

RESOLUTION R-53-07

**A RESOLUTION AUTHORIZING THE EXECUTION OF AN  
ENGINEERING SERVICES AGREEMENT  
FOR THE 2007 SANITARY SEWER SMOKE TESTING INVESTIGATION**

WHEREAS, the City of Wheaton, DuPage County, Illinois, is desirous of performing smoke testing on sanitary sewers for the purpose of investigating private sector sources of stormwater inflow and infiltration to the city's sanitary sewer system; and

WHEREAS, the engineering consultant, RJN Group, Inc. of Wheaton, Illinois, has submitted an engineering services proposal to perform smoke testing; and

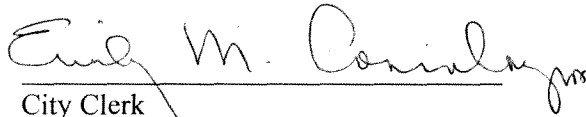
WHEREAS, it is necessary for the City to enter into an agreement for the smoke testing services.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, Illinois, that the Mayor is authorized to execute an agreement between the City of Wheaton and RJN Group, Inc. of Wheaton, Illinois, for smoke testing services for the 2007 Sanitary Sewer Smoke Testing Investigation.

ADOPTED this 2<sup>nd</sup> day of July, 2007.

  
MAYOR

ATTEST:

  
City Clerk

ROLL CALL VOTE

Ayes: Councilman Mouhelis  
Councilman Prendiville  
Councilman Suess  
Councilwoman Corry  
Councilman Johnson  
Councilman Levine  
Mayor Gresk

Nays: None  
Absent: None

Motion Carried Unanimously

**An Agreement between the City of Wheaton, Illinois  
and RJN Group, Inc. for the  
2007 Sanitary Sewer Smoke Testing Investigation**

**This Agreement** is entered into by and between the **City of Wheaton**, an Illinois municipal corporation ("City"), 303 West Wesley Street, Wheaton, IL 60187, and **RJN Group, Inc.** ("Consultant"), 200 West Front Street, Wheaton, IL 60187.

**WITNESSETH:**

**Whereas**, the City has determined that it is necessary to obtain the services of a professional engineering consultant to provide sanitary sewer smoke testing services for the purpose of investigating private sector sources of stormwater inflow and infiltration to the City's sanitary sewer system; and

**Whereas**, the City has heretofore requested a proposal from the Consultant for the services necessary to perform the services; and

**Whereas**, the Consultant did submit a proposal to the City for the work specified, which is attached hereto and incorporated herein as Exhibit A; and

**Now, therefore**, for in consideration of their mutual promises, terms, covenants, agreements, and conditions recited in this Agreement, the City and the Consultant hereto do hereby agree as follows:

1. *Scope of Services.* The Consultant shall provide the City with the services as described in this Agreement and attached Exhibits. The Consultant represents and warrants that it shall perform the services in a manner consistent with the level of care and skill customarily exercised by other professional Consultants under similar circumstances.

2. *Compensation.* The City shall compensate the Consultant according to the terms of the Consultant's proposal which is attached hereto as Exhibit A.

3. *Additional Services.* The Consultant shall perform only those services specified in this Agreement and attached Exhibits. In the event the Consultant or the City determines that additional services are required to complete the project, such additional services shall not be performed unless directed in writing by the City. Terms, frequency, and prices for additional services shall be as mutually agreed upon in writing by the City and the Consultant.

4. *Hold Harmless and Indemnification.* The Consultant shall defend, hold harmless, and indemnify the City, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

- a) The Consultant's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of the contract documents pertaining to the Consultant's services; or
- b) The negligence or willful misconduct of the Consultant, its employees, agents, representatives, and subcontractors.

