

City of Fayetteville Item Review Form

2014-0163

Legistar File Number

4/15/2014

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

Billy Ammons

Submitted By

Utilities

Department

Action Required:

Approval of contract amendment 2 with Mitchell, Williams, Selig, Gates & Woodyard, PLLC (Mitchell Williams), for \$20,000 for continued legal actions relating to the White River Water Quality Standards Petition to the Arkansas Pollution Control And Ecology Commission.

Does this item have a cost? Yes

\$20,000.00

Cost of this request

\$253,469.00

Category or Project Budget

White River NPDES UAA & APCEC

Program or Project Name

5400.5700.5314.00

Account Number

\$218,469.00

Funds Used to Date

Wastewater Treatment

Program or Project Category

11014.1102

Project Number

\$15,000.00

Remaining Balance

Water/Sewer

Fund Name

Budgeted Item? Yes

Budget Adjustment Attached? No

V20130812

Previous Ordinance or Resolution # 176-13

Original Contract Number: 2182



Comments:

[Signature] 3/31/14

Paul A. Baker 3-31-2014


Doc Man 4-2-14
[Signature]

CITY COUNCIL AGENDA MEMO

MEETING OF APRIL 15, 2014

TO: Mayor and City Council

THRU: Don Marr, Chief of Staff

FROM: Billy Ammons, Wastewater Treatment
Water, Sewer, and Solid Waste Committee 

DATE: March 26, 2014

SUBJECT: Contract Amendment with Environmental Attorney Contract, Mitchell, Williams, Selig, Gates & Woodyard, PLLC, for an additional \$20,000, for White River Water Quality Standards Petition

RECOMMENDATION:

City Administration recommends approval of Contract Amendment # 2 with Mitchell, Williams, Selig, Gates & Woodyard, PLLC, increasing the compensation by up to \$20,000, for legal actions relating to the White River Water Quality Standards Petition to the Arkansas Pollution Control & Ecology Commission (APCEC).

BACKGROUND:

The Noland WWTP National Pollutant Discharge Elimination System (NPDES) permit contains limits on Total Dissolved Solids (TDS) and minerals, specifically chloride and sulfate. In that permit, the City is required to complete a Petition to the APCEC to change the local stream standards. If we do not, or if the APCEC does not approve our request, we might be required to complete a very expensive modification to our wastewater treatment plant to comply with the very strict limits of chloride, 20 mg/l; sulfate, 20 mg/l; and TDS, 160 mg/l. The estimated capital cost for this modification is approximately \$45 million. The City's team consisted of CH2M HILL with FTN as a subcontractor, the USGS, and the Mitchell, Williams law firm.

The City began the process to submit the Petition by performing a Use Attainability Analysis (UAA), a physical study of the river. The in-stream work was completed and the Petition was filed with APCEC on October 11, 2013 requesting the approval to reset the local stream standards to chloride, 60 mg/l; sulfate, 100 mg/l; and TDS, 440 mg/l. The petition was reviewed by the APCEC's Regulations Committee and the first public hearing was held at the Fayetteville Public library by the APCEC on February 13, 2014. The hearing resulted in comments made to APCEC including one from the ADEQ requesting that Fayetteville reconsider the limits requested in the Petition and to perhaps request a less drastic change in at least two of those standards

DISCUSSION:

The contract between the City and Mitchell, Williams was originally set at \$48,000 and was amended last year to \$63,000 to help cover un-anticipated costs due to Act 954. However,

additional complications have arisen requiring the Mitchell, Williams firm to spend more time on the UAA effort than the amended contract allows for. There are still several tasks to be completed to finish the UAA and Third-Party Rulemaking process, which will involve legal fees and costs. Below is the list of items that still need to be done:

