

AGREEMENT

BETWEEN
VILLAGE OF VILLA PARK, ILLINOIS
AND
RJN GROUP, INC.
WHEATON, ILLINOIS

THIS AGREEMENT made this 7th day of June 2009 by and between the Village of Villa Park, Illinois, hereinafter called OWNER and RJN GROUP, INC., with an office in Wheaton, Illinois, hereinafter called ENGINEER.

WHEREAS, the OWNER desires to retain the professional services of the ENGINEER for a project generally described as **2008-2009 Sewer Rehabilitation Program Resident Engineering Services** WHEREAS, the ENGINEER desires to perform such services for the OWNER in accordance with the terms and conditions of the AGREEMENT.

NOW, THEREFORE, in consideration of the above recitals, the mutual promises and covenants hereinafter set forth, the parties hereto agree as follows:

Section I - Basic Services of ENGINEER

The specific services which the ENGINEER agrees to furnish are as indicated in the Attachment A "Scope of Services" which is hereby incorporated by reference and made part of this AGREEMENT. Changes in the indicated Scope of Services shall be subject to renegotiation and implemented through an Amendment of this AGREEMENT.

Section II - Future Services of ENGINEER

The ENGINEER is available to furnish and perform, under an Amendment or a separately negotiated agreement, future services to supplement this work.

Section III - Payment for Services

Payment to the ENGINEER shall be made as follows:

A. Payment for Services

The OWNER recognizes that time is of the essence with respect to payment of the ENGINEER's invoices, and that timely payment is a material part of the consideration of this AGREEMENT.

Payment for services rendered shall be made to the ENGINEER at the end of each month's billing cycle upon presentation of the ENGINEER's monthly statement. ENGINEER will provide to the OWNER a detailed statement of tasks by classification and reimbursement expenses. Total payment shall not exceed aforesaid amounts without prior authorization by the OWNER.

If the OWNER objects to all or any portion of an invoice, the OWNER shall so notify the ENGINEER

within ten (10) calendar days of the invoice date, identify the cause of disagreement, and pay when due that portion of the invoice, if any, not in dispute.

OWNER has the right to appeal or ask for clarification of any ENGINEER's billing within ten (10) days of date of billing. Until said appeal is resolved, or clarification is issued, no interest will accrue. The OWNER shall exercise reasonableness in contesting any invoice or portion thereof.

Section IV - Services to be Provided by the OWNER

A. Authorization to Proceed

The OWNER shall authorize the ENGINEER to proceed prior to the ENGINEER starting work.

B. Access to Facilities and Property

The OWNER shall make its system facilities and properties available and accessible for inspection by ENGINEER and arrange for access to make all provisions for the ENGINEER to enter upon public property as required for the ENGINEER to perform his services.

C. Prompt Notice

The OWNER shall give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of any development that affects the scope or timing of ENGINEER's services, or any defect in the service or work of the ENGINEER or Contractors in order that the ENGINEER may take prompt, effective measures, which in the ENGINEER's opinion, will minimized the consequences of a defect.

D. Compensation of a Cost Not to Exceed

For basic services, as enumerated in Section I, the OWNER shall pay the ENGINEER a maximum not to exceed cost of \$122,576. Payments as described hereinafter shall represent full compensation to the ENGINEER for all payroll costs, expenses, current overhead, profit, and all other costs in connection with the performance of these services. The ENGINEER, if requested, shall provide documentation to the OWNER of all costs in connection with the performance of these services, and as further described in Attachment B.

E. Changes of Scope

In the event additional services are required through changes in the scope of the Project, or other unusual or unforeseen circumstances are encountered, or for other consulting services, ENGINEER shall, upon written authorization by the OWNER, perform the additional services as mutually agreed by both parties by supplemental agreement. If renegotiated terms cannot be agreed to, the OWNER agrees that the ENGINEER has an absolute right to terminate the AGREEMENT.

