

City of Fayetteville Staff Review Form

2021-0623

Legistar File ID

9/7/2021

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

Tim Nyander

8/13/2021

WATER SEWER (720)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of a fifteen-year contract between the City of Fayetteville and the City of Elkins for collection and treatment of wastewater from Elkins at the Noland Water Resource Recovery Facility.

Budget Impact:

N/A	N/A
Account Number	Fund
N/A	N/A
Project Number	Project Title
Budgeted Item? <u> No </u>	Current Budget \$ -
	Funds Obligated \$ -
	Current Balance \$ -
Does item have a cost? <u> No </u>	Item Cost \$ -
Budget Adjustment Attached? <u> No </u>	Budget Adjustment \$ -
	Remaining Budget \$ -

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF SEPTEMBER 7, 2021

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff
Water & Sewer Committee

FROM: Tim Nyander, Utilities Director

DATE: August 13, 2021

SUBJECT: City of Elkins – Contract for Sanitary Sewer Service

RECOMMENDATION:

Staff recommends approval of a fifteen-year agreement between the City of Fayetteville and the City of Elkins to treat Elkins' wastewater in Fayetteville's Wastewater Treatment Facility and discharge treated effluent under Fayetteville's National Pollution Discharge Elimination System (NPDES) permit.

BACKGROUND:

Fayetteville has treated Elkins' wastewater for over 40 years. The current sewer services agreement has expired, and both entities desire to continue the sewer service agreement.

DISCUSSION:

Fayetteville agrees to accept for treatment the sanitary sewage delivered by Elkins to the Fayetteville system and to process such wastes in the same manner as wastes from Fayetteville are treated. Elkins will own and maintain all facilities required to deliver wastewater from Elkins to a Point of Connection to Fayetteville's sewer collection system at Lewis Woods Lane.

Fayetteville and Elkins agree that Fayetteville shall accept and treat all wastewater flows from Elkins until the bio-loading at the Paul R. Noland Treatment Plant ("Plant") and the hydraulic loading at any point in the collection system from the Point of Connection to and including the "Plant" reaches 75%, and, at that time the Elkins and Fayetteville agree to pro-rate the remaining capacity between all cities and any non-city customers using the Plant based on the existing percentage of that Plant by each city or non-city customer until additional capacity is provided. Fayetteville will provide monthly reports to Elkins showing the average bio-loading for each month.

The rates that the City of Elkins will pay for sanitary sewer service are based on 85% of the metered wholesale potable water that is provided to Elkins from Fayetteville. These rates will remain unchanged.

These items were contained in the previous agreement and are unchanged. The term of the contract would start on September 7, 2021 and be effective for fifteen years.

BUDGET/STAFF IMPACT:

There is no budget impact. The rates remain unchanged from what Elkins is currently paying for sanitary sewer service.

Attachments:

Contract for Sanitary Sewer Service

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

This Contract, is agreed to and entered into this _____ day of _____, 2021, by and between the City of Fayetteville, Arkansas, a municipal corporation, hereinafter referred to as "Fayetteville", and the City of Elkins, Arkansas, a municipal corporation, hereinafter referred to as "Elkins", witnesseth:

WHEREAS, Fayetteville in its governmental capacity owns and operates its own complete wastewater collection, treatment and discharge system; and

WHEREAS, Elkins in its governmental capacity owns and operates its own wastewater collection system and does not operate a wastewater treatment or discharge system; and

WHEREAS, Fayetteville receives wastewater from Elkins and then collects and processes the wastewater in Fayetteville's wastewater treatment facility and discharges treated wastewater effluent under Fayetteville's National Pollution Discharge Elimination System (NPDES) permit; and

WHEREAS, at this time it has been determined that the best and most feasible treatment for Elkins' wastewater can be provided by Fayetteville's wastewater treatment facilities; and

WHEREAS, Elkins desires to contract with Fayetteville to provide continued collection and treatment for the wastewater from Elkins; and

WHEREAS, Fayetteville must ensure that this role does not place financial burden of Fayetteville's retail customers for which Fayetteville's retail customers receive no benefit; and

WHEREAS, Elkins must ensure that this role does not place financial burdens on Elkins' retail customers for which Elkins' retail customers receive no benefit; and

WHEREAS, Elkins acknowledges that Fayetteville must add and fund capacity additions from time-to-time.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions hereinafter set forth and other valuable considerations, the receipt of which is hereby acknowledged by Fayetteville and Elkins, it is hereby agreed as follows:

