

**City of Fayetteville Staff Review Form**

**2017-0679**

**Legistar File ID**

**12/5/2017**

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

Tim Nyander

11/20/2017

Utilities Director /  
Utilities Department

**Submitted By**

**Submitted Date**

**Division / Department**

**Action Recommendation:**

Staff recommends approval of a fifteen-year agreement between the Cities of Fayetteville for Greenland regarding the provision of wastewater collection services for the City of Greenland for the period of January 1, 2018 until December 31, 2032.

**Budget Impact:**

N/A	N/A
Account Number	Fund
N/A	N/A
Project Number	Project Title
<b>Budgeted Item?</b> NA	Current Budget    \$    -
	Funds Obligated    \$    -
	Current Balance <b>\$</b> -
<b>Does item have a cost?</b> NA	Item Cost    \$    -
<b>Budget Adjustment Attached?</b> NA	Budget Adjustment    \$    -
	Remaining Budget <b>\$</b> -

V20140710

Previous Ordinance or Resolution #    60-16

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

Approval Date:    \_\_\_\_\_

Comments:



**MEETING OF DECEMBER 5, 2017**

**TO:** Mayor and City Council

**THRU:** Don Marr, Chief of Staff  
Water & Sewer Committee

**FROM:** Tim Nyander, Utilities Director *TN*

**DATE:** November 20, 2017

**SUBJECT:** Resolution approving a fifteen-year agreement to continue sewer service by Fayetteville for Greenland for the period of January 1, 2018 to December 31, 2032

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**RECOMMENDATION:**

Staff recommends approval of a fifteen-year agreement between Fayetteville and Greenland to operate and maintain Greenland's wastewater collection system.

**BACKGROUND:**

Fayetteville has operated and maintained the wastewater collection system in Greenland since the system was installed in the mid-1970's. The current wastewater services agreement expires December 31, 2017. In the past, Greenland had expressed a willingness for Fayetteville to own the system, in addition to operating and maintaining it. To make that transition, the system needed to be restored by refurbishing the sewer pump station on Sandy Lane. While a plan was being developed, the City of Fayetteville renewed the sewer service contract in two-year increments.

**DISCUSSION:**

Greenland has recently acquired financing to make improvements on their sewer collection system, and have started work on the design for upgrades. Given that, the City of Greenland will retain ownership of their sewer collection system, and is requesting to extend the sewer service contract for a period of 15 years, to reflect the original contract.

A signed contract is normally required to start a Legistar item, but not necessarily when we are working with another governmental unit. It is important to get this item moving forward while we wait for Greenland Mayor Groom to sign the agreement after his Council's approval. The signed contract will be in place before it goes to Mayor Jordan for signature.

**BUDGET/STAFF IMPACT:**

None. Greenland residents pay the "outside of city" sewer rates; this will not change.

**Attachments:**

Agreement

# FAYETTEVILLE AND GREENLAND SEWER CONTRACT OF 2017

Comes now the City of Fayetteville and the City of Greenland and mutually agree to this new Fifteen (15) Year Sewer Contract for the period of January 1, 2018 until December 31, 2032.

The City of Fayetteville and the City of Greenland hereby mutually agree as follows:

**WHEREAS**, the City of Fayetteville owns and operates its wastewater collection and treatment system and has for almost a quarter century accepted and treated wastewater from the City of Greenland; and

**WHEREAS**, the City of Greenland has for almost a quarter century abided by and properly performed its obligations pursuant to the Fayetteville-Greenland Contract of 1993 and extensions thereof including the latest two-year extension of March 15, 2016; and

**WHEREAS**, it is in mutual best interests of the citizens and cities of Fayetteville and Greenland to enter into this renewal of that sewer contract and its extensions.