The City shall defend, hold harmless, and indemnify the Consultant, its directors, officers, employees, and agents, from and against any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses, including, but not limited to, reasonable attorneys' fees and costs of litigation, and all causes of action of any kind or character, except as otherwise provided herein, to the extent that such matter arises from either of the following:

- a) The City's breach of any term, provision, warranty, standard or requirement of this Agreement including, but not limited to, those provisions of the contract documents pertaining to the City's work; or
- b) The negligence or willful misconduct of the City, its employees, agents, representatives, and subcontractors.

In the event that any claim for indemnification hereunder arises from the negligence or willful misconduct of both the Consultant and the City, the parties agree that any and all liabilities, losses, claims, demands, damages, fines, penalties, costs, and expenses shall be apportioned between the parties on the basis of their comparative degrees of fault, except as otherwise herein provided.

**5. Insurance.** The Consultant and each of its agents, subcontractors, and consultants hired to perform any services provided for herein shall purchase and maintain during the term of this contract insurance coverage which will satisfactorily insure the Consultant and, where appropriate, the City against claims and liabilities which may arise out of the services referred to in this Agreement. Such insurance shall be issued by companies authorized to do business in the State of Illinois and approved by the City. The insurance coverages shall include, but not necessarily be limited to, the following:

a) Worker's compensation insurance with limits as required by the applicable statutes of the State of Illinois. The employer's liability coverage under the worker's compensation policy shall have limits of not less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each accident/injury and FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) each employee/disease.

b) Commercial general liability insurance protecting the Consultant against any and all public liability claims which may arise in the course of performance of this contract. The limits of liability shall be not less than ONE MILLION DOLLARS (\$1,000,000.00) each occurrence bodily injury/property damage combined single limit and ONE MILLION DOLLARS (\$1,000,000.00) aggregate bodily injury/property damage combined single limit. The policy of commercial liability insurance shall include contractual liability coverage and an endorsement naming the City as an additional insured.

c) Commercial automobile liability insurance covering the Consultant's owned, non-owned, and leased vehicles which protects the Consultant against automobile liability claims whether on or off of the City's premises with coverage limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per accident bodily injury/property damage combined single limit.

d) Umbrella or excess liability insurance with limits of not less than THREE MILLION DOLLARS (\$3,000,000.00) per occurrence bodily injury/property damage combined single unit. The umbrella or excess coverage shall apply in excess of the limits stated in subparagraphs B and C above, and shall either include an endorsement naming the City as an additional insured or provide "following form" coverage for the primary insurance.

e) Professional liability insurance with limits of not less than ONE MILLION DOLLARS (\$1,000,000.00) per claim covering the Consultant against all sums which the Consultant may become obligated to pay on account of any liability arising out of the performance of the professional services for the City under this contract when caused by any negligence act, error, or omission of the Consultant or of any person employed by the Consultant or any others for whose actions the Consultant is legally liable. The professional liability insurance shall remain in force for a period for not less than four (4) years after the completion of the services to be performed by the Consultant under this contract.

6. *Compliance with Laws.* The Consultant shall comply with all applicable federal, state, and local laws, rules, and regulations, and all City ordinances, rules and regulations now in force or hereafter enacted, in the provision of the goods and/or performance of the services required under this Agreement.

7. *Termination of Contract.* If the Consultant fails to perform according to the terms of this Agreement, then the City may terminate this Agreement upon seven (7) days written notice to the Consultant. In the event of a termination, the City shall pay the Consultant for services performed as of the effective date of termination, less any sums attributable, directly or indirectly, to Consultant's breach. The written notice required under this paragraph shall be either (i) served personally during regular business hours; (ii) served by facsimile data transmission during regular business hours; or (iii) served by certified or registered mail, return receipt requested, addressed to the address listed in this Agreement with postage prepaid and deposited in the United States mail. Notice served personally and by facsimile data transmission shall be effective upon receipt, and notice served by United States mail shall be effective three (3) business days after mailing.

8. *Discrimination Prohibited.* The Consultant shall comply with the provisions of the Illinois Human Rights Act, as amended, 775 ILCS 5/1-101 et seq. (1992 State Bar Edition), and with all rules and regulations established by the Department of Human Rights. The Consultant agrees that it will not deny employment to any person or refuse to enter into any contract for services provided for in this Agreement to be performed on its behalf on the basis of unlawful discrimination as defined in the Illinois Human Rights Act.

