

City of Fayetteville Item Review Form

2014-0198

Legistar File Number

5/6/14

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

Don Marr

Submitted By

Utilities

Department

Action Required:

Approval to exercise the City's option to accept the first of two available five-year contract extensions for operation, maintenance, management and engineering services for the City's wastewater treatment facilities and systems.

Does this item have a cost?  No

\$0.00

Cost of this request

0

Account Number

N/A

Project Number

\$0.00

Category or Project Budget

\$0.00

Funds Used to Date

\$0.00

Remaining Balance

Wastewater Treatment

Program or Project Name

Wastewater Treatment

Program or Project Category

Water/Sewer

Fund Name

Budgeted Item?  Yes

Budget Adjustment Attached?  No

V20130812

Previous Ordinance or Resolution # 240-13

Original Contract Number: 2113



Comments:

*[Signature]* 4-22-14


Paul A. Becher 4-22-2014

Don Marr 4-22-14  
*[Signature]*



## CITY COUNCIL AGENDA MEMO

**MEETING OF MAY 6, 2014**

**TO:** Mayor and City Council  
**THRU:** Don Marr, Chief of Staff  
**FROM:** Billy Ammons, Wastewater Treatment   
**DATE:** April 18, 2014

**SUBJECT:** An Agreement exercising the City's option to accept the first of two available five-year contract extensions beginning January 1, 2015 and ending December 31, 2019.

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### RECOMMENDATION:

City Administration recommends approval of Contract Amendment # 6 with CH2M HILL Engineers, Inc. to exercise the City's option to accept the first of two available five-year contract extensions beginning January 1, 2015 and ending December 31, 2019.

### BACKGROUND:

Amendment # 6 with CH2M HILL Engineers, Inc. for operation, maintenance, management and engineering services for the City's wastewater treatment facilities and systems is attached. When the original Noland WWTP upgrade was completed in 1987, the City contracted with OMI (now CH2M HILL) for wastewater treatment services. The scope of services provided by CH2M HILL include: (1) operate and maintain the Noland and West Side Wastewater Treatment Plants (WWTP); (2) operate and/or maintain 43 wastewater pump station sites; (3) administer the City's NPDES discharge, air, stormwater, and other permits; (4) manage the City's biosolids disposal program; (5) manage the City's industrial pretreatment program; (6) support the SCADA (supervisory control and data acquisition system) network that monitors water and wastewater facilities; (7) pursue operation economies, efficiencies, and permit compliance; and (8) participate in the construction and post-construction work of the Wastewater System Improvement Project (WSIP). In late 2009, the City underwent a rigorous selection process with three competitive proposals. The selection committee selected CH2M HILL for a five year contract, which expires December 31, 2014. Contract amendment # 6 exercises the first of two available five-year extensions of the overall contract beginning January 1, 2015.

### DISCUSSION:

The recent departure of the City's Utility Engineer, coupled with the departure of the City's Utility Director, has helped to bring into focus the breadth and depth of support that the engineering position has delivered to the overall Water and Wastewater Utility. It has become obvious that the Utility Engineer position is critical to successful utility operations and long term planning and maintaining qualified services from that position is clearly in the best interest of the citizens of Fayetteville. Staff has come to the conclusion that having these services supported by the resources available to CH2M HILL will stabilize the delivery of those services. The contract

between the City and CH2M HILL has included the option for engineering services since 2009. The engineering services provided under that contract to date, however, have largely been incidental to the operation and maintenance of the facilities for which CH2M HILL has been responsible. With this elevated level of support, CH2M HILL will place an engineer here at this project location, and will also support that engineer with administrative services from within the existing project staff as well as provide supplemental support from other CH2M HILL locations on an as-needed basis. While the overall number of hours worked in providing these services is not expected to substantially exceed the equivalent of one full time person, which was the previous level of support provided to the overall Utility, it is expected that the combination of these resources will provide a more robust level of support than any one individual could. The Utility will of course still contract for the services of other local and national consultant firms to provide the detailed engineering required for many of the highly complex tasks faced by the Utility, as has been the practice for many years. The Utility Engineer provided by CH2M HILL will continue to facilitate the development and implementation of those contracts as well as interface with many other groups and individuals within the City organization on behalf of the Utility. This amendment formalizes the City's intent to continue contracting for the full scope of services into the next five years, thus allowing CH2M HILL to place the engineer permanently on site as described above.

