer cities, as well as current and future sewage flows from the City of West Fork, as long as the City of West Fork improves its sewer collection system to correct and minimize infiltration and inflow into its sewer lines, and maintains its collection system to reasonable standards acceptable to the City of Fayetteville; and,

WHEREAS, West Fork's best and most feasible option for treatment of West Fork's wastewater would be to pay Fayetteville for the use of Fayetteville's sewer mains, sewer lift stations and its wastewater treatment facilities to treat and discharge West Fork sewage; and

WHEREAS, prior to agreeing to accept West Fork's wastewater for treatment, Fayetteville must ensure that accepting this additional wastewater does not place a financial burden on Fayetteville's customers and citizens for which they do not receive a corresponding benefit; and

WHEREAS, West Fork acknowledges that Fayetteville will likely have to add and fund capacity additions and/or treatment capability enhancements in the future partly as a result of accepting wastewater from West Fork; and

WHEREAS, West Fork acknowledges that all costs necessitated by any capacity or sewer treatment capacity enhancement will be shared proportionally by all sewer customers including West Fork; and

WHEREAS, West Fork acknowledges that Fayetteville is accepting the burden of National Pollution Discharge Elimination System (NPDES) permit compliance for all wastewater legally within the Fayetteville wastewater system; and

WHEREAS, West Fork acknowledges that Fayetteville does not accept the burden of any National Pollution Discharge Elimination System (NPDES) permit compliance for any wastewater prior to its lawful and proper entrance into Fayetteville's gravity sewer system; and

WHEREAS, West Fork agrees it has the burden of all National Pollution Discharge Elimination System permit requirements for all of its wastewater prior to its legal entry into the Fayetteville system.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL PROMISES, AGREEMENTS, COVENANTS AND CONDITIONS OF THIS AGREEMENT, THE CITIES OF FAYETTEVILLE AND WEST FORK MUTUALLY AGREE AS FOLLOWS:

(1) **TREATMENT OF SEWAGE:** Fayetteville agrees to accept for treatment West Fork's sanitary sewage that is in compliance with this contract and West Fork's National Pollution Discharge Elimination System permit delivered by West Fork to the Fayetteville system and to process such wastes in the same manner as wastes from Fayetteville are treated under the following terms and conditions:

- a. West Fork will properly construct, operate and maintain all piping and conveyance facilities required to deliver wastewater from West Fork to the point of Connection to Fayetteville's sewer collection system as described below, with the exception of the final sewer pump station. The City of Fayetteville will assist West Fork if requested by West Fork with emergency maintenance if crews are available and adequate resources and materials are on hand. The City of Fayetteville may loan West Fork available sewer pipe from its stockpile to be promptly replaced by West Fork. This final pump station will be constructed and owned by West Fork, but operated and maintained by the City of Fayetteville with all the costs associated with those operation and maintenance activities to be paid by West Fork and included in the normal billing procedures between the two cities. The Point

of Connection to Fayetteville's sewer collection system is in the area of W. Montgomery St., west of South School Ave.

- b. Wastewater received by the City of Fayetteville from West Fork will be discharged into the environment under Fayetteville's NPDES permit or permits, as well as any other regulatory requirements that apply as a result of said permit, permits, or related laws. This applies to any and all permits that pertain to any portion of the wastewater conveyance and treatment system through which West Fork wastewater flows.
- c. Fayetteville will provide West Fork a current copy of its NPDES permit and any future revisions upon West Fork's request.

(2) **FLOWS AND LOADS:** Fayetteville shall accept and treat all proper and legal wastewater flows from West Fork pursuant to this contract until either the annual average organic loading, any mineral limitations or the annual average daily hydraulic loading at the Paul R. Noland Wastewater Treatment Facility (Noland WWTF) reach 80% of permitted capacity on an annual average basis. At that time West Fork and Fayetteville agree that alternatives for future growth will be studied and discussed. Upon mutual agreement how to handle capacity or enhanced treatment requirements and how to pay for such requirements, Fayetteville shall continue to accept flows from West Fork during capacity and treatment improvement efforts. Throughout this contract Fayetteville will annually provide West Fork with the average monthly organic loading, regulated minerals loading and hydraulic loading for the Noland WWTF.

