

### City of Fayetteville Item Review Form

# 2014-0145

Legistar File Number

## April 15, 2014

City Council Meeting Date - Agenda Item Only

N/A for Non-Agenda Item

## Don Marr

Submitted By

Utilities - Water/Sewer Department

Department

### Action Required:

To approve an ordinance for a bid waiver and approving a contract with RJN Group, Inc. for professional engineering services in the amount of \$56,000.

Does this item have a cost?  Yes  No

\$56,000.00

Cost of this request

\$56,000.00

Category or Project Budget

Engineering Services

Program or Project Name

5400.5700.5314.00

Account Number

\$0.00

Funds Used to Date

Sewer Mains Construction

Program or Project Category

02017-1202

Project Number

\$0.00

Remaining Balance

Water & Sewer Fund

Fund Name

Budgeted Item?  Yes  No

Budget Adjustment Attached?  Yes  No

Previous Ordinance or Resolution # \_\_\_\_\_

Original Contract Number: \_\_\_\_\_

ENTERED  
3/24/14  
P.A.

V20120812  
ENTERED  
3/21/14  
J.M.

Comments:

*[Signature]* 3/21/14

*Paul A. Becher* 3-25-2014


*Paul A. Becher* 3-25-2014

*for Don Marr*

*[Large Signature]*

## CITY COUNCIL AGENDA MEMO

### MEETING OF APRIL 15, 2014

**TO:** Mayor and City Council  
**THRU:** Mayor Lioneld Jordan  
**FROM:** Don Marr, Chief of Staff   
**DATE:** March, 21, 2014  
**SUBJECT:** Engineering Services Contract

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#### RECOMMENDATION:

Pass an ordinance for a bid waiver and approving a contract with RJN Group Inc. for professional engineering services for \$56,000.00 to be used specifically for the completion of projects within the Water & Sewer Fund that have begun and where use of these services will save time and money to finish related engineering work.

#### BACKGROUND:

The City of Fayetteville Utilities Director – David Jurgens, and Design Team Engineer – Shannon Jones both accepted new positions and voluntarily left their employment with the City of Fayetteville in January and February of 2014 respectively. In their departure there are no remaining licensed engineers to stamp plans and complete drawings, and prepare bid documents for numerous projects that were in progress once engineering services was brought in-house approximately 5 years ago.

#### DISCUSSION:

It has been determined that the new Utilities Director should be involved in determining if we want to continue with in house engineering services going forward – and so replacement of our internal engineering professional for the water/sewer design team will be delayed until the new Utilities Director is hired and an assessment of continuing in this manner can be determined.

We also believe that if the decision is made to retain this position in-house then the new Utility Director should have the opportunity of hiring such an important member of their staff.

In the interim it will be less costly to utilize the firm that Shannon Jones left to join, and to contract specifically with them to utilize Shannon Jones to complete in progress projects that he was working on while employed with the City of Fayetteville – providing the City with engineering services and bid document preparation rather than incurring additional time and delaying projects, and paying additional cost of bringing up to speed a new engineering firm to complete these tasks.

Our CH2M Hill contract allows for the hiring/contracting of Engineering Services and we will be adding engineering services to this to the scope of the contract with CH2M Hill for new projects moving forward and during the next 12 to 18 month period. Once our new Utilities Director is hired and a determination can be made about the best way to proceed in the future. We will make a decision of in-house, vs. contracting with CH2M Hill vs. outside contracting over the next year.

**BUDGET/STAFF IMPACT:**

An appropriation of \$56,000.00 is requested to pay for engineering services. This will be paid for within the cost of these projects.

**ORDINANCE NO. \_\_\_\_\_**

AN ORDINANCE WAIVING THE REQUIREMENTS OF FORMAL COMPETITIVE BIDDING AND APPROVING AN AGREEMENT WITH RJN GROUP, INC. FOR PROFESSIONAL ENGINEERING SERVICES TO BE USED FOR COMPLETION OF UTILITIES PROJECTS CURRENTLY IN PROGRESS IN AN AMOUNT NOT TO EXCEED \$56,000.00, AND APPROVING A BUDGET ADJUSTMENT

**WHEREAS**, the City of Fayetteville Utilities Director and Design Team Engineer voluntarily left their employment with the City of Fayetteville recently, leaving no remaining licensed engineers to perform necessary services on utilities projects that are still in progress; and

**WHEREAS**, the search for a new Utilities Director is ongoing and the City believes the replacement of an internal engineering professional should be done by the new Utilities Director; and

**WHEREAS**, it will be less costly and will require much less delay to hire the engineering firm that the City's previous Design Team Engineer joined to complete the projects in which he was involved before leaving the City.