**The City of Fayetteville and the City of Greenland mutually promise, agree and covenant to fully perform and obey all of the terms, requirements and conditions shown below:**

1. **FAYETTEVILLE WILL ACCEPT AND TREAT GREENLAND SEWERAGE:** Fayetteville agrees that it will continue to operate and maintain the Greenland sewer system and shall treat all wastewater collected within the Greenland city limits (but only for customers who have individual water services provided by Fayetteville). Sewer service to Greenland residents not having Fayetteville water service may be furnished provided mutual agreement on the method of billing such customers can be reached by Fayetteville and Greenland.

2. **GREENLAND CUSTOMERS WILL PAY FAYETTEVILLE TO ACCEPT AND TREAT SEWERAGE:** Greenland agrees that it will require its citizens receiving Fayetteville water service to purchase sewer service from Fayetteville under the same sewer availability criteria as required of Fayetteville citizens. Greenland agrees that its citizens will be subject to pay sewer rates on a cost-of-service basis pursuant to the current sewer service rates adopted by the Fayetteville City Council (§51.137 of the Code of Fayetteville) and any amendments thereto.

3. **NEW GREENLAND CUSTOMERS SHALL PAY IMPACT FEES:** Pursuant to Greenland Ordinance 280, Greenland customers receiving new sewer service from Fayetteville shall pay sewer impact fees to Fayetteville in the same amount as new development in Fayetteville pays pursuant to the current ordinance and any amendments to §159.02 **Water and Wastewater Impact Fees** of the Unified Development Code of Fayetteville. Pursuant to Greenland ordinance 282, Greenland customers will pay Greenland local impact fees, which Fayetteville will collect and remit quarterly to Greenland.

4. CHARGES AND REQUIREMENTS FOR SEWER SERVICE CONNECTIONS: The charges for making individual connections to the Greenland System shall be as established by the Fayetteville City Council and as adjusted from time to time. A Plumbing Permit must be obtained from the City of Fayetteville before a connection order can be issued by Fayetteville.

5. BILLING, COLLECTIONS AND PAYMENT: Fayetteville shall issue billing and collect all bills in accordance with ordinances of the City of Fayetteville and the rules and regulations of the Water and Wastewater Department of Fayetteville as now exist or hereafter adopted, and if any customer fails or refuses to pay said billing, Fayetteville shall discontinue water and sewer service to such customer in accordance with said ordinances, rules and regulations.

6. COMPLIANCE WITH RULES AND REGULATIONS: The City of Greenland and all sewer customers shall comply with, at all times, the ordinances, rules and regulations of the City of Fayetteville which may now exist or may hereafter be promulgated. Failure or refusal of any customer to comply with such ordinances, rules or regulations will subject the customer to immediate discontinuance of water and sewer service. Neither Fayetteville nor Greenland shall in any way be liable for any damages or expenses which may result from such discontinuance.

- (A) Each customer shall obtain a Plumbing Permit from the City of Fayetteville and install all plumbing in accordance with the ordinances, rules and regulations of the City of Fayetteville in effect at the time such plumbing is installed. Fayetteville shall provide a copy of each and every regulation and ordinance so alluded to this Contract to Greenland as they now exist and shall provide changes to those regulations as soon as possible after such changes are made.
- (B) Greenland shall not be held liable under any rule or regulation or ordinance that has not been properly transmitted to them. Greenland will adopt an ordinance or ordinances providing for the discontinuance of water and sewer service in the event of failure or refusal of a customer to comply with the above provisions. All plumbing shall be inspected by the City of Fayetteville Plumbing Inspector, or his authorized agent. The Plumbing Permit Fee/Inspection Fee shall be as prescribed by the City of Fayetteville from time to time for outside of the City of Fayetteville.
- (C) The Plumbing Permit Fees for Greenland shall be determined on a cost of service basis and shall include but not be limited to the costs of equipment used, man hours employed, and mileage, overhead and administrative costs. The Plumbing Permit Fees shall be as shown in Exhibit "B", attached and as modified by Fayetteville from time to time. Greenland will make provision by ordinance for authorized agents of Fayetteville to enter any and all properties for inspection where the possibility of violation of said plumbing ordinances, rules and regulations may exist.
- (D) It is understood Greenland may issue its own Plumbing Permits and do its own inspections at such time as they develop the staff and capabilities to do so.