F. Limitation of Engineer's Liability

OWNER hereby agrees that to the fullest extent permitted by law, ENGINEER's total liability to OWNER for any and all injuries, claims, losses, expenses or damages whatsoever arising from or in any way related to the project or this AGREEMENT from any cause or causes including but not limited to ENGINEER's negligence, errors, omissions, strict liability, breach of contract, or breach of warranty shall not exceed the total compensation received by ENGINEER under this AGREEMENT minus subconsultant and direct costs.

Section V - General Considerations

A. Standard of Practice

Services performed by the ENGINEER under this AGREEMENT will be conducted in a manner consistent with that level of care and skill ordinarily exercised by members of the profession currently practicing in the same locality under similar conditions. No other representation, expressed or implied, and no warranty or guarantee is included or intended in this AGREEMENT, or in any report, opinion, document or otherwise.

B. Survival

All obligations arising prior to the termination of this AGREEMENT and all provisions of this AGREEMENT allocating responsibility or liability between the OWNER and the ENGINEER shall survive the completion of the services hereunder and the termination of this AGREEMENT.

C. Ownership of Instruments of Service

All reports, plans, specifications, field data, field notes, laboratory test data, calculations, estimates and other documents prepared by the ENGINEER as instruments of service shall remain the property of the OWNER. The ENGINEER shall retain these records for a period of five (5) years following submission of his or her report, during which period they will be made available to the OWNER at all reasonable times.

If the OWNER wishes the ENGINEER to retain documents for a longer period of time, the OWNER shall so specify in advance, in writing, and shall pay in a timely manner all charges agreed to for the ENGINEER's maintenance of such documents beyond the time period otherwise prevailing.

D. Reuse of Documents

All documents including Drawings and Specifications prepared or furnished by the ENGINEER (and ENGINEER's independent professional associates and consultants) pursuant to this AGREEMENT are instruments of service in respect of the Project and ENGINEER shall retain an interest therein whether or not the Project is completed. OWNER may make and retain copies for information and reference in connection with the use and occupancy of the Project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER's independent professional associates or consultants, and OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's independent professional associates and consultants from all claims, damages, losses and expenses including attorneys' fees arising from or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

E. Termination of Services

This AGREEMENT may be terminated in whole or 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. Such termination may not be effected unless the other party is given not less than 10 days written notice (delivered by certified mail, return receipt requested) of intent to terminate and an opportunity for consultation with the terminating party and 10 days to cure such substantial failure.

If the OWNER terminates the ENGINEER without cause, the OWNER shall within forty-five (45) calendar days of termination remunerate the Engineer for services rendered and costs incurred, in accordance with the Engineer's prevailing fee schedule and expense reimbursement policy. Service shall include those rendered to the time of termination, as well as those associated with termination itself, such as demobilizing, modifying schedules, reassigning personnel, and so on. Costs shall include those incurred to the time of termination, as well as those associated with termination and post-termination activities. Such costs shall not include payments to third parties engaged by the ENGINEER for services not yet performed. The OWNER may terminate this AGREEMENT with or without cause or reason. Upon receipt of a notice of termination from OWNER, the ENGINEER shall promptly discontinue all services affected (unless the notice directs otherwise) and deliver otherwise make available to the OWNER (Subject to "reuse of Documents" provisions) all data, drawings, specifications, reports, estimates, summaries, and other information and materials accumulated by the ENGINEER in performing this AGREEMENT, whether complete or in progress.

F. Controlling Law and Disputes

If any of the provisions of this AGREEMENT are invalid under any applicable statute or rule of law, they are, to that extent, deemed omitted. However, the OWNER and the ENGINEER will in good faith attempt to replace an invalid or unenforceable provision with one that is valid and enforceable, and which comes as close as possible to expressing or achieving the intent of the original provision. This AGREEMENT shall be governed by the laws of the State of Illinois, DuPage County.

The parties agree that they shall reasonably attempt to resolve any disputes regarding the interpretation of this AGREEMENT by informal negotiation, the final resolution of which disputes shall require the agreement of both parties.