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FAYETTEVILLE, ARKANSAS:**

Section 1. That the City Council of the City of Fayetteville, Arkansas hereby finds that such circumstances constitute an exceptional situation where competitive bidding is deemed not feasible or practical, and therefore waives the requirements of formal competitive bidding and authorizes the Mayor to execute an agreement with RJN Group, Inc. for professional engineering services for completion of utilities projects currently in progress in an amount not to exceed \$56,000.00.

Section 2. That the City Council of the City of Fayetteville, Arkansas hereby approves a budget adjustment, a copy of which is attached as Exhibit "A".

**Page 2**  
**Ordinance No.**

**PASSED** and **APPROVED** this 15<sup>th</sup> day of April, 2014.

APPROVED:

ATTEST:

By: \_\_\_\_\_  
**LIONELD JORDAN**, Mayor

By: \_\_\_\_\_  
**SONDRA E. SMITH**, City Clerk/Treasurer

City of Fayetteville, Arkansas - Budget Adjustment Form (Legistar Version)

<b>Budget Year</b> 2014	<b>Division:</b> Utilities Director <b>Dept.:</b> Utilities <b>Requestor:</b> Cheryl Partain	<b>Adjustment Number</b>
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**BUDGET ADJUSTMENT DESCRIPTION / JUSTIFICATION:**

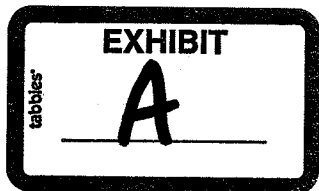
A BA is needed within the Sanitary Sewer Rehabilitation Project to cover costs for miscellaneous engineering services as needed on capital projects.

REQUEST DATE: 4/1/2014  
 LEGISTAR FILE ID#: 2014-0145  
**BUDGET & INFORMATION MANAGEMENT USE**  
*Kevin Springer*  
3/21/2014 9:40 AM  
 Budget Director \_\_\_\_\_ Date \_\_\_\_\_  
 TYPE:  A  B  C  D  E  P  
 DESCRIPTION: \_\_\_\_\_  
 GLDATE: \_\_\_\_\_  
 POSTED: \_\_\_\_\_ / \_\_\_\_\_

RESOLUTION/ORDINANCE \_\_\_\_\_

v.20140306

Account Number	Increase / (Decrease)		Project.Sub#		AT	Account Name
	Expense	Revenue	Project	Sub		
TOTAL	-	-				
5400.5700.5314.00	56,000	-	02017	1202	EX	Professional Services
5400.5700.5815.00	(56,000)	-	02017	1	EX	Sewer Improvements
	-	-				
	-	-				
	-	-				
	-	-				
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### City of Fayetteville - Purchase Order Request (PO)

(Not a Purchase Order)  
All PO Requests shall be scanned to the Purchasing e-mail: [Purchasing@fayetteville-ar.gov](mailto:Purchasing@fayetteville-ar.gov).  
Purchase shall not be made until an actual PO has been issued.

<b>Vendor #:</b> 291		<b>Vendor Name:</b> RJN Group, Inc.		<b>Requisition No.:</b>	<b>Date:</b>
<b>Address:</b> 12160 Abrams Rd Ste 400				<b>P.O Number:</b>	
<b>City:</b> Dallas		<b>State:</b> TX		<b>Mail</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Requester:</b> Cheryl Partain		<b>Requester's Employee #:</b> 2548		<b>Legistar#:</b> 2014-0145	
<b>City:</b> Dallas		<b>State:</b> TX		<b>Expected Delivery Date:</b>	
<b>Zip Code:</b> 75243		<b>Ship to code:</b>		<b>Taxable</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Requester:</b> Cheryl Partain		<b>Requester's Employee #:</b> 2548		<b>Quotes Attached</b> <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
<b>Extension:</b> 224					