**BUDGET/STAFF IMPACT:**

Funds are available within the overall Utility budget.

**Attachments:**

Signed Contract Amendment



OFFICE OF THE  
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams  
City Attorney

Blake Pennington  
Assistant City Attorney

Patti Mulford  
Paralegal

TO: Mayor Jordan  
City Council

CC: Don Marr, Chief of Staff

FROM: Kit Williams, City Attorney

DATE: April 18, 2014

RE: Five year option to renew Agreement for Operations, Maintenance and Management Services of the City's Wastewater Plants and Pump Stations with CH2M Hill Engineers, Inc.

Both CH2M Hill Engineers, Inc. and the City Administration desire to exercise our five year option to renew the Agreement for Operations, Maintenance, and Management Services between the City of Fayetteville and CH2M Hill Engineers, Inc. as authorized in § 7.1 of the Agreement.

"7.1 The initial term of this Agreement shall be five (5) years commencing on January 1, 2010 and ending on December 31, 2014, followed by two (2) successive five (5) year options, each option renewable at the mutual agreement of the City of Fayetteville and CH2M HILL. Each option can be made effective by written agreement of the parties ninety (90) calendar days prior to the expiration of the previous contract period. All contract periods and renewals are subject to and contingent upon yearly budget approval by the City of Fayetteville."

This is by far the largest contract for operations in the City which is likely to cost about **\$7,796,000.00** for 2015. As you see from the quoted language, this Agreement is always “contingent upon yearly budget approval....”

Attached are copies of Resolution No. 256-09 which approved the original Agreement as well as a memo from my office dated November 23, 2009, discussing the History of Sewer Plant Operations by CH2M HILL or OMI and my concerns about Section 6.4 of the Agreement ) an indemnity provision).

**RESOLUTION NO. 256-09**

A RESOLUTION TO APPROVE AN AGREEMENT FOR OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES OF THE CITY'S WASTEWATER PLANTS AND PUMP STATIONS WITH CH2M HILL ENGINEERS, INC. IN THE AMOUNT OF \$6,858,886.00 PLUS A CONTINGENCY OF \$75,000.00 FOR SERVICES IN 2010

**WHEREAS**, CH2M Hill Engineers, Inc. was selected by a City Selection Committee as the best applicant to operate our sewer plants and lift stations; and

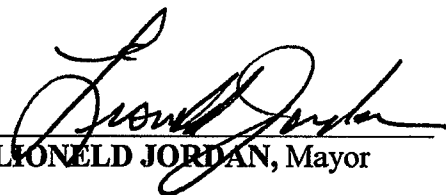
**WHEREAS**, the City Administration and CH2M Hill Engineers, inc. have negotiated a proposed five year contract "subject to and contingent upon yearly budget approval by the City of Fayetteville," with two successive five year options to renew.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby approves the attached Agreement with CH2M Hill Engineers, Inc. in the amount of \$6,858.886.00 plus a contingency of \$75,000.00 for operations, maintenance and management services of the City's wastewater plants and pump stations in 2010.

**PASSED and APPROVED** this 15<sup>th</sup> day of December, 2009.

APPROVED:

By:   
LIONELD JORDAN, Mayor

ATTEST:

By:   
SONDRA E. SMITH, City Clerk/Treasurer



# FAYETTEVILLE

THE CITY OF FAYETTEVILLE, ARKANSAS

**KIT WILLIAMS, CITY ATTORNEY**  
**DAVID WHITAKER, ASST. CITY ATTORNEY**



A. 13  
CH2M Hill Engineers, Inc.  
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**DEPARTMENTAL CORRESPONDENCE**

**LEGAL DEPARTMENT**

**TO: Lioneld Jordan, Mayor**  
**City Council**  
**Don Marr, Chief of Staff**

**CC: David Jurgens, Utilities Department Director**

**FROM: Kit Williams, City Attorney**

A handwritten signature in black ink, appearing to read 'Kit Williams', with a long horizontal flourish extending to the right.