7. **OWNERSHIP OF SYSTEM:** It is understood that the Greenland System, including all sewers, the sewage lift station, force mains, and appurtenances thereto are the property of the City of Greenland.

8. **OPERATION AND MAINTENANCE:** Fayetteville shall operate and maintain all of the existing Greenland System and all facilities which may be constructed and become a part of the Greenland System in the future. Operation and Maintenance shall include:

(A) Pump Stations: Fayetteville shall provide the maintenance made necessary by the normal wear and tear encountered by the system. It does not include the replacement or enlargement of the station made necessary either by the increase in normal domestic flows or by an increase in the infiltration and inflow within the Greenland System. Neither does it include repair of extraordinary damages resulting from Acts of God.

(B) Gravity Sewers and Force Mains: Operation and maintenance of the gravity sewers and force mains shall mean the demand maintenance required as a result of a reported gravity sewer or force main blockage, the preventive rodding and cleaning of gravity sewer mains or force mains, and in-house sewer rehabilitation activities. In-house sewer rehabilitation shall include smoke testing, televising of lines, manhole lining and repairs, chemical grouting, point repairs, and line replacements not exceeding 15 feet. Fayetteville agrees that it shall utilize the same criteria to determine the extent and degree of in-house sewer rehabilitation to be done within the Greenland System as we do for the Fayetteville sewerage system.

9. **CONSTRUCTION OF NEW FACILITIES:** New gravity sewers, force mains, pump stations, sewerage appurtenances, or enlargement thereof shall be constructed without cost to Fayetteville. This includes enlarging, replacing, moving, relocating, lowering, or adjusting to grade of any of the facilities of the system should they become overloaded or for the purpose of permitting construction of other facilities. To the extent that these or similar activities are undertaken, they shall be undertaken without cost of Fayetteville. Also included under this Paragraph are pump station replacements or improvements, sewer line replacements, construction of relief sewers, force main replacements and improvements, Sewer System Evaluation Studies intended to define excessive stormwater infiltration and inflow into the Greenland System, and subsequent construction to eliminate such excessive infiltration and inflow. All of these activities or projects shall be accomplished without cost to Fayetteville. The need for a Sewer System Evaluation Study would be jointly determined by Greenland and Fayetteville.

Fayetteville and Greenland agree that Greenland may add a surcharge to the amounts normally charged by Fayetteville for sewer services provided under this Contract. The purpose shall be to provide for the construction of new facilities as defined in this Paragraph, and for other purposes as may be specified by Greenland. The money collected under this provision shall be collected by the City of Fayetteville and shall be dispersed to Greenland two times per year beginning in July of 2018.

Any interest earned on said funds shall go to Fayetteville to compensate for the administration, audit and payment of said funds.

Plans and specifications for any new construction as described above must be approved by the Fayetteville City Engineer and the Arkansas State Department of Health prior to the execution of any construction contract. Pipe size for any facilities shall be in keeping with prospects for future growth. Pipe and other materials used in such construction shall be in accordance with the standard construction practices of the Sewer Department of Fayetteville at the time such work is done. The design and specifications for any sewer facilities shall be in keeping with acceptable engineering practices at the time of construction. All such construction shall be planned and supervised by a Registered Professional engineer licensed to practice in the State of Arkansas. Greenland shall not extend any sewer lines beyond the Greenland City Limits.

Fayetteville shall be furnished two copies of the "As-Built" plans of all work, with a certification from the Engineer that all work was constructed in accordance with the approved plans and specifications. Fayetteville shall have the right to inspect and test the system within a reasonable time prior to accepting and placing the system into service.