Item	Description	Quantity	Unit of Issue	Unit Cost	Extended Cost	Account Number	Project.Sub#	Inventory #	Fixed Asset #
1	Engineering Services As Needed	1	EA	56,000.00	\$56,000.00	5400.5700.5314.00	02017.1202		
2					\$0.00				
3					\$0.00				
4					\$0.00				
5					\$0.00				
6					\$0.00				
7					\$0.00				
8					\$0.00				
9					\$0.00				
10					\$0.00				
*	Shipping/Handling		Lot		\$0.00				

<b>Special Instructions:</b>	<b>Subtotal:</b> <u>          \$56,000.00</u>
	<b>Tax:</b> <u>          \$0.00</u>
	<b>Total:</b> <u>          \$56,000.00</u>

**Approvals:**

Mayor: _____	Department Director: _____	Purchasing Manager: _____
Chief Financial Officer: _____	Budget Director: _____	IT Director: _____
Dispatch Manager: _____	Utilities Manager: _____	Other: _____

AGREEMENT  
For  
PROFESSIONAL ENGINEERING SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
And  
RJN GROUP, INC.

THIS AGREEMENT is made as of \_\_\_\_\_, 2014, by and between City of Fayetteville, Arkansas, acting by and through its Mayor (hereinafter called CITY OF FAYETTEVILLE) and RJN GROUP, INC. (hereinafter called ENGINEER).

CITY OF FAYETTEVILLE from time to time requires professional engineering services in connection with the evaluation, design, and/or construction supervision of capital improvement projects. Therefore, CITY OF FAYETTEVILLE and ENGINEER in consideration of their mutual covenants agree as follows:

ENGINEER shall serve as CITY OF FAYETTEVILLE's professional engineering consultant in those assignments to which this Agreement applies, and shall give consultation and advice to CITY OF FAYETTEVILLE during the performance of ENGINEER's services. All services shall be performed under the direction of a professional engineer registered in the State of Arkansas and qualified in the particular field.

**SECTION 1 - AUTHORIZATION OF SERVICES**

- 1.1 Services on any assignment shall be undertaken only upon written Authorization of CITY OF FAYETTEVILLE and agreement of ENGINEER.
- 1.2 Assignments may include services described hereafter as Basic Services or as Additional Services of ENGINEER.
- 1.3 Changes, modifications or amendments in scope, price or fees to this contract shall **not** be allowed without a formal contract amendment approved by the Mayor and the City Council **in advance** of the change in scope, costs, fees, or delivery schedule.

**SECTION 2 - BASIC SERVICES OF ENGINEER**

- 2.1 Perform professional services in connection with the Project as hereinafter stated.
  - 2.1.1 The Scope of Services to be furnished by ENGINEER during the Project is included in Appendix A attached hereto and made part of this Agreement.
- 2.2 ENGINEER shall coordinate their activities and services with the CITY OF FAYETTEVILLE. ENGINEER and CITY OF FAYETTEVILLE agree that ENGINEER has full responsibility for the engineering services.



**SECTION 3 - RESPONSIBILITIES OF CITY OF FAYETTEVILLE**

- 3.1 CITY OF FAYETTEVILLE shall, within a reasonable time, so as not to delay the services of ENGINEER.
- 3.1.1 Provide full information as to CITY OF FAYETTEVILLE's requirements for the Project.
- 3.1.2 Assist ENGINEER by placing at ENGINEER's disposal all available information pertinent to the assignment including previous reports and any other data relative thereto.
- 3.1.3 Assist ENGINEER in obtaining access to property reasonably necessary for ENGINEER to perform its services under this Agreement.
- 3.1.4 Examine all studies, reports, sketches, cost opinions, proposals, and other documents presented by ENGINEER and render in writing decisions pertaining thereto.
- 3.1.5 Provide such professional legal, accounting, financial, and insurance counseling services as may be required for the Project.
- 3.1.6 The Utilities Director is the CITY OF FAYETTEVILLE's project representative with respect to the services to be performed under this Agreement. The Utilities Director shall have complete authority to transmit instructions, receive information, interpret and define CITY OF FAYETTEVILLE's policies and decisions with respect to materials, equipment, elements and systems to be used in the Project, and other matters pertinent to the services covered by this Agreement.
- 3.1.7 CITY OF FAYETTEVILLE and/or its representative will review all documents and provide written comments to ENGINEER in a timely manner.