(3) **RATES FOR SEWER SERVICE:**

- a. Rate making shall be fair and equitable, be easy to administer and understand and shall be based on policies that result in predictable rate adjustments and avoid abrupt rate changes to the extent possible. Regulations imposed for phosphorus and other possible minerals could require multimillion dollar investments to enhance the treatment abilities of the wastewater plant. Such costs would have to be apportioned among and paid by all sewer customers (homeowners, businesses, industries, city customers, Farmington, Greenland, West Fork, Elkins and portions of Johnson).
- b. West Fork agrees that Fayetteville is entitled to a reasonable rate of return on its investment on assets employed to provide wastewater service to West Fork in the approximate amount of 2% above the average bond coupon outstanding debt at the time of the most recent comprehensive cost of service study. Fayetteville will conduct comprehensive cost-of-service studies at various times in the future that will reset these sewer rates based

on industry standards and the actual costs of providing service to West Fork and other customers.

- c. Fayetteville shall cause the rate per 1,000 gallons for wastewater treatment services to be determined by an independent utility rate consulting firm with demonstrable expertise in water and wastewater utilities under a wholesale contractual agreement and in compliance with the rate methodology based in whole or in part on the rate making standards promulgated by the American Water Works Association (AWWA), Water Environment Federation (WEF), or other authoritative organizations. All of the wastewater flows from West Fork shall flow through a metering device provided near the pump station which delivers wastewater to the Fayetteville system.

(4) **CAPACITY SURCHARGE:** West Fork shall pay an additional \$0.25/1,000 gallons of billed sewage, beginning on the date of delivery of the first wastewater to the Fayetteville system to provide payment for at least some portion of the existing reserve treatment capacity of the Noland plant that will be consumed by the initial amount of wastewater flow from West Fork. After one year receiving West Fork's wastewater flows, the City of Fayetteville shall determine the average existing quarterly wastewater flow from West Fork which shall be termed the "benchmark flow." In the event that the annual rainfall during the year used to define the "benchmark flow" is more than 10% higher or lower than the average annual rainfall, then the "benchmark flow" shall be adjusted appropriately to coincide with the average rainfall. Thereafter, any flow of wastewater from West Fork during a quarter above the benchmark flow shall require West Fork to pay an additional second fee of \$0.25 per 1,000 gallons of billed sewage for the amount of sewage over the benchmark flow for that quarter. This additional second fee shall provide some portion of the potential funding required to provide future capacity enhancements to the Fayetteville collection and treatment facilities used by West Fork. This charge to provide future wastewater capacity enhancements shall take the place of and be in lieu of wastewater impact fees paid by other users. Fayetteville and West Fork agree that these Capacity Surcharges shall be evaluated concurrent with each comprehensive cost of service study described in (3) b.

(5) **TERM OF CONTRACT:** Fayetteville and West Fork hereby agree that the term of this contract shall be for a period of fifteen (15) years from the date of this agreement and can be renewed pursuant to (7).

(6) **EFFECTIVE DATE:** This contract shall become effective and enforceable on the date this agreement is signed by the Mayors of both cities after proper City Council Resolution or Ordinance authorizing such execution.

(7) **CONTRACT RENEWAL:** Either party shall have the option to renew this contract upon terms and conditions as may be negotiated and agreed to by Fayetteville and West

Fork by giving not less than twelve (12) months of notice in advance of the termination date of this contract.

(8) **BILLING AND PAYMENTS:** West Fork is empowered to bill and collect wastewater fees in a nondiscriminatory manner for all customers using West Fork's wastewater collection system. A few of these customers are within the City of Fayetteville water service area and receive water bills from Fayetteville. Fayetteville shall coordinate and cooperate with West Fork in the collection of its wastewater fees if based upon water usage and shall disconnect water service for nonpayment of water and wastewater fees pursuant to Fayetteville's ordinances, regulations, and normal procedure. If West Fork wishes Fayetteville to collect both the water and wastewater fee for these customers, Fayetteville will remit the appropriate wastewater fee collections to West Fork monthly with 5% withheld to cover some of the administrative costs.

(9) **NO LIABILITY FOR FAYETTEVILLE FOR WASTEWATER BACK-UPS OR OVERFLOWS:** Although the City of Fayetteville shall endeavor to operate its wastewater system efficiently and provide reliable wastewater service to West Fork, neither West Fork nor any of its customers or citizens may seek any damages, compensation, injunctive relief, or make any other claim or demand upon Fayetteville, its citizens, employees, officials or contractors for any sewer blockages, back-ups, overflows or other problems accepting, transporting or treating wastewater flowing from West Fork. West Fork agrees to indemnify and hold harmless the City of Fayetteville, its citizens, employees, officials, and contractors for any such damages and from any such claim or suit.

