



Legislation Text

File #: 2018-0185, Version: 1

MITCHELL WILLIAMS SELIG GATES & WOODYARD PLLC:

A RESOLUTION TO APPROVE THE AMENDMENT TO AGREEMENT FOR LEGAL SERVICES WITH MITCHELL WILLIAMS SELIG GATES & WOODYARD PLLC FOR LEGAL SERVICES TO THE NORTHWEST ARKANSAS NUTRIENT TRADING RESEARCH & ADVISORY GROUP WITH THE CITY OF FAYETTEVILLE'S PORTION OF THE FEES NOT TO EXCEED THE TOTAL AMOUNT OF \$35,000.00

WHEREAS, on November 3, 2015, the City Council approved Resolution 203-15 expressing the intent of the City of Fayetteville to participate in cooperative regional efforts toward the development and implementation of nutrient water quality trading programs; and

WHEREAS, on May 3, 2016, the City Council approved Resolution No. 94-16 authorizing the City of Fayetteville to join Bentonville, Rogers and Springdale in the newly created Northwest Arkansas Nutrient Trading Research and Advisory Group; and

WHEREAS, the law firm of Mitchell, Williams, Selig, Gates & Woodyard was chosen to provide legal services to the Group, with the fees apportioned equally among the members, and the City of Fayetteville's share of legal fees will soon exceed \$20,000.00.

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 Amendment to Agreement for Legal Services with Mitchell, Williams, Selig, Gates & Woodyard PLLC for legal services to the Northwest Arkansas Nutrient Trading Research & Advisory Group and authorizes the City of Fayetteville to pay its portion of fees not to exceed the total amount of \$35,000.00.

City of Fayetteville Staff Review Form

2018-0185

Legistar File ID

4/3/2018

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

Tim Nyander

3/15/2018

Wastewater Treatment Plant /
Utilities Department

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval of an amendment to a legal services agreement with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the amount of \$15,000.00 for additional legal services related to the Nutrient Trading and Advisory Group.

Budget Impact:

5400.730.5800-5314.00

Water and Sewer

Account Number

Fund

10027.1701

Phosphorus Standards Management

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 130,096.00

Funds Obligated \$ 40,631.32

Current Balance \$ 89,464.68

Does item have a cost? Yes

Item Cost \$ 15,000.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget \$ 74,464.68

V20140710

Previous Ordinance or Resolution # 94-16, 203-15

Original Contract Number:

Approval Date:

Comments:



MEETING OF APRIL 3, 2018

TO: Mayor and City Council

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

FROM: Tim Nyander, Utilities Director

DATE: March 15, 2018

SUBJECT: Amendment to Nutrient Trading Agreement

RECOMMENDATION:

Staff recommends approval of an Amendment to the Agreement for Legal Services with Mitchell, Williams, Selig, Gates & Woodyard, PLLC in the amount of \$15,000.00 for legal services related to the Northwest Arkansas Nutrient Trading and Advisory Group.

BACKGROUND:

On November 3, 2015, Fayetteville City Council passed Resolution 203-15 expressing its intent to participate in cooperative regional efforts toward the development and implementation of nutrient water quality trading programs. The Northwest Arkansas Nutrient Trading Research and Advisory Group was formed in 2016, and Resolution 94-16 passed on May 3, 2016 authorized the City of Fayetteville to join the group. The Cities of Rogers, Bentonville, Springdale and Fayetteville have petitioned the Arkansas Pollution Control and Ecology Commission to initiate rulemaking to adopt a new nutrient trading regulation, which would address nutrient water quality trading projects and approval of those projects.