**SECTION 4 - PERIOD OF SERVICE**

- 4.1 This Agreement will become effective upon the first written notice by CITY OF FAYETTEVILLE authorizing services hereunder.
- 4.2 The provisions of this Agreement have been agreed to in anticipation of the orderly progress of the Project through completion of the services stated in the Agreement. ENGINEER will proceed with providing the authorized services immediately upon receipt of written authorization from CITY OF FAYETTEVILLE. Said authorization shall include the scope of the services authorized and the time in which the services are to be completed. The anticipated schedule for this project is included as Appendix A.

**SECTION 5 - PAYMENTS TO ENGINEER**

- 5.1 The maximum not-to-exceed amount authorized for this Agreement shall be based on a Unit Price or Lump Sum basis as described in Appendix A.
- 5.2 Statements
- 5.2.1 Monthly statements for each calendar month shall be submitted to CITY OF FAYETTEVILLE or such parties as CITY OF FAYETTEVILLE may designate for professional services consistent with ENGINEER's normal billing schedule. Once established, the billing schedule shall be maintained throughout the duration of the Project. Applications for payment shall be

made in accordance with a format to be developed by ENGINEER and approved by CITY OF FAYETTEVILLE. Applications for payment shall be accompanied each month by the updated project schedule as the basis for determining the value earned as the work is accomplished. Final payment for professional services shall be made upon CITY OF FAYETTEVILLE's approval and acceptance with the satisfactory completion of the study and report for the Project.

### 5.3 Payments

5.3.1 All statements are payable upon receipt and due within thirty (30) days. If a portion of ENGINEER's statement is disputed by CITY OF FAYETTEVILLE, the undisputed portion shall be paid by CITY OF FAYETTEVILLE by the due date. CITY OF FAYETTEVILLE shall advise ENGINEER in writing of the basis for any disputed portion of any statement. CITY OF FAYETTEVILLE will make reasonable effort to pay invoices within 30 days of date the invoice is approved, however, payment within 30 days is not guaranteed.

### 5.4 Final Payment

5.4.1 Upon satisfactory completion of the work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, ENGINEER shall execute and deliver to CITY OF FAYETTEVILLE a release of all claims against CITY OF FAYETTEVILLE arising under or by virtue of this Agreement, except claims which are specifically exempted by ENGINEER to be set forth therein. Unless otherwise provided in this Agreement or by State law or otherwise expressly agreed to by the parties to this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of CITY OF FAYETTEVILLE's claims against ENGINEER or his sureties under this Agreement or applicable performance and payment bonds, if any.

## **SECTION 6 - GENERAL CONSIDERATIONS**

### 6.1 Insurance

6.1.1 During the course of performance of these services, ENGINEER will maintain (in United States Dollars) the following minimum insurance coverages:

<u>Type of Coverage</u>	<u>Limits of Liability</u>
Workers' Compensation Employers' Liability	Statutory \$500,000 Each Accident
Commercial General Liability Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Automobile Liability: Bodily Injury and Property Damage	\$1,000,000 Combined Single Limit
Professional Liability Insurance	\$1,000,000 Each Claim

ENGINEER will provide to CITY OF FAYETTEVILLE certificates as evidence of the specified insurance within ten days of the date of this Agreement and upon each renewal of coverage.

- 6.1.2 CITY OF FAYETTEVILLE and ENGINEER waive all rights against each other and their officers, directors, agents, or employees for damage covered by property insurance during and after the completion of ENGINEER's services.

## 6.2 Professional Responsibility

- 6.2.1 ENGINEER will exercise reasonable skill, care, and diligence in the performance of ENGINEER's services and will carry out its responsibilities in accordance with customarily accepted professional engineering practices. CITY OF FAYETTEVILLE will promptly report to ENGINEER any defects or suspected defects in ENGINEER's services of which CITY OF FAYETTEVILLE becomes aware, so that ENGINEER can take measures to minimize the consequences of such a defect. CITY OF FAYETTEVILLE retains all remedies to recover for its damages caused by any negligence of ENGINEER.

## 6.3 Cost Opinions and Projections

- 6.3.1 Cost opinions and projections prepared by ENGINEER relating to construction costs and schedules, operation and maintenance costs, equipment characteristics and performance, and operating results are based on ENGINEER's experience, qualifications, and judgment as a design professional. Since ENGINEER has no control over weather, cost and availability of labor, material and equipment, labor productivity, construction Contractors' procedures and methods, unavoidable delays, construction Contractors' methods of determining prices, economic conditions, competitive bidding or market conditions, and other factors affecting such cost opinions or projections, ENGINEER does not guarantee that actual rates, costs, performance, schedules, and related items will not vary from cost opinions and projections prepared by ENGINEER.