10. EXTENSIONS BY FAYETTEVILLE: Fayetteville shall have the right to make extensions from Greenland's lines to serve adjacent areas inside or outside the present limits of Fayetteville so long as Fayetteville does not serve customers in the present limits of Greenland. The cost of replacement or enlargement of Greenland's lines of pumping facilities required by loads imposed by Fayetteville shall be borne by Fayetteville.

11. EASEMENTS: When easements are necessary in connection with maintenance and/or construction activities provided for in this Contract, those easements shall be acquired by and at the expense of Greenland. The easements shall be of adequate width for construction, installation and maintenance of lines and appurtenances. Fayetteville shall be afforded the right to full use of such easement. The form of such easements, together with the provisions contained therein, shall be the same as used by Fayetteville at the time such easements are obtained. All such easements, whether acquired by condemnation proceedings or otherwise, shall be obtained without cost to Fayetteville.

12. ORDINANCES AND REGULATIONS TO FACILITATE PERFORMANCE OF CONTRACT: Greenland and Fayetteville will enact, adopt or execute ordinances, motions, resolutions, rules, regulations or supplemental agreements which may be necessary to carry out the terms of this agreement. All ordinances required to be enacted by Greenland under this contract shall be enacted within 90 days of the contract execution date unless specifically stated otherwise in the contract.

13. PROSECUTION FOR TAMPERING: Greenland agrees to enact and enforce an ordinance or ordinances with provisions substantially as follows:

"It shall be unlawful for any person other than a person authorized by the Water and Wastewater Director of the City of Fayetteville, Arkansas, to make connection with the sewer collection system in this City or to tamper with any manhole or any appurtenance to the sewer collection system in this City. Nothing in this ordinance shall be so constructed as to prevent any person when acting under the authority of the Director of the Water and Wastewater Department of the City of Fayetteville, Arkansas, from changing, altering or otherwise working with any portion of the sewer system located in this city."

That violation of said ordinance or ordinances shall be prosecuted within the fullest limits of the law. Greenland agrees that it will prosecute all offenders.

#### 14. INDUSTRIAL PRETREATMENT:

a) Greenland Ordinance: Greenland agrees to adopt or to maintain the effectiveness of its sewer use ordinance which is no less stringent and is as broad in scope as the sewer use ordinance as adopted by Fayetteville. Whenever Fayetteville amends its sewer use ordinance, it will forward a copy of such amendment within 30 business days of enactment thereof. Greenland will enact amendments at least as stringent of those adopted by Fayetteville within 30 business days of receipt thereof. The Parties will periodically review their respective sewer use ordinance and jointly draft and adopt amendments (which are equivalent in scope and stringency) to their respective sewer use ordinance when deemed necessary for the effective administration and operation of the pretreatment program. This review will be conducted no less than once every 2 years. However, either party may request a joint review whenever such party believes that a review is necessary.

A request for such joint review must be forwarded by the requesting party to the other party, stating the reason for the request and the date on which the review is requested to take place. Within 10 days of receipt of the request, the receiving party must respond to the request stating that the proposed date is satisfactory or proposing an alternate date(s) for the review. In any case, the joint review will take place within 30 business days of the request.

b) Local Limits: Greenland will adopt and diligently enforce local limits which address at least the same pollutant parameters and are at least as stringent as the local limits enacted by Fayetteville. If any revisions or additions are made to Fayetteville's local limits, Fayetteville will forward to Greenland a copy of any such revisions or additions to the local limits within 10 business days of enactment thereof. Greenland agrees to adopt any revisions or additions made to Fayetteville's local limits within 30 business days.

c) Implementation of Greenland Ordinance: Greenland designates Fayetteville as the agent of Greenland for the purposes of implementation and enforcement of Greenland's sewer use ordinance against users connected to the Greenland System.

Fayetteville, on behalf of and as an agent for Greenland will perform technical and administrative duties necessary to implement and enforce Greenland's sewer use ordinance. Fayetteville will: (1) update the industrial waste survey; (2) issue permits to all users required to obtain a permit; (3) conduct inspections, sampling, and analysis; (4) take all appropriate enforcement action as outlined in the enforcement response plan; and (5) perform any other technical or administrative duties the parties to this agreement deem appropriate.