A. TREATMENT OF SEWAGE

1. Fayetteville agrees to accept for treatment the sanitary sewage delivered by Elkins 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:
2. Elkins will own and maintain all facilities required to deliver wastewater from Elkins to a "Point of Connection" to Fayetteville's sewer collection system as described in Section I below. Elkins' wastewater will be discharged to the environment under Fayetteville's NPDES permit or permits, as well as any other regulatory requirements that apply as a result of said permit or permits. This applies to any and all permits that pertain to any portion of the wastewater conveyance and treatment system through which Elkins wastewater flows. Fayetteville will provide Elkins a current copy of the NPDES permit and any future revisions. Permits which are issued relative to portions of the Fayetteville wastewater conveyance and treatment system through which Elkins wastewater does not flow do not apply.
3. Fayetteville and Elkins agree that Fayetteville shall accept and treat all wastewater flows from Elkins until the bio-loading at the Paul Noland Plant ("Plant") and the hydraulic loading at any point in the collection system from the Point of Connection to and including the "Plant" reaches 75%, and, at that time the Elkins and Fayetteville agree to pro-rate the remaining capacity between all cities and any non-city customers using the "Plant" based on the existing percentage of that "Plant" by each city or non-city customer until additional capacity is provided. Fayetteville will provide monthly reports to Elkins showing the average bio-loading for each month.

B. RATES FOR SEWER SERVICE

1. Elkins and Fayetteville agree that rate-making shall be fair and equitable to all customer classes, be easy to administer and understand and shall be based on policies that result in predictable rate adjustments and avoid abrupt rate changes.
2. Elkins agrees that Fayetteville's return on investment on assets employed to provide service to Elkins will be limited to 2% above the average bond coupon outstanding debt at the time of the comprehensive cost of service study noted in paragraph 4 below.
3. Elkins and Fayetteville agree the rate for sewage treatment services provided herein shall be **\$5.04** per 1,000 gallons of sewage received by Fayetteville from Elkins for treatment beginning on the date this agreement is approved by both Cities, As provided by Fayetteville City Code § 51.137(A)(2), beginning on January 1, 2021, all monthly sewer quantity charges-usage rates per 1000 gallons shall be increased by 3% per year.

4. Fayetteville will conduct a comprehensive cost-of-service study periodically that will reset these sewer rates based on industry standards. 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 part or whole on the rate making standards promulgated by the American Water Works Association (AWWA), Water Environment Federation (WEF) or other authoritative organizations. All the wastewater flows from Elkins shall flow through a metering device provided at the pump station which pumps to the point of connection of the Elkins system to the Fayetteville system.

C. IMPACT FEE IMPLEMENTATION OR CONTRACTUAL SURCHARGE

1. Elkins and Fayetteville further agree that Elkins shall pay an additional \$0.25/1,000 gallons of billed sewage, which began on January 1, 2006, to fund Elkins' portion of future capacity enhancements to the Fayetteville collection and treatment facilities utilized by Elkins. Fayetteville and Elkins agree that this rate per thousand shall be evaluated concurrent with each comprehensive cost-of- service study as governed by Section J below. Fayetteville and Elkins further agree that Elkins shall assess, collect and remit to Fayetteville the cost of increasing capacity for the sewer lines necessary to serve Elkins as depicted in APPENDIX A and described in Section K. The capacity cost is to be calculated on the volume of contributed wastewater flow caused by the development under review.
2. Impact fees apply pursuant to Section 159.02 of the Fayetteville Unified Development Code. If the City of Fayetteville conducts another impact fee study then the contract may be amended to implement the new impact fees.
3. The payment for wastewater treatment shall be based on metered water purchases discounted by the formula described in APPENDIX B. Elkins and Fayetteville agree to use eighty-five per cent (85%) as the initial percentage. This initial percentage shall remain in effect until December 31, 2025 at which time the percentage may be adjusted to reflect adjusted wastewater flows as calculated by a registered engineer contracted by Elkins. Elkins and Fayetteville agree that the volume of wastewater received by Fayetteville at the "Point of Connection" shall be measured by the wastewater meter installed at the upstream lift station. The Cities agree to base monthly billing on the percentage method unless the metering device readings detect any volume discrepancies greater than 10% for three consecutive months. Elkins and Fayetteville agree to use actual meter readings while the volume discrepancies are investigated. The use of the meter for billing purposes shall cease only upon mutual agreement between Elkins and Fayetteville.
4. Fayetteville shall provide the maintenance and any required replacement of the metering device, and Elkins shall have the right of inspection of the metering device and "Point of Connection" at any reasonable time. Elkins shall have full and complete

access to the pump station at all times. The metering device shall be calibrated in compliance with the manufacturer's guidelines for accuracy once per year by Fayetteville.