## 6.4 Changes

- 6.4.1 CITY OF FAYETTEVILLE shall have the right to make changes within the general scope of ENGINEER's services, with an appropriate change in compensation and schedule only after Fayetteville City Council approval of such proposed changes and, upon execution of a mutually acceptable amendment or change order signed by the Mayor of the CITY OF FAYETTEVILLE and the duly authorized officer of ENGINEER.

## 6.5 Termination

- 6.5.1 This Agreement may be terminated in whole or in part in writing by either party in the event of substantial failure by the other party to fulfill its obligations under this Agreement through no fault of the terminating party, provided that no termination may be effected unless the other party is given:

- 6.5.1.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,

- 6.5.1.2 An opportunity for consultation with the terminating party prior to termination.

- 6.5.2 This Agreement may be terminated in whole or in part in writing by CITY OF FAYETTEVILLE for its convenience, provided that ENGINEER is given:
- 6.5.2.1 Not less than ten (10) calendar days written notice (delivered by certified mail, return receipt requested) of intent to terminate,
  - 6.5.2.2 An opportunity for consultation with the terminating party prior to termination.
- 6.5.3 If termination for default is effected by CITY OF FAYETTEVILLE, an equitable adjustment in the price provided for in this Agreement shall be made, but
- 6.5.3.1 No amount shall be allowed for anticipated profit on unperformed services or other work,
  - 6.5.3.2 Any payment due to ENGINEER at the time of termination may be adjusted to cover any additional costs to CITY OF FAYETTEVILLE because of ENGINEER's default.
- 6.5.4 If termination for default is effected by ENGINEER, or if termination for convenience is effected by CITY OF FAYETTEVILLE, the equitable adjustment shall include a reasonable profit for services or other work performed. The equitable adjustment for any termination shall provide for payment to ENGINEER for services rendered and expenses incurred prior to the termination, in addition to termination settlement costs reasonably incurred by ENGINEER relating to commitments which had become firm prior to the termination.
- 6.5.5 Upon receipt of a termination action under Paragraphs 6.5.1 or 6.5.2 above, ENGINEER shall:
- 6.5.5.1 Promptly discontinue all affected work (unless the notice directs otherwise),
  - 6.5.5.2 Deliver or otherwise make available to CITY OF FAYETTEVILLE all data, drawings, specifications, reports, estimates, summaries and such other information and materials as may have been accumulated by ENGINEER in performing this Agreement, whether completed or in process.
- 6.5.6 Upon termination under Paragraphs 6.5.1 or 6.5.2 above CITY OF FAYETTEVILLE may take over the work and may award another party an agreement to complete the work under this Agreement.
- 6.5.7 If, after termination for failure of ENGINEER to fulfill contractual obligations, it is determined that ENGINEER had not failed to fulfill contractual obligations, the termination shall be deemed to have been for the convenience of CITY OF FAYETTEVILLE. In such event, adjustments of the agreement price shall be made as provided in Paragraph 6.5.4 of this clause.
- 6.6 Delays
- 6.6.1 In the event the services of ENGINEER are suspended or delayed by CITY OF FAYETTEVILLE or by other events beyond ENGINEER's reasonable control, ENGINEER shall be entitled to additional compensation and time for reasonable costs incurred by ENGINEER in temporarily closing down or delaying the Project.

## 6.7 Rights and Benefits

- 6.7.1 ENGINEER's services will be performed solely for the benefit of CITY OF FAYETTEVILLE and not for the benefit of any other persons or entities.

## 6.8 Dispute Resolution

- 6.8.1 Scope of Paragraph: The procedures of this Paragraph shall apply to any and all disputes between CITY OF FAYETTEVILLE and ENGINEER which arise from, or in any way are related to, this Agreement, including, but not limited to the interpretation of this Agreement, the enforcement of its terms, any acts, errors, or omissions of CITY OF FAYETTEVILLE or ENGINEER in the performance of this Agreement, and disputes concerning payment.

- 6.8.2 Exhaustion of Remedies Required: No action may be filed unless the parties first negotiate. If timely Notice is given under Paragraph 6.8.3, but an action is initiated prior to exhaustion of these procedures, such action shall be stayed, upon application by either party to a court of proper jurisdiction, until the procedures in Paragraphs 6.8.3 and 6.8.4 have been complied with.