DISCUSSION:

A Memorandum of Understanding signed by Mayor Jordan on March 20, 2017 authorized Mitchell, Williams, Selig, Gates & Woodyard, PLLC (Mitchell Williams) to provide legal services on behalf of the Northwest Arkansas Nutrient Trading Research and Advisory Group. As the designee for the Mayor, Utilities Director Tim Nyander was authorized to represent the City of Fayetteville, and signed the Agreement for Legal Services with Mitchell Williams in the not-to-exceed amount of \$20,000.00. Expenses have approached the \$20,000.00 amount, and additional legal services will be needed in the amount of \$15,000.00. Staff requests city council approval of the utilization of funds in the Phosphorus Standards Management project to pay for the additional legal services in the amount of \$15,000.00, for a total not-to-exceed amount of \$35,000.00 for legal services related to the Northwest Arkansas Nutrient Trading and Advisory Group. The \$15,000.00 amount (the Amendment) is contingent upon unanimous approval by Rogers, Bentonville, and Springdale.

BUDGET/STAFF IMPACT:

Funds are available in the Phosphorus Standards Management project.

Attachments:

Amendment to Agreement for Legal Services

Exhibit 1 – Agreement for Legal Services

Amendment to
Agreement for Legal Services

1. The Northwest Arkansas Nutrient Trading Research & Advisory Group (the "Group") and Mitchell Williams Selig Gates & Woodyard PLLC ("Mitchell Williams") entered into an Agreement for Legal Services effective March 30, 2017 (the "Agreement"). A true copy of the Agreement is attached as Exhibit 1 to this Amendment to Agreement for Legal Services.
2. Paragraph 5 of the Agreement is hereby amended to authorize an additional Sixty Thousand Dollars (\$60,000.00) in fees and costs to be incurred under the Agreement, as amended. Mitchell Williams shall submit a monthly budget report to the Group included with each invoice or 3 days prior to a Group meeting in case an invoice is not needed. Budget report shall include summary of all charges through most recent billing cycle, anticipated charges for current billing cycle, and an overall summary of budget status including any unforeseen issues or concerns.
3. Paragraph 5 is further amended to add the following language:

Mitchell Williams agrees that it will perform all legal services necessary to pursue adoption of the Group's proposed nutrient water quality trading regulation, APCEC Docket No. 18-001-R, through a final vote on the merits by the Commission for fees and costs not to exceed the total amount authorized under this paragraph 5, as amended. No work under this Agreement beyond the final vote of the Commission shall be undertaken by Mitchell Williams unless expressly authorized in writing by the Group.

4. Paragraph 6 is amended to remove Marcella J. Taylor from the list of professionals with approved rates; and Jordan Wimpy is added to the list of professionals with an approved rate of \$295/hour.
5. Effective Date. When this Amendment is fully executed by authorized representatives of Mitchell Williams and each member of the Group, it shall be effective as of the Effective Date listed below.

EFFECTIVE DATE: _____, 2018.



Allan Gates
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

REPRESENTATIVES
OF NANTRAG MEMBERS

Brad Stewart – Springdale Water Utilities
Chair

Honorable Greg Hines, Mayor, City of Rogers

Earl Rausch, Superintendent, Rogers Water Utilities
(Or his designee)

Honorable Bob McCaslin,
Mayor, City of Bentonville

Tim Nyander – City of Fayetteville

EXHIBIT 1

AGREEMENT FOR LEGAL SERVICES

WHEREAS, the Northwest Arkansas Nutrient Trading Research and Advisory Group (the "Group") published a Request for Qualifications for Legal Counsel on September 4, 2016; and

WHEREAS, on September 30, 2016, Mitchell Williams Selig Gates & Woodyard PLLC ("Mitchell Williams") submitted a timely and complete Statement of Qualifications in response to the Group's Request; and

WHEREAS, on October 31, 2016, the Group interviewed representatives of law firms that had submitted Statements of Qualifications in response to the Group's Request; and

WHEREAS, on October 31, 2016, following the conclusion of the law firm interviews, the Group voted unanimously to engage Mitchell Williams to provide legal services to the Group;

NOW THEREFORE, in consideration of the above premises, the Group hereby retains Mitchell Williams to provide legal services as directed by the Group. The terms and conditions of Mitchell Williams' legal representation of the Group shall be as set forth below.