5. A statement for sewer services shall be rendered by Fayetteville once each month, and shall be paid by Elkins in accordance with Fayetteville Code of Ordinances Chapter 51.141, as amended from time-to-time and incorporated herein as of September 14, 2019:

Sewer Billing procedure: (A) Bills for sewer service shall be rendered monthly. Sewer bills are due and payable on or before the 20th day following the billing date stated on the sewer bills. Sewer bills not paid on or before the due date shall be considered delinquent and an additional charge of 10% of the total bill shall be added, and if any bill is not paid within 30 days after the bill shall be due, suit may be brought to collect the amount due, together with the expenses of collection and a reasonable attorney's fee. (B) In the case of the sewer customers outside the city limits, if the monthly service charges are not paid within the prescribed time, sewer service to the customer will be discontinued in the same manner and subject to the same provisions as prescribed for discontinuance of service under 51.140(B).

D. ELKINS RESPONSIBILITY FOR SEWER MAINTENANCE

1. Elkins shall have full responsibility for all maintenance and operations of Elkins' sanitary sewer system, including all parts thereof necessary to deliver the sanitary waste to the point of connection with the Fayetteville system in such a manner to be suitable for the treatment capabilities of the Fayetteville system. In such regard, Elkins agrees to comply with all reasonable requirements of Fayetteville.
2. Elkins agrees that Fayetteville will have the right to inspect the sanitary sewage system of Elkins at all reasonable times to assure Fayetteville that the construction, maintenance and operation of said sanitary sewer system in being carried out in a manner consistent with modern engineering and health practices. Fayetteville may inspect any taps onto the sanitary sewer system of Elkins at the time of installation of said taps, said inspection to be by a designated official of Fayetteville. Fayetteville will notify the Elkins Water and Sewer Department during normal business hours, of Fayetteville's intent to inspect portions of Elkins Wastewater Collection System. Fayetteville agrees to provide Elkins a copy of any written reports that result from the inspection(s).

E. ELKINS' ADOPTION OF SEWER CODE REQUIREMENTS

1. Elkins designates Fayetteville, or its authorized representative, as the agent of Elkins for the purposes of implementation of Elkins' sewer use ordinance with industrial users connected to the Elkins system. Fayetteville, on behalf of and as an agent for Elkins will perform technical and administrative duties necessary to the implementation of Elkins' 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 Elkins 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 at the wastewater treatment plant.

2. Elkins 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. Elkins shall also comply with the following terms and conditions:
 - a. Elkins shall adopt within 6 months from the date of this Contract, a sewer use ordinance which is at least as stringent as Chapter 51, Article III – Discharge and Pretreatment Regulations of the Fayetteville City Code, including the local limits set out in § 51.075(D). Additionally, Elkins' sewer use ordinance shall be revised as necessary to reflect changes made to Fayetteville's sewer use ordinance and/or local limits.
 - b. Elkins shall submit a revised user inventory to Fayetteville at least on an annual basis.
 - c. Elkins shall provide Fayetteville with access to all information that Elkins obtains as part of its pretreatment activities.
 - d. Elkins shall provide Fayetteville with access to the facilities of industrial users located within Elkin'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 Elkins Fork prior notice.
 - e. All costs incurred by Fayetteville, in the implementation of Elkins' pretreatment section of the sewer use ordinance on behalf of Elkins' (including labor, equipment, sampling, and analysis, etc.) shall be borne by the City of Elkins. In the event of a lawsuit relating to the implementation or enforcement of the pretreatment program in Elkins, all expenses incurred by Fayetteville in the defense of that lawsuit shall be paid by Elkins. The items for which Elkins shall be responsible shall include, but shall not be limited to the use of outside consultants, attorneys, or other professional expertise.
 - f. Elkins has the primary responsibility for enforcing pretreatment standards within the

Elkins' jurisdiction and shall act upon the enforcement recommendations from the City of Fayetteville. In the event that the City of Elkins fails or is unable to enforce the pretreatment regulations, Fayetteville has the right to take action directly against noncompliant industrial users.