(10) **MAINTENANCE OF WASTEWATER COLLECTION SYSTEM.** West Fork agrees to maintain its wastewater system in accordance with the requirements of the United States Environmental Protection Agency (USEPA) and the Arkansas Department of Environmental Quality (ADEQ), and industry standards as established by the Water Environment Federation. A Sanitary Sewer Evaluation Study (SSES) must be performed by and paid for by West Fork every ten (10) years. Based on the results of the SSES, West Fork will perform the needed action items to satisfy the recommendations of the SSES.

(11) **SANITARY SEWER OVERFLOWS.** Sanitary Sewer Overflows within the West Fork Sewer System which includes all wastewater conveyances that deliver wastewater to the West Fork Sanitary Sewer System are the sole legal and regulatory responsibility of West Fork.

- a. Sanitary Sewer Overflows shall be reported by West Fork to ADEQ with a copy to Fayetteville Water/Wastewater Operations in compliance with ADEQ's reporting requirements.

b. Sanitary Sewer Overflows exceeding 500 gallons or reaching any storm drainage conveyance (including pipes, ditches, etc.) or waterway shall be reported to the Beaver Water District within one working day of the overflow.

(12) **PLUMBING:**

a. **WATER SERVICE:**

- i. **West Fork Service Area.** Each customer shall install all plumbing in accordance with the ordinances, rules and regulations of the City of West Fork in effect at the time such plumbing is installed. All plumbing shall be inspected by West Fork.
- ii. **Fayetteville Service Area.** Each customer shall install all plumbing in accordance with the ordinances, rules and regulations of Fayetteville in effect at the time such plumbing is installed. All plumbing shall be permitted and inspected by Fayetteville and the water impact fee shall be paid to and collected by the City of Fayetteville.

b. **SEWER SERVICE:** Each customer shall install all wastewater plumbing in accordance with the ordinances, rules and regulations of the City of West Fork and be inspected by West Fork.

(13) **COMPLIANCE:** West Fork and all sewer customers shall constantly comply with the ordinances, rules and regulations of Fayetteville (as to pretreatment requirements, prohibited substances, etc.), the U.S. Environmental Protection Agency, the Arkansas Department of Health, and the Arkansas Department of Environmental Quality governing public health and sewer operations and usage which may now exist or may hereinafter be promulgated. Failure or refusal of any customer to comply with such ordinances, rules or regulations will subject the customer to immediate discontinuance of water and sewer service and Fayetteville shall in no way be liable for any damages or expenses which may or may not result from such discontinuance. West Fork shall also comply with the following terms and conditions:

- a. West Fork shall adopt within 6 months from the date of this Contract, a sewer use ordinance which is at least as stringent as Article III – Discharge and Pretreatment Regulations of Fayetteville’s sewer use ordinance, including the local limits set out in § 51.075(D) of Article III. Additionally, West Fork’s sewer use ordinance shall be revised as necessary to reflect changes made to Fayetteville’s sewer use ordinance and/or local limits.
- b. West Fork shall submit a revised user inventory to Fayetteville at least on an annual basis.

- c. West Fork designates Fayetteville, or its authorized representative, as the agent of West Fork for the purposes of implementation of West Fork's sewer use ordinance with industrial users connected to the West Fork system. Fayetteville, on behalf of and as an agent for West Fork will perform technical and administrative duties necessary to the implementation of West Fork's sewer use ordinance. When necessary, Fayetteville will: (1) update the industrial wastewater survey; (2) prepare discharge permits to all users required to obtain a permit; (3) conduct inspections, sampling, and analysis; (4) recommend appropriate enforcement action as outlined in the enforcement response plan; and (5) perform any other technical or administrative duties the parties to this agreement deem appropriate. Fayetteville may, as an agent of West Fork take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.
- d. West Fork shall provide Fayetteville with access to all information that West Fork obtains as part of its pretreatment activities.
- e. West Fork shall provide Fayetteville with access to the facilities of industrial users located within West Fork's jurisdiction for the purpose of inspection, sampling and any other duties deemed necessary by Fayetteville. The City of Fayetteville will provide the City of West Fork prior notice.
- f. All costs incurred by Fayetteville, in the implementation of West Fork's pretreatment section of the sewer use ordinance on behalf of West Fork (including labor, equipment, sampling, and analysis, etc.) shall be borne by the City of West Fork. In the event of a lawsuit relating to the implementation or enforcement of the pretreatment program in West Fork, all expenses incurred by Fayetteville in the defense of that lawsuit shall be paid by West Fork. The items for which West Fork shall be responsible shall include, but shall not be limited to the use of outside consultants, attorneys, or other professional expertise.
- g. West Fork has the primary responsibility for enforcing pretreatment standards within the West Fork's jurisdiction and shall act upon the enforcement recommendations from the City of Fayetteville. In the event that the City of West Fork fails or is unable to enforce the pretreatment regulations, Fayetteville has the right to take action directly against noncompliant industrial users.