G. Successors and Assigns

The OWNER and the ENGINEER each binds itself and its partners, successors, executors, administrators, assigns and legal representatives to the other party to this AGREEMENT and to the partners, successors, executors, administrators, assigns and legal representatives of such other party, in respect to all covenants, agreements, and obligations of this AGREEMENT.

Neither the OWNER nor the ENGINEER shall assign, sublet or transfer any rights under or interest in (including, but without limitation, moneys that may become due or moneys that are due) this AGREEMENT without the written consent of the other. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assigner from any duty or responsibility under this AGREEMENT. Nothing contained in this paragraph shall prevent the ENGINEER from employing such independent consultants, associates, and subcontractors as it may deem appropriate to assist it in the performance of services hereunder.

The Engineer's use of others for additional services shall not be unreasonably restricted by the OWNER provided the ENGINEER notifies the OWNER in advance. Nothing herein shall be construed to give any

rights or benefits hereunder to anyone other than the OWNER and the ENGINEER, and all duties and responsibilities undertaken herein will be for the sole and exclusive benefit of the OWNER and the ENGINEER and not for the benefit of any other party.

H. Dispute Resolution

All claims, disputes or controversies arising from, or in relation to, the application or enforcement of this AGREEMENT shall be decided through mediation if mutually agreed upon by OWNER and ENGINEER.

- I. None of these services to be furnished by the ENGINEER shall be sublet; assigned, or transferred to any other party or parties without the written consent of the VILLAGE. The consent to sublet, assign or otherwise transfer any portion of the services to be furnished by the ENGINEER shall not be construed to relieve the ENGINEER of any responsibility for the fulfillment of the AGREEMENT.
- J. The ENGINEER agrees to comply with all applicable requirements of 720 ILCS 5/33E-1 et seq. The ENGINEER agrees to execute a certificate that is not barred from contracting with any unit of state or local government as a result of a violation of 720 ILCS 5/33-1 et seq.
- K. The ENGINEER shall comply with all applicable laws, regulations and rules promulgated by any Federal, State, County, Municipal and/or government unit or regulatory body now in effect or which may be in effect during the performance of the work. Included within the scope of laws, regulations and rules referred to in this paragraph but in no way to operate as a limitation, are all forms of traffic regulations, public utility and Intrastate and Interstate Commerce Commission regulations, Workers Compensation laws, Prevailing Wage laws, the Social Security Act of the Federal Government and any of its titles, the Illinois Human Rights Act and regulations EOC statutory provisions and rules and regulations. Any breach of the foregoing laws, regulations and rules shall constitute a breach of this contract.

L. Audit and Access to Records

The ENGINEER agrees that all books, records, and other evidence directly pertinent to performance of WPCLP loan work under this agreement shall be maintained consistent with generally accepted accounting standards in accordance with the American Institute of Certified Public Accountants Professional Standards. The agency or any of its authorized representatives shall have access to the books, records, documents and other evidence for the purpose of inspection, audit or copying. Facilities shall be provided for access and inspection.

Audits conducted pursuant to this provision shall be in accordance with generally accepted auditing standards.

All information and reports resulting from access to records pursuant to the above section shall be disclosed to the Agency. The auditing agency shall afford the engineer an opportunity for an audit exit conference and an opportunity to comment on the pertinent portions of the draft audit report. The final audit report shall include written comments, if any, of the audited parties.

Records shall be maintained and made available during performance of the project services under this agreement and for three years after the final loan closing. In addition, those records that relate to any dispute pursuant to Section 365.650 (Disputes) of the Illinois Administrative Code Title 35: Subtitle F. of this Subpart or litigation or the settlement of claims arising out of project performance or costs or items to which an audit exception has been taken, shall be maintained and made available for three years after the resolution of the appeal, litigation, claim or exception.