### 6.8.3 Notice of Dispute

- 6.8.3.1 For disputes arising prior to the making of final payment promptly after the occurrence of any incident, action, or failure to act upon which a claim is based, the party seeking relief shall serve the other party with a written Notice.

- 6.8.3.2 For disputes arising within one year after the making of final payment, CITY OF FAYETTEVILLE shall give ENGINEER written Notice at the address listed in Paragraph 6.14 within thirty (30) days after occurrence of any incident, accident, or first observance of defect or damage. In both instances, the Notice shall specify the nature and amount of relief sought, the reason relief should be granted, and the appropriate portions of this Agreement that authorize the relief requested.

- 6.8.4 Negotiation: Within seven days of receipt of the Notice, the Project Managers for CITY OF FAYETTEVILLE and ENGINEER shall confer in an effort to resolve the dispute. If the dispute cannot be resolved at that level, then, upon written request of either side, the matter shall be referred to the President of ENGINEER and the Mayor of CITY OF FAYETTEVILLE or his designee. These officers shall meet at the Project Site or such other location as is agreed upon within 30 days of the written request to resolve the dispute.

- 6.9 CITY OF FAYETTEVILLE represents that it has sufficient funds or the means of obtaining funds to remit payment to ENGINEER for services rendered by ENGINEER.

## 6.10 Publications

- 6.10.1 Recognizing the importance of professional development on the part of ENGINEER's employees and the importance of ENGINEER's public relations, ENGINEER may prepare publications, such as technical papers, articles for periodicals, and press releases, pertaining to ENGINEER's services for the Project. Such publications will be provided to CITY OF FAYETTEVILLE in draft form for CITY OF FAYETTEVILLE's advance review. CITY OF FAYETTEVILLE shall review such drafts promptly and provide CITY OF FAYETTEVILLE's comments to ENGINEER. CITY OF FAYETTEVILLE may require deletion of proprietary data or confidential information from such publications, but otherwise

CITY OF FAYETTEVILLE will not unreasonably withhold approval. The cost of ENGINEER's activities pertaining to any such publication shall be for ENGINEER's account.

#### 6.11 Indemnification

6.11.1 CITY OF FAYETTEVILLE agrees that it will require all construction Contractors to indemnify, defend, and hold harmless CITY OF FAYETTEVILLE and ENGINEER from and against any and all loss where loss is caused or incurred or alleged to be caused or incurred in whole or in part as a result of the negligence or other actionable fault of the Contractors, or their employees, agents, Subcontractors, and Suppliers.

#### 6.12 Ownership of Documents

6.12.1 All documents provided by CITY OF FAYETTEVILLE including original drawings, CAD drawings, estimates, field notes, and project data are and remain the property of CITY OF FAYETTEVILLE. ENGINEER may retain reproduced copies of drawings and copies of other documents.

6.12.2 Engineering documents, computer models, drawings, specifications and other hard copy or electronic media prepared by ENGINEER as part of the Services shall become the property of CITY OF FAYETTEVILLE when ENGINEER has been compensated for all Services rendered, provided, however, that ENGINEER shall have the unrestricted right to their use. ENGINEER shall, however, retain its rights in its standard drawings details, specifications, databases, computer software, and other proprietary property. Rights to intellectual property developed, utilized, or modified in the performance of the Services shall remain the property of ENGINEER.

6.12.3 Any files delivered in electronic medium may not work on systems and software different than those with which they were originally produced. ENGINEER makes no warranty as to the compatibility of these files with any other system or software. Because of the potential degradation of electronic medium over time, in the event of a conflict between the sealed original drawings/hard copies and the electronic files, the sealed drawings/hard copies will govern.

#### 6.13 Notices

6.13.1 Any Notice required under this Agreement will be in writing, addressed to the appropriate party at the following addresses:

CITY OF FAYETTEVILLE's address:  
113 West Mountain Street  
Fayetteville, Arkansas 72701

ENGINEER's address:  
26 East Meadow, #7  
Fayetteville, AR 72701

6.14 Successor and Assigns

6.14.1 CITY OF FAYETTEVILLE and ENGINEER each binds himself and his successors, executors, administrators, and assigns to the other party of this Agreement and to the successors, executors, administrators, and assigns of such other party, in respect to all covenants of this Agreement; except as above, neither CITY OF FAYETTEVILLE nor ENGINEER shall assign, sublet, or transfer his interest in the Agreement without the written consent of the other.