- g. No industrial user outside the limits of the City of Elkins shall be allowed to tie on to the Elkins sewer system.
3. **REMEDIES:** It is recognized by the parties that this agreement contemplates the treatment of wastewater delivered from businesses and residences in and around Elkins 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 Elkins' power to enforce requirements directly against industrial users located in Elkins, nor will it preclude Fayetteville or Elkins from seeking other remedies including, but not limited to, specific performance.
- a. 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.
 - b. Elkins shall provide Fayetteville with access to all information that Elkins obtains as part of its pretreatment activities.

F. REPORTING DEVELOPMENT APPROVALS

- 1. Elkins agrees to provide to Fayetteville, on an annual basis, all development approval grants by the Elkins Planning Commission and/or Elkins City Council.

G. TERM OF CONTRACT

- 1. Fayetteville and Elkins 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 (H).

H. CONTRACT RENEWAL

1. Either party shall have the option to renew this contract upon terms and conditions as may be negotiated and agreed to by Fayetteville and Elkins by giving not less than twelve (12) months of notice in advance of the termination date of this contract.

I. EFFECTIVE DATE

1. 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.

J. SEWER RATE SCHEDULE ADJUSTMENT

1. The rate schedule established herein is subject to adjustment by Fayetteville every four (4) years during this contract upon thirty (30) days written notice to Elkins that Fayetteville intends to conduct a comprehensive rate study.

K. POINT OF CONNECTION

1. The "Point of Connection" shall be at the end of Fayetteville's 10-inch gravity sewer line in Lewis Woods Lane in the Baldwin Community as depicted in APPENDIX A.

L. HOLDHARMLESS

1. Elkins covenants and agrees that it will defend and hold harmless against and indemnify said City of Fayetteville, Arkansas, for any judgment which might be obtained against them by reason of any negligent act on the part of Elkins in the operations, maintenance and construction of Elkins' sewage collection facilities within Elkins' service area. This provision does not waive either City's statutory sovereign immunity. Fayetteville shall not be responsible for damages resulting from acts of God, acts of war, insurrections, or rebellions, acts of public enemy, acts of any unauthorized persons, firms, or corporations, or acts of Elkins', its agents or employees.

M. CONTRACT BINDING ON SUCCESSORS

1. This contract shall be binding upon the parties hereto, their successors and assigns. In the event of any occurrence rendering Elkins incapable of performing under this contract, any successor of Elkins, whether by result of legal process, assignment, or otherwise shall succeed to the rights of Elkins under this contract.

N. NO FRANCHISE OR OTHER FEE OR TAX TO BE LEVIED

1. Elkins will not during the period of this contract or any renewal thereof, levy any franchise tax, occupation tax, or any other tax or fee of any form whatsoever, by

whatever name it may be called, upon Fayetteville, or the services rendered by Fayetteville pursuant to this contract without consent of all the parties.

O. TERMINATION

1. This agreement may be terminated by either party upon a material or substantial breach by the other of any of the covenants or agreements contained herein, and the failure of the party in breach to remedy such breach within six (6) months after receipt of written notice of the existence of such breach. Either party will have the right to utilize a mediation process if they disagree with a proposed breach. Elkins reserves the right to re-negotiate or terminate this contract if it is advantageous for the Elkins to pursue a different type of sewage treatment process, subject to advance notification of at least two years.

P. NOTICE

1. The written notices provided for herein shall be sufficient if sent 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 Elkins, 1874 Stokenbury Road, Elkins, Arkansas, 72727, but not limited thereto.

IN AGREEMENT WITH ALL THE TERMS AND CONDITIONS ABOVE AND 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, and the Mayor and City Recorder of the City of Elkins, Arkansas, by authority of a Resolution adopted by the City Council of the City of Elkins, have hereunto set their hand and caused the corporation seal to be affixed and dated this ____ day of _____, 2021.

CITY OF ELKINS, ARKANSAS

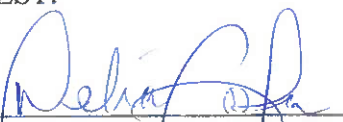
CITY OF FAYETTEVILLE, ARKANSAS

By: 
BRUCE LEDFORD, Mayor

By: _____
LIONELD JORDAN, Mayor

ATTEST:

ATTEST:

By: 
DELIA FOSTER, City Clerk

By: _____
KARA PAXTON, City Clerk

Appendix A

Fayetteville - Elkins Wastewater Agreement