M. Covenant Against Contingent Fees

The professional service contractor warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon agreement or understanding for a commission, percentage, brokerage, or contingent fee, excepting bonafide employees. For breach or violation of this warranty, the loan recipient shall have the right to annul this agreement without liability or in its discretion to deduct from the contract price or consideration or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

N. Affirmative Action Steps

The ENGINEER agrees to take affirmative steps to assure that disadvantaged business enterprises are utilized when possible as sources of supplies, equipment, construction and services in accordance with the Clean Water Loan Program rules. As required by the award conditions of USEPA's Assistance Agreement with IEPA the ENGINEER acknowledges that the fair share percentages are 5% for MBEs and 12% for WBEs.

Non Discrimination Clause

- O. The Engineer shall not discriminate on the basis of race, color, national origin or sex in the performance of this contract. The Engineer shall carry out applicable requirements of 40 CFR Part 33 in the award and administration of contracts awarded under EPA financial assistance agreements. Failure by the Engineer to carry out these requirements is a material breach of this contract which may result in the termination of this contract or other legally available remedies.

IN WITNESS WHEREOF, the parties hereto have caused this AGREEMENT to be executed this
24 day of June, 2009

For the OWNER:

VILLAGE OF VILLA PARK, ILLINOIS

Thomas Cullerton

Signature

Thomas Cullerton

Name (Printed)

President

Title



ATTEST:

Lauren Krynicky

For the ENGINEER:

RJN GROUP, INC.

Signature

Clay Hollenbeck

Alan J Hollenbeck, P.E.
Name (Printed)

President/CEO
Title

Attachment A – Scope and Schedule of Services
Attachment B – Level of Effort

**United States Environmental Protection Agency
Washington, DC 20460**

Certification Regarding Debarment, Suspension and Other Responsibility Matters

The prospective participant to the best of its knowledge and belief that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property.
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

I understand that a false statement on this certification may be grounds for rejection of this proposal or termination of the award. In addition, under 18 USC Sec. 1001, a false statement may result in fine of up to \$10,000 or imprisonment for up to 5 years, or both.

Alan J. Hollerbeck, President/CEO

(Typed Name & Title of Authorized Representative)

Alan J. Hollerbeck

(Signature of Authorized Representative)

5/7/09

(Date)

I am unable to certify the above statements. My explanation is attached.

Attachment A

Scope and Schedule of Services
Village of Villa Park

**2008-2009 Sewer Rehabilitation Program
Resident Engineering Services**

The Resident Engineering Services will comprise the following tasks for the construction of the new sanitary relief sewer.

1. Submission of Contractor Bid package to EPA for review.
2. Review Contractor required submittals.
3. Attendance at pre-construction meeting
4. Part time resident engineering services during scheduled sanitary sewer construction. To be completed in 300 Calendar days as specified in the Construction Contract for this project.
5. Attendance at project management and progress meetings
6. Final site confirmation survey and preparation of record drawings

Attachment B

Level of Effort
Village of Villa Park

**2008-2009 Sewer Rehabilitation Program
Resident Engineering Services**

Task No.	Task Description	170	155	120	100	75	80	75	48	Total	Labor
		PD	PM	SRE	RE	CD	ET	FT	CL	Hours	Cost
Construction Engineering Services											
1001	Prepare Contracts, Pre-construction Meeting, and Minutes	4	8	16	16				4	48	\$5,632
1002	Shop Drawing Review		8	24	24				4	60	\$6,712
1003	Submittals Review		60		40		80		8	188	\$20,084
1003	Part time field observation		40	258	288					586	\$65,960
1004	Project Management and Progress Meetings	4	16	16	16				8	60	\$7,064
1005	Record Drawings	2	4	4	16	80	40	40	8	194	\$15,624
	Sub-Total	10	136	318	400	80	120	40	32	1,136	\$121,076

Direct Costs (Construction)

9901	Mileage										\$1,000
9902	Printing										\$500
										Sub-Total	\$1,500
										Total	\$122,576