Fayetteville may, as an agent of Greenland, take emergency action to stop or prevent any discharge which presents or may present an imminent danger to the health or welfare of humans, which reasonably appears to threaten the environment, or which threatens to cause interference, pass through, or sludge contamination.

d) Pretreatment Program Costs: Fayetteville will be responsible for all costs (including labor, equipment, attorney's fees, etc.) incurred in implementing and enforcing Greenland's sewer use ordinance on behalf of Greenland. In the event of a lawsuit relating to the implementation or enforcement of the pretreatment program in Greenland, the City of Fayetteville shall be responsible for the defense of its interest only. The City of Greenland will be responsible for attorneys and other professional expertise that may be required to defend its interest.

Nothing in this paragraph should be construed to mean that Fayetteville will not work with Greenland in every way possible in the event of a lawsuit, nor does it prohibit the combining of legal forces by Fayetteville and Greenland in the defense of a lawsuit as long as the cost sharing of such a defense of a lawsuit is agreed upon beforehand.

e) Outside Greenland Dischargers: No industrial user outside the limits of the City of Greenland shall be allowed to tie on to the Greenland System.

f) Mediation of Disputes: Any disputes arising out of this Contract concerning pretreatment issues should be submitted to mediation if the parties cannot timely resolve any dispute themselves. Both parties retain all of their normal rights to seek judicial relief.

g) Review of Pretreatment Agreement: The portion of this Contract dealing with industrial pretreatment will be reviewed and revised to ensure compliance with the Federal Clean Water Act (42 U.S.C. para. 1251 et seq.) and all rules and regulations (see 40 CFR Part 403) issued thereunder as necessary, but at least every (2) years.

15. **LIABILITY**: Fayetteville shall not be responsible for damages resulting from acts of God, acts of war, insurrections or rebellions, acts of a public enemy, acts of any unauthorized persons, firms or corporations, or acts of Greenland or its agents or employees.

16. **TAXES PROHIBITED**: Greenland will not during the period of this contract or any renewal thereof levy any franchise tax, occupation tax, or any other tax of any form whatsoever, by whatever name it may be called, upon Fayetteville or the services rendered pursuant to this contract without consent of all the parties.

17. **TERMINATION OF CONTRACT**: This agreement may be terminated by either party upon breach by the other of any of the covenants or agreements contained herein, and the failure of the party in breach to remedy such breach, within six (6) months after receipt of written notice of the existence of such breach.

18. **OPTION TO RENEW CONTRACT**: Greenland shall have the option to renew this contract upon the same terms and conditions contained herein for an additional period of



fifteen (15) years by giving proper written notice to the Mayor of Fayetteville of its intent to renew no later than December 31, 2031.

19. NOTICES: The written notices provided for herein shall be sufficient if hand delivered or sent by certified mail, return receipt requested, postage prepaid, to the Mayor of the City of Fayetteville, Arkansas, or the Mayor of the City of Greenland, Arkansas at their respective official City Hall addresses.

20. SEVERABILITY: Should any term of this Agreement be held null and void or rescinded by a court of competent jurisdiction, the remaining terms of this Agreement will be unaffected and enforceable.

IN WITNESS WHEREOF, Fayetteville and Greenland have executed this Contract by their respective Mayors and have caused their seals to be hereunto affixed and same attested to by the City Clerk and/or City Recorder, having been authorized to do so by appropriate resolution of their respective City Councils.

**CITY OF FAYETTEVILLE**

**CITY OF GREENLAND**

\_\_\_\_\_  
**Lioneld Jordan, Mayor**

\_\_\_\_\_  
**Bill Groom, Mayor**

ATTEST: \_\_\_\_\_  
**Sondra Smith, City Clerk**

ATTEST: \_\_\_\_\_  
**Stephanie Sharp,  
Recorder/Treasurer**

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

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