**DATE: November 23, 2009**

**RE: 15 Year Contract with CH2M Hill Engineers, Inc.**

## **HISTORY OF SEWER PLANT OPERATION BY CH2M HILL OR OMI**

The City of Fayetteville has contracted with CH2M Hill Engineers, Inc. since at least 1983 when it assisted in the construction of the Noland sewer plant. That initial agreement contained joint indemnity provisions with the statement that "this provision shall not constitute a waiver of Owner's (Fayetteville's) statutory tort immunity." CH2M Hill (through OMI) began operating Fayetteville's sewer plant by an agreement dated February 27, 1984.

Fayetteville specifically agreed to an assignment of its contract for operating the sewer plant from CH2M Hill to OMI on January 16, 1990. On August 16, 1994, the City of Fayetteville and OMI agreed to a five year contract to operate the sewer plant, plus two five year extensions at the option of the City. This contract included indemnity language for OMI to pay and indemnify the City for damages, injury or loss from its "negligent operations or intentional acts." There was no directly corresponding indemnity provision required of the City. However, the City did agree to indemnify OMI for release of hazardous substances unless caused by OMI's negligence. There was a "no waiver of statutory immunity" paragraph.

On October 5, 1999, the City renewed the operations contract for its first five year renewal period by Resolution No. 128-99. There was apparently no change in the contract's terms other than dates and increasing fees.

On May 20, 2003, the OMI contract was renewed (a year early) by Resolution No. 76-03 until December 31, 2008, with no change or reference to original terms except for fees and dates.

On December 6, 2007, the Contract was renewed again to its original end date of December 31, 2009, by Resolution No. 209-07. No reference or change was made except to fees, end dates and appendices. The final authorized year and amendment to the 1994 contract (fees and dates only) was made on December 16, 2008, pursuant to Resolution No. 250-08.

### **PROPOSED CONTRACT**

I suggested numerous changes in this 26 page contract primarily in the areas of what the City of Fayetteville would be required to do (beyond just paying CH2M Hill to operate our plants and pump stations) and indemnity/insurance provisions. CH2M Hill agreed to virtually all my proposed changes for the duties to be imposed upon the City. We have also removed an indemnity provision which had not been required in our earlier contracts.

I do want to call your attention to Section 6.4 which is an indemnity provision concerning the release of hazardous substances. I do not like any provision requiring the City to indemnify a contractor, but this one has been in place in our contracts with CH2M Hill Engineers for decades. I rewrote this indemnity provision slightly to place the burden on CH2M Hill to prove that any such hazardous discharge was not the result of their own negligence before the City would have to indemnify them. This is an improvement even though you know I have opposed virtually every indemnity provision contractors try to force upon us.

Because of CH2M Hill Engineers and OMI's long history of proven efficiency, expertise and safety when operating our sewer plants, I can recommend this proposed contract even with the modified indemnity provision. If the City insisted on eliminating this indemnity provision (which is more favorable to the City than the one used for the last two decades), CH2M Hill might reasonably believe it would need to purchase insurance to cover such a risk which would likely result in a higher cost to operate our sewer plants. Thus, the City could force elimination of the limited indemnity provision, but the City would likely have to pay an increased amount to



CH2M Hill to offset its increased insurance costs. I believe the City Administration recommends that the very slight risk (but potentially high possible claim) caused by the indemnity provision should be accepted (as it has for two decades) rather than renegotiating this contract at a probably higher cost to our ratepayer.

I also do not like arbitration requirements in contracts as I prefer the option of litigation if we cannot agree with a contractor about the terms or conditions of the agreement. Section 9.4 does require arbitration in some cases and is the same provision as agreed to in 1994. Because it continues a previously agreed to contract provision, I will not object to its inclusion in the new contract.