- h. No industrial user outside the limits of the City of West Fork shall be allowed to tie on to the West Fork sewer system.
- i. **REMEDIES:** It is recognized by the parties that this agreement contemplates the treatment of wastewater delivered from businesses and residences in and around West Fork and the cessation of the delivery of this service would have the potential to create public health and environmental problems. If either party to this agreement concludes that there is a breach of any terms of this contract, that party shall notify the other party by electronic mail and certified mail of the breach. After notification, the party in breach shall remedy the breach within thirty (30) days of receipt of the notice of breach. If the party claiming breach is not satisfied that the breach has been cured, then that party may pursue specific enforcement of the terms of this agreement through the Circuit Courts of Washington County, Arkansas. Prior to the filing of any action in the Circuit Courts, the parties should attempt to mediate any claims before a mutually agreeable mediator, the cost of which shall be shared equally by the parties to this agreement. A decision reached in circuit court or in mediation will in no way limit Fayetteville's or West Fork's power to enforce requirements directly against industrial users located in West Fork, nor will it preclude Fayetteville or West Fork from seeking other remedies including, but not limited to, specific performance.

(14) **TAXES AND FRANCHISE FEES PROHIBITED:** West Fork will not during the period of this contract or any renewal thereof, levy any franchise tax or fee, occupation tax or any other tax or fee of any form whatsoever, by whatever name it may be called, upon Fayetteville, its water system or the operations called for by this contract. Nothing contained herein shall preclude the collection of any gross receipts tax (i.e. state, county or local sales tax) enacted in accordance with state law and not otherwise made exempt by state law.

(15) **NOTICES:** Any written notices provided for herein shall be sufficient if hand delivered or by certified mail, return receipt requested, postage prepaid, to the Mayor of the City of Fayetteville, 113 West Mountain Street, Fayetteville, Arkansas, 72701, or the Mayor of the City of West Fork, 262 W. Main, West Fork, AR, 72774.

(16) **COMPLETE AGREEMENT:** It is agreed that neither party hereto is relying upon any oral or written information made by the other prior to the signing of this contract unless expressly provided herein, and that this contract constitutes the entire agreement between the parties.

(17) **AMENDMENT OF CONTRACT:** Both parties retain the right to present proposed amendments to this contract at any time. If such amendment is approved by

both City Councils of West Fork and Fayetteville, and signed by both Mayors, this Contract shall be changed as stated in the written and approved amendment.

(18) **CONTRACT BINDING ON SUCCESSORS.** This contract shall be binding upon the parties thereto, their successors and assigns. In the event of any occurrence rendering West Fork incapable of performing under this contract, any successor of West Fork or Fayetteville, whether by result of legal process, assignment, or otherwise shall succeed to the rights of West Fork and Fayetteville under this contract.

(19) **SEVERABILITY:** If any phrase, clause, sentence or paragraph of this contract shall be declared invalid by the Judgment or Decree of a Court of competent jurisdiction, such invalidity shall not affect any of the remaining sentences or paragraphs of this contract.

(20) **NOT A JOINT VENTURE:** Neither city shall be responsible for the acts or omissions of the other city's officers, agents, employees, contractors and subcontractors. Nothing in the Agreement shall be construed as creating a partnership or joint venture between the Cities of Fayetteville and West Fork.

(21) **SOVEREIGN IMMUNITY:** Nothing in this contract shall be construed to waive or limit the sovereign immunity enjoyed by both cities.

IN WITNESS WHEREOF, the Mayor and City Clerk of the City of Fayetteville, Arkansas, by authority of a resolution adopted by the City Council of the City of Fayetteville, Arkansas, and the Mayor and City Recorder/Treasurer of the City of West Fork, Arkansas, by authority of a resolution adopted by the City Council of the City of West Fork, Arkansas, have hereunto set their hand and caused the corporation seal to be affixed and dated this ____ day of _____ 2019.

City of Fayetteville, Arkansas

City of West Fork, Arkansas

APPROVED:

APPROVED:

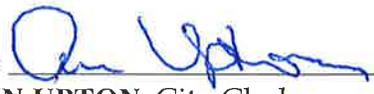
By: _____
LIONELD JORDAN, Mayor

By: 
HEITH CAUDLE, Mayor

ATTEST:

ATTEST:

By: _____
SONDRA E. SMITH, City Clerk

By: 
ANN UPTON, City Clerk