9. *Status of Independent Consultant.* Both City and Consultant agree that Consultant will act as an Independent Consultant in the performance of duties under this agreement.

Accordingly, the Independent Consultant shall be responsible for payment all taxes including federal, state, and local taxes arising out of the Consultant's activities in accordance with this agreement, including by way of illustration but not limitation, federal and state income tax, social security tax, and any other taxes or license fees as may be required under the law. Consultant further acknowledges under the terms of this Agreement, that it is not an agent, employee, or servant for the City for any purpose, and that it shall not hold itself out as an agent, employee, or servant of the City under any circumstance for any reason. Consultant is not in any way authorized to make any contract, agreement, or promise on behalf of City, or to create any implied obligation on behalf of City, and Consultant specifically agrees that it shall not do so. City shall have no obligation to provide any compensation or benefits to Consultant, except those specifically identified in this Agreement. City shall not have the authority to control the method or manner by which Consultant complies with the terms of this Agreement.

10. *Assignment; Successors and Assigns.* This Agreement may not be assigned by either of the parties hereto without the written consent of all other parties. Upon approval of assignment, this Agreement and the rights, interests and obligations hereunder shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.

11. *Recovery of Costs.* In the event the City is required to file any action, whether legal or equitable, to enforce any provision of this Agreement, the City shall be entitled to recover all costs and expenses incurred as a result of the action or proceeding, including expert witness and attorney's fees, if so provided in any order of the Court.

12. *Notification.* All notification under this Agreement shall be made as follows:

If to the Consultant:  
RJN Group, Inc.  
Attn: Stephen R. Maney, P.E.  
200 West Front Street  
Wheaton, IL 60187

If to the City:  
City of Wheaton  
Attn: Director of Engineering  
303 W. Wesley Street, Box 727  
Wheaton, IL 60189-727

13. *Waiver.* Any failure of either the City or the Consultant to strictly enforce any term, right, or condition of this Agreement shall not be construed as a waiver of such term, right, or condition.

14. *Integration.* The provisions set forth in this Agreement represent the entire agreement between the parties and supersede all prior agreements, contracts, promises, and representations, as it is the intent of the parties to provide for a complete integration within the terms of this Agreement. This Agreement may be modified only by a further written agreement between the parties, and no modification shall be effective unless properly approved and signed by each party.

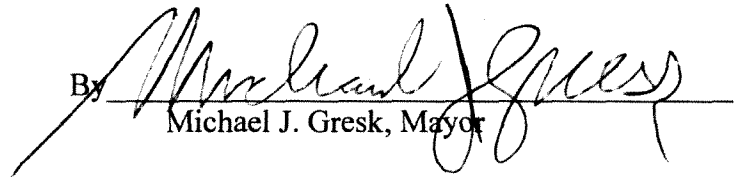
15. *Non-disclosure.* During the course of the work specified in this Agreement, Consultant may have access to proprietary and confidential information including, but not limited to, methods, processes, formulae, compositions, systems, techniques, computer

programs, databases, research projects, resident name and address information, financial data, and other data. Consultant shall not use such information for any purpose other than described in this Agreement and Exhibits and shall not directly or indirectly disclose such information to any third party without the express written consent of the City.

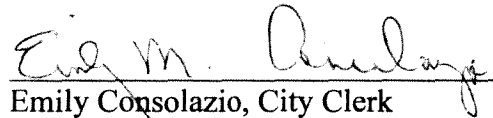
16. *Severability.* If any provision of this Contract is held to be illegal, invalid, or unenforceable, such provision shall be fully severable, and this Contract shall be construed and enforced as if such illegal, invalid, or unenforceable provision were never a part hereof; the remaining provisions hereof shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance; and in lieu of such illegal, invalid, or unenforceable provision there shall be added automatically as part of this agreement, a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and legal, valid and enforceable.