1. Term of the Engagement. This engagement shall be for an original term of two years starting on the Effective Date below, with an option to renew on a year-to-year basis for up to three additional one-year terms.
2. Early Termination. The Group may terminate representation under the Agreement at any time with or without cause by delivering written notice to Mitchell Williams. Mitchell Williams may terminate the representation under the Agreement only as

permitted by Arkansas Rule of Professional Conduct 1.16 and only after giving 30 days advance written notice to the Group.

3. Scope of Services. Mitchell Williams shall be authorized under this Agreement to provide legal services only with respect to those tasks or matters approved by unanimous agreement of all members of the Group.

4. Primary Contact. The parties' primary contacts under this Agreement will be:

For the Group: Brad Stewart, Chairman

For Mitchell Williams: Allan Gates

5. Identity of Client and Source of Payment: The client under this Agreement shall be the Group, and not the individual members of the Group. Nothing in this engagement shall authorize Mitchell Williams to act as counsel for an individual member of the Group.

For purposes of payment, however, the Group has requested, and Mitchell Williams agrees, that it will look only to the individual members of the Group for payment of their pro rata share of the fees and expenses for services rendered to the Group. Total fees and costs under this engagement shall not exceed Eighty Thousand Dollars (\$80,000.00) without the prior express written authorization of each member of the Group.

6. Fees and Expenses. The Group agrees to pay Mitchell Williams fees for services under this Agreement on the basis of the following hourly rates plus reimbursement of actual expenses.

Allan Gates	\$400/hour
Walter Wright	\$325/hour
Marcella Taylor	\$300/hour
Paralegal Assistance	\$100/hour

The hourly rate for any other professional assistance under this Agreement shall be agreed in writing in advance. No expense item in excess of \$100 shall be reimbursable unless approved in advance by the Group.

7. Record Retention. Mitchell Williams agrees that it will maintain orderly records regarding the services rendered to the Group under this Agreement, and it will make those records available to any member of the Group upon request. Mitchell Williams will maintain a copy of its records regarding this engagement for a period of five years following the termination of the representation, after which Mitchell Williams may destroy the records in accordance with its customary record retention and destruction policy.
8. Client Confidentiality. Mitchell Williams will preserve the client confidences of the Group to the extent permitted by applicable law, but it will not keep information received from one Group member confidential as against another member of the Group. Each member of the Group agrees that any information it provides to Mitchell Williams in connection with this engagement may be disclosed by Mitchell Williams to other members of the Group.
9. Decision Making. Mitchell Williams shall be authorized to act under this engagement only by the unanimous agreement of the Group's members. In the event any disagreement arises among the members of the Group regarding questions related to the engagement, Mitchell Williams shall take no further action with respect to the unresolved question until the Group reaches unanimous agreement regarding the question's resolution.

10. Modification of Agreement. Any extension or modification of this Agreement shall be in writing signed by authorized representatives of Mitchell Williams and each member of the Group.

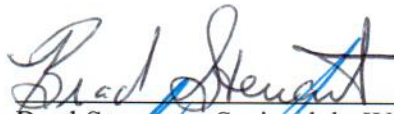
11. Effective Date. When this Agreement is fully executed by authorized representatives of Mitchell Williams and each member of the Group, it shall be effective as of the Effective Date listed below.

EFFECTIVE DATE: March 30, 2017.

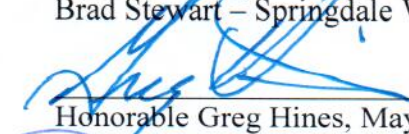


Allan Gates
MITCHELL, WILLIAMS, SELIG,
GATES & WOODYARD, P.L.L.C.

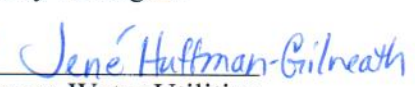
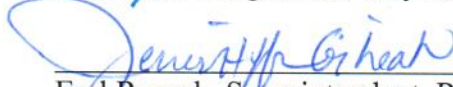
REPRESENTATIVES
OF NANTRAG MEMBERS



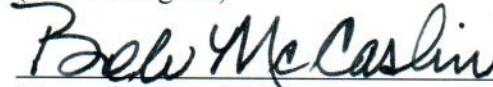
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