6.15 Controlling Law

6.15.1 This Agreement shall be subject to, interpreted and enforced according to the laws of the State of Arkansas without regard to any conflicts of law provisions.

6.16 Entire Agreement

6.16.1 This Agreement represents the entire Agreement between ENGINEER and CITY OF FAYETTEVILLE relative to the Scope of Services herein. Since terms contained in purchase orders do not generally apply to professional services, in the event CITY OF FAYETTEVILLE issues to ENGINEER a purchase order, no preprinted terms thereon shall become a part of this Agreement. Said purchase order document, whether or not signed by ENGINEER, shall be considered as a document for CITY OF FAYETTEVILLE's internal management of its operations.

**SECTION 7 - SPECIAL CONDITIONS**

7.1 Additional Responsibilities of ENGINEER

7.1.1 CITY OF FAYETTEVILLE's review, approval, or acceptance of design drawings, specifications, reports and other services furnished hereunder shall not in any way relieve ENGINEER of responsibility for the technical adequacy of the work. Neither CITY OF FAYETTEVILLE's review, approval or acceptance of, nor payment for any of the services shall be construed as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

7.1.2 ENGINEER shall be and shall remain liable, in accordance with applicable law, for all damages to CITY OF FAYETTEVILLE caused by ENGINEER's negligent performance of any of the services furnished under this Agreement except for errors, omissions or other deficiencies to the extent attributable to CITY OF FAYETTEVILLE or CITY OF FAYETTEVILLE-furnished data.

7.1.3 ENGINEER's obligations under this clause are in addition to ENGINEER's other express or implied assurances under this Agreement or State law and in no way diminish any other rights that CITY OF FAYETTEVILLE may have against ENGINEER for faulty materials, equipment, or work.

7.2 Remedies

7.2.1 Except as may be otherwise provided in this Agreement, all claims, counter-claims, disputes and other matters in question between CITY OF FAYETTEVILLE and ENGINEER arising out of or relating to this Agreement or the breach thereof will be decided in a court of competent jurisdiction within Arkansas.

### 7.3 Audit: Access to Records

7.3.1 ENGINEER shall maintain books, records, documents and other evidence directly pertinent to performance on work under this Agreement in accordance with generally accepted accounting principles and practices consistently applied in effect on the date of execution of this Agreement. ENGINEER shall also maintain the financial information and data used by ENGINEER in the preparation of support of the cost submission required for any negotiated agreement or change order and send to CITY OF FAYETTEVILLE a copy of the cost summary submitted. CITY OF FAYETTEVILLE, the State or any of their authorized representatives shall have access to all such books, records, documents and other evidence for the purpose of inspection, audit and copying during normal business hours. ENGINEER will provide proper facilities for such access and inspection.

7.3.2 Records under Paragraph 7.3.1 above, shall be maintained and made available during performance on assisted work under this Agreement and until three years from the date of final payment for the project. In addition, those records which relate to any controversy arising out of such performance, or to costs or items to which an audit exception has been taken, shall be maintained and made available until three years after the date of resolution of such appeal, litigation, claim or exception.

7.3.3 This right of access clause (with respect to financial records) applies to:

7.3.3.1 Negotiated prime agreements:

7.3.3.2 Negotiated change orders or agreement amendments in excess of \$10,000 affecting the price of any formally advertised, competitively awarded, fixed price agreement:

7.3.3.3 Agreements or purchase orders under any agreement other than a formally advertised, competitively awarded, fixed price agreement. However, this right of access does not apply to a prime agreement, lower tier subagreement or purchase order awarded after effective price competition, except:

7.3.3.3.1 With respect to record pertaining directly to subagreement performance, excluding any financial records of ENGINEER;

7.3.3.3.2 If there is any indication that fraud, gross abuse or corrupt practices may be involved;

7.3.3.3.3 If the subagreement is terminated for default or for convenience.

### 7.4 Covenant Against Contingent Fees

7.4.1 ENGINEER warrants that no person or selling agency has been employed or retained to solicit or secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established commercial or selling agencies maintained by ENGINEER for the purpose of securing business. For breach or violation of this warranty, CITY OF FAYETTEVILLE shall have the right to annul this Agreement without liability or at its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.