In Witness Whereof, the parties have entered into this Agreement this 2<sup>nd</sup> day of July, 2007.

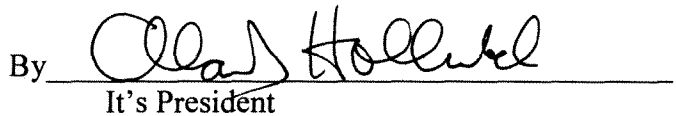
City of Wheaton, an Illinois municipal corporation

By   
Michael J. Gresk, Mayor

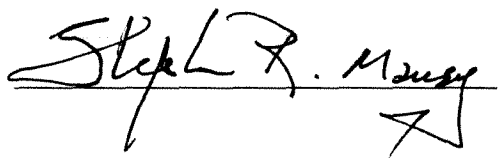
Attest:

  
Emily Consolazio, City Clerk

RJN Group, Inc.

By   
It's President

Attest:



June 6, 2007

Mr. Paul G. Redman, P.E.  
City Engineer  
City of Wheaton  
303 W. Wesley Street  
Wheaton, IL 60187

Subject: 2007 Basin 4 Smoke Testing  
Proposal

Dear Mr. Redman:

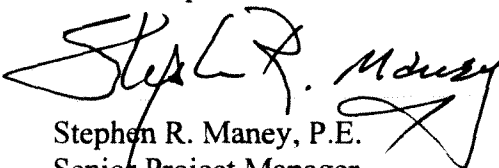
We are pleased to submit this proposal for smoke testing of Basin 4 which is located in the northeastern portion of Wheaton. The City has identified the need to conduct smoke testing to determine the sources of excess I/I in Basin 4.

This proposal is based on interviews with City staff, an examination of City maps of the sanitary sewer system in Basin 4, and RJN's experience on similar projects in the region.

We propose to test up to 90,000 linear feet of sanitary sewer in Basin 4 to determine the sources of excessive I/I into the sanitary sewer system. Smoke testing will be conducted using a dual blower testing technique on each individual segment unless the segment is less than 100 feet long. Prior to conducting the smoke testing, a public relations approach will be established with City staff that will most likely involve the distribution of door hangers a couple of days before the testing is conducted. Additional information can be provided to the City, if deemed necessary, for public information in the City's local newspaper, newsletter, and/or web site. The Wheaton Fire Department will be kept aware of our location throughout the smoke testing process.

The level of effort/breakdown by task is given on the enclosed table. Please feel free to call if you have any questions.

Very Truly Yours,  
RJN Group, Inc.



Stephen R. Maney, P.E.  
Senior Project Manager

Enclosure

cc: Mike Jankovic

**City of Wheaton Smoke Testing  
Breakdown of Engineering Costs**

Task No.	Task Description	140 PM	100 PE	75 ET	50 FT	55 CL	Total Hours	Total Cost
1001	Project Kick-off and Meetings with City Staff	2	4			1	7	\$735
1002	Public Relations and door hangers	4	12		40	8	64	\$4,200
1003	Smoke Testing (90,000 linear feet)	4	54	150	260		468	\$30,210
1005	Compilation and Prioritization of Defects for Rehabilitation	4	10	24		16	54	\$4,240
1006	Draft Letter Report and Review with Village Staff for Comments	16	12	8		8	44	\$4,480
1007	Final Report (3 copies)	4	4			2	10	\$1,070
<b>Sub - Total</b>		<b>34</b>	<b>96</b>	<b>182</b>	<b>300</b>	<b>35</b>	<b>647</b>	<b>\$44,935</b>

**Direct Expenses (no markup)**

9901	Mileage 15*20*0.485	\$145
9902	Field Supplies, Phone, Shipping	\$4,000
9903	Printing	\$50

**Total \$49,130**

**Classifications**

- PM Project Manager
- PE Project Engineer
- ET Engineering Technician
- FT Field Technician
- CL Clerical

R-53-07