- Team conference(s) to deal with comments by ADEQ
- Arrange for and meet with ADEQ water and legal division seeking agreement on the requested minerals numbers
- Prepare and file Statement of Basis and Responsiveness Summary (Response to Comments) with the APCEC
- Prepare for and attend (defend) legislative review of the Third-Party Rulemaking by Joint Legislative Public Health and Welfare Committee and the Joint Legislative Rules and Regulations Committee
- Prepare and File with APC&EC the Motion to Adopt Water Quality Standard Changes and the Draft Order adopting same
- Prepare for and attend the APC&EC meeting seeking final adoption of the changes
- Track submission and approval of the water quality changes to EPA

The original contract, contract amendment 1, and this amendment are for the actual costs incurred. This amendment seeks to change the not-to-exceed amount from \$63,000 to \$83,000.

BUDGET/STAFF IMPACT:

Funds are available within the project budget.

Attachments:

Contract Amendment 2 with Mitchell, Williams, Selig, Gates & Woodyard, PLLC

RESOLUTION NO. _____

A RESOLUTION TO APPROVE AMENDMENT NO. 2 TO THE CONTRACT WITH MITCHELL, WILLIAMS, SELIG, GATES & WOODYARD, PLLC IN THE AMOUNT OF \$20,000.00 FOR ADDITIONAL LEGAL SERVICES RELATED TO THE WHITE RIVER WATER QUALITY STANDARDS PETITION TO THE ARKANSAS POLLUTION CONTROL AND ECOLOGY COMMISSION

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 Amendment No. 2 to the contract with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the amount of \$20,000.00 for additional legal services related to the White River water quality standards petition to the Arkansas Pollution Control and Ecology Commission.

PASSED and APPROVED this 15th day of April, 2014.

APPROVED:

ATTEST:

By: _____
LIONELD JORDAN, Mayor

By: _____
SONDRA E. SMITH, City Clerk/Treasurer

AMENDMENT TO AGREEMENT FOR ENVIRONMENTAL LEGAL SERVICES

CONTRACT AMENDMENT NO. 2

This Contract Amendment No. 2 dated _____, 2014 shall amend the original contract between the City of Fayetteville, Arkansas, and Mitchell, Williams, Selig, Gates & Woodyard, PLLC., dated April 5, 2011, referred to in the following paragraphs as the original contract.

This Contract Amendment No. 2:

1. Services to be Performed: Adds: Continued actions as required to obtain final approval from the Arkansas Pollution Control and Ecology Commission (APCEC) to modify site specific water quality criteria in the White River, to provide advice and guidance on what actions the City and its consultants need to take to successfully accomplish the task of receiving approval to the petition from two committees of the AR Legislature, and to assist in obtaining relevant approvals from USEPA. The following items are the currently known required actions:

- Team conference(s) to deal with comments by ADEQ.
- Arrange for and meet with ADEQ water and legal division seeking agreement on the requested minerals numbers
- Prepare and file Statement of Basis and Responsiveness Summary (Response to Comments) with the APCEC
- Prepare for and attend (defend) legislative review of the Third-Party Rulemaking by Joint Legislative Public Health and Welfare Committee and the Joint Legislative Rules and Regulations Committee
- Prepare and File with APC&EC the Motion to Adopt Water Quality Standard Changes and the Draft Order adopting same
- Prepare for and attend the APC&EC meeting seeking final adoption of the changes
- Track submission and approval of the water quality changes to EPA.

8. Compensation: Replaces not exceed compensation amount of \$48,000 with not to exceed compensation amount of \$83,000.

WITNESS OUR HANDS THIS _____ DAY OF _____, 2014.

**MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, PLLC**

**CITY OF FAYETTEVILLE,
FAYETTEVILLE, ARKANSAS**



BY Allan Gates and
Marcella J. Taylor

LIONELD JORDAN, Mayor

Attest:

Attest:

Leann Kret

Mitchell, Williams, Selig, Gates & Woodyard, PLLC
425 West Capitol Avenue, Suite 1800
Little Rock, AR 72201

Sondra Smith, City Clerk

City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701