7.5 Gratuities

7.5.1 If CITY OF FAYETTEVILLE finds after a notice and hearing that ENGINEER or any of ENGINEER's agents or representatives, offered or gave gratuities (in the form of entertainment, gifts or otherwise) to any official, employee or agent of CITY OF FAYETTEVILLE, in an attempt to secure an agreement or favorable treatment in awarding, amending or making any determinations related to the performance of this Agreement, CITY OF FAYETTEVILLE may, by written notice to ENGINEER terminate this Agreement. CITY OF FAYETTEVILLE may also pursue other rights and remedies that the law or this Agreement provides. However, the existence of the facts on which CITY OF FAYETTEVILLE bases such finding shall be in issue and may be reviewed in proceedings under the Remedies clause of this Agreement.

7.5.2 In the event this Agreement is terminated as provided in Paragraph 7.5.1, CITY OF FAYETTEVILLE may pursue the same remedies against ENGINEER as it could pursue in the event of a breach of the Agreement by ENGINEER. As a penalty, in addition to any other damages to which it may be entitled by law, CITY OF FAYETTEVILLE may pursue exemplary damages in an amount (as determined by CITY OF FAYETTEVILLE) which shall be not less than three nor more than ten times the costs ENGINEER incurs in providing any such gratuities to any such officer or employee.

7.6 Arkansas Freedom of Information Act

7.6.1 City contracts and documents, including internal documents and documents of subcontractors and sub-consultants, prepared while performing City contractual work are subject to the Arkansas Freedom of Information Act (FOIA). If a Freedom of Information Act request is presented to the CITY OF FAYETTEVILLE, ENGINEER will do everything possible to provide the documents in a prompt and timely manner as prescribed in the Arkansas Freedom of Information Act (A.C.A. §25-19-101 et seq.). Only legally authorized photocopying costs pursuant to the FOIA may be assessed for this compliance.

IN WITNESS WHEREOF, CITY OF FAYETTEVILLE, ARKANSAS by and through its Mayor, and ENGINEER, by its authorized officer have made and executed this Agreement as of the day and year first above written.

CITY OF FAYETTEVILLE, ARKANSAS

RJN GROUP, INC.

By: \_\_\_\_\_  
Mayor, Lioneld Jordan

By: Hygh M. Kelso  
Hygh M. Kelso

ATTEST:

By: \_\_\_\_\_  
City Clerk

Title: Vice President

END OF AGREEMENT FOR PROFESSIONAL ENGINEERING SERVICES

## Appendix A

1. Project Title: On-Call Services
2. Project Description: RJN Group will provide professional engineering services on an on-call basis for various water and wastewater facilities.
3. Services of RJN Group: RJN Group will perform duties as directed by the City of Fayetteville and agreed to by the Engineer. Work beyond the not to exceed amount below is considered extra work.
4. Payment to Engineer: The City of Fayetteville will pay RJN Group, for time spent on the project, at the hourly payroll rate of each of RJN Group's personnel during the performance of these services for work time directly connected with the project. The not to exceed cost of these services is \$19,900.00. The actual total fee may not exceed this estimate without a formal contract amendment approved by the City of Fayetteville. For informational purposes, a breakdown of RJN Group's approximate current hourly rates for each employee classification is included in Exhibit A.

Expenses other than salary costs that are directly attributable to performance of professional services will be billed as follows:

- a. Direct cost plus 12 percent professional fee for reproduction, presentation material preparation, presentation materials, mail/courier expenses, reports, plan sheets, etc.
  - b. The amount allowed by the federal government for mileage (\$0.56/mile).
5. Attachments: Exhibit A - Hourly Rate Schedule

Appendix A

Attachment A

RJN GROUP, INC.

HOURLY BILLING RATES

<u>CATEGORY</u>	<u>BILLING RATE RANGES*</u>
Administrative Staff	\$ 30 - \$ 75
Field Technician	\$ 45 - \$ 55
Field Supervisor	\$ 55 - \$ 68
Engineer Technician	\$ 70 - \$ 85
Geographic Information Services (GIS)	\$ 80 - \$ 90
Computer Aided Design and Drafting (CADD)	\$ 80 - \$ 90
Field Manager	\$ 80 - \$ 95
Engineer-In-Training (EIT)	\$ 85 - \$ 95
Project Engineer	\$105 - \$125
Project Manager	\$135 - \$165
Quality Assurance/Quality Control (QA/QC) Engineer	\$145 - \$165
Principal	\$190 - \$250