### CONCLUSION

I want to thank Utilities Director David Jurgens and Billy Ammons of CH2M Hill/OMI for working with me to resolve almost all of my concerns with this contract. I believe this contract is an improvement over the fifteen year contract that is now ending.

CH2M Hill/OMI has proven its expertise by successfully operating the Noland Plant at full capacity with no significant problems for several years until the West Side Plant could be finished. With our stringent discharge permit requirements, I am, as City Attorney, concerned that our legal risks from Wastewater plant operations need the most capable and experienced team possible to avoid permit violations. I am confident that CH2M Hill Engineers, Inc. has the best possible team in place right now at our wastewater plants with the expertise and experience to minimize our legal exposure.

**RESOLUTION NO. \_\_\_\_\_**

A RESOLUTION TO EXERCISE A NEW FIVE YEAR OPTION TO RENEW THE AGREEMENT FOR OPERATIONS, MAINTENANCE AND MANAGEMENT SERVICES BETWEEN THE CITY OF FAYETTEVILLE, ARKANSAS AND CH2M HILL ENGINEERS, INC.

**WHEREAS**, on December 15, 2009, the Fayetteville City Council passed Resolution No. 265-09 which approved a “proposed five year contract ‘subject to and contingent upon yearly budget approval by the City of Fayetteville,’ with two successive five year option to renew”; and

**WHEREAS**, CH2M Hill Engineers, Inc. has faithfully performed four and a third years of the five year initial term and now desires to exercise the next five year option to renew pursuant to § 7.1 of the Agreement; and

**WHEREAS**, the City Administration recommends that the City Council authorize renewal of the next five year term to this Agreement.

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

Section 1: That the City Council of the City of Fayetteville, Arkansas hereby agrees that it is the best interest of our citizens and sewer rate payers to exercise along with CH2M Hill Engineers, Inc. the option to renew the original Agreement (as amended) for a second five year period under terms of the original Agreement, as modified by amendments one through five. Mayor Jordan is authorized to sign this Agreement to renew.

**PASSED and APPROVED** this 6<sup>th</sup> day of May, 2014.

APPROVED:

ATTEST:

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

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

**AGREEMENT TO EXERCISE THE FIVE YEAR OPTION TO  
RENEW THE AGREEMENT  
For  
OPERATIONS, MAINTENANCE, AND MANGEMENT SERVICES  
Between  
CITY OF FAYETTEVILLE, ARKANSAS  
AND CH2M HILL ENGINEERS, INC.**

Pursuant to their contractual rights in § 7.1 of the Agreement for Operations, Maintenance and Management Services between the City of Fayetteville, Arkansas, and CH2M HILL Engineers, Inc., the City of Fayetteville and CH2M HILL Engineers, Inc. mutually agree to renew this Agreement for Operations, Maintenance and Management Services between the City of Fayetteville, Arkansas, and CH2M HILL Engineers, Inc. as amended for the five year period beginning on January 1, 2015 and ending on December 31, 2019.

**CH2M HILL ENGINEERS, INC.**

**CITY OF FAYETTEVILLE**

By: \_\_\_\_\_

APPROVED:

Title:

By: \_\_\_\_\_

**Lioneld Jordan, Mayor**

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_


**Sondra E. Smith, City Clerk/Treasurer**



**AGREEMENT TO EXERCISE THE FIVE YEAR OPTION TO  
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**CH2M HILL ENGINEERS, INC.**

By:   
**Elliott Wheeler** *wa 4/23/14*  
Title: *Senior Designated Manager*  
Date: 23 APRIL 2014

**CITY OF FAYETTEVILLE**

APPROVED:

By: \_\_\_\_\_  
**Lionel Jordan, Mayor**

Date: \_\_\_\_\_

ATTEST:

By: \_\_\_\_\_  
**Sondra E. Smith, City Clerk/Treasurer**

