

City of Fayetteville Staff Review Form

2020-1063

Legistar File ID

1/5/2021

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

Tim Nyander

11/30/2020

WASTEWATER TREATMENT (730)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends the approval of Amendment No. 7 to the contract with Environmental Consulting Operations, Inc. in the amount of \$63,000.00 for wetlands mitigation site monitoring and management for 2021.

Budget Impact:

5400.730.5120-5315.00

Water and Sewer

Account Number

Fund

N/A

N/A

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 63,000.00

Funds Obligated \$ -

Current Balance **\$ 63,000.00**

Does item have a cost? Yes

Item Cost \$ 63,000.00

Budget Adjustment Attached? No

Budget Adjustment \$ -

Remaining Budget **\$ -**

V20180321

Purchase Order Number: _____

Previous Ordinance or Resolution # 02-20

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF JANUARY 5, 2021

TO: Mayor and City Council
THRU: Susan Norton, Chief of Staff
FROM: Tim Nyander, Utilities Director
DATE: November 30, 2020
SUBJECT: **Environmental Consulting Operations, Inc. Amendment No. 7**

RECOMMENDATION:

Staff recommends the approval of Amendment No. 7 to the contract with Environmental Consulting Operations, Inc. in the amount of \$63,000.00 for wetlands mitigation site monitoring and management for 2021.

BACKGROUND:

Ordinance 5687, which was adopted on May 6, 2014, waived the requirement of formal competitive bidding and authorized a contract with Environmental Consulting Operations, Inc. for wetlands mitigation site monitoring and management for 2014. Section 3.2 of the contract provides that the contract may be renewed for additional one year terms upon mutual agreement of the City and Environmental Consulting Operations, Inc.

ECO, Inc. developed the wetlands and storm water protection best management plans and conducted excellent construction inspection for the WSIP, and was tasked to ensure full compliance with the related regulations and permits. ECO, Inc. also designed the wetlands mitigation site that was required by the Corps of Engineers, which has a mandated seven-year monitoring and reporting period.

DISCUSSION:

The contract covers the following work tasks for 2021:

1. Project Administration and Management
2. Annual Ecological Restoration Monitoring
3. Annual Adaptive Management Strategy
4. Update Credit Tracking Ledger for Surplus Wetland Credits
5. Academic Research Project Guidance

The details of each of these work tasks are outlined within the proposed Amendment No. 7 between the City of Fayetteville and ECO, Inc. Amendment No. 7 has a decrease of \$3,255.00 from Amendment No. 6 in 2020, due to the elimination of the guidance provided during the installation of the solar array adjacent to Woolsey Wet Prairie.

BUDGET/STAFF IMPACT:

Funds are available in the Wastewater Treatment Operations Program.

Attachments:

2021 Executive Summary

Amendment No. 7

2021 Executive Summary:
Woolsey Wet Prairie Annual Ecological Monitoring and Adaptive Management:
ECO, Inc. Contract Amendment No. 7

Overview & Background

The Woolsey Wet Prairie Sanctuary was established by the City of Fayetteville as part of wetland compensatory mitigation requirements under Section 404 Permit 14207 issued by the U.S. Army Corps of Engineers Little Rock District (Corps). The 43.8-acre mitigation site was constructed to offset the permanent alteration of 7.92 acres of wetlands from construction of the City's Wastewater Systems Improvement Project (WSIP). The Section 404 Permit required 73.57 wetland credits to be generated at the mitigation site to offset wetland losses from the WSIP.

Environmental Consulting Operations, Inc. (ECO, Inc.) developed the WSIP stormwater permitting Best Management Practices Plans, conducted WSIP construction compliance evaluations, and oversaw full compliance with related regulations and environmental permits. Under ECO, Inc.'s oversight, contractors working for the city completed over \$160 million in work without a single permit violation.

ECO, Inc. designed the Corps-required ecological features of the wetland mitigation site and has met all mandated monitoring and reporting requirements, including the required wetland credit ledger to track the use of surplus wetland credits by the City of Fayetteville. Under ECO, Inc.'s management, a total of 94.47 mitigation credits have been generated, producing a surplus of 20.90 credits. After ECO, Inc.'s conferrals with the Corps, the City of Fayetteville received a special one-of-a-kind approval to use the 20.90 surplus wetland credits for city infrastructure projects that require wetland compensatory mitigation within the Illinois River Watershed. To date, surplus wetland credits have been used for the City's Van Asche Drive Extension Project and the Clabber Creek Recreational Trail Project, saving the City thousands of dollars.

Under ECO, Inc.'s adaptive management strategy, the mitigation site has a current plant species list totaling 496 species, a **1,055% increase** beyond the 47 plant species initially observed in 2004. Eleven species at the site are tracked by the Arkansas Natural Heritage Commission as species of state conservation concern. Nonetheless, persistent invasive species are present at the site, requiring continued monitoring and adaptive management activities and each monitoring year presents unforeseen contingencies.

ECO, Inc. 2021 Scope of Work

As shown in the 2020/2021 cost comparison table below, the 2021 "Not To Exceed" cost of **\$63,000.00** represents a **5% (\$3,255) DECREASE from the 2020 budget**. Part F–Solar Array Coordination has been removed from the scope now that the coordination process for prescribed burns that do not damage the solar array has been streamlined.

Amendment No. 7 - 2020/2021 Cost Comparison

ECO Scope of Services	2020	2021
Part A - Project Administration And Management	\$4,350	\$4,350
Part B - Annual Ecological Restoration Monitoring	\$28,050	\$28,000
Part C - Annual Adaptive Management Strategy	\$30,050	\$30,050
Part D - Update Surplus Wetland Credit Tracking Ledger	\$0	\$0
Part E – Academia Research Project Guidance	\$1,400	\$600
Part F – 2020 Woolsey Conservation Area/Solar Array	\$2,405	\$0
TOTAL	\$66,255	\$63,000

ECO, Inc. 2021 Budget Management Track Record

Since 2014, ECO, Inc.'s budget has slightly increased. However, 2014 is not representative because ECO, Inc.'s 2014 contract was not approved until May 8, 2014 and ECO, Inc. did not bill for services provided between January 1, 2014 and May 7, 2014.

Over the six-year period from 2015 to 2020, the TOTAL budget has increased by 32.5% or an average of 6.5% annually. As shown in the table below, miscellaneous contingencies have largely been the cause of price increases, as follows:

- **Update wetland credit ledger for City to use surplus credits on City infrastructure improvement projects,**
- **Development of Woolsey Wet Prairie Surplus Wetland Credits Guidance document,**
- **Development of Academic Research Guidance Document,**
- **Development of designated tree preservation areas,**
- **USFWS coordination of tree removal to address endangered bats,**
- **Coordination of Solar Array prescribed burns/relocation of fire protection lines.**

ECO, INC. WOOLSEY WET PRAIRIE HISTORICAL TOTAL BUDGETS AND BILLING

Year	Budgeted Amount	Amount Billed	
2014 Contract Approved May 8, 2014*	\$33,000	\$22,162	ECO, Inc. submitted contract in January of 2014. During this time, David Jurgens had departed and Don Marr was handling our contract. The City Council was in the midst of passing the nondiscriminatory ordinance and it was difficult to get on the City Council agenda. Consequently, ECO, Inc.'s contract was not approved until May 8, 2014. Prior to that time, ECO, Inc. provided spring 2014 monitoring and management coordination and coordination of the prescribed burn and provided \$13,124.30 of consulting services that was not billed to the City. Had we billed for this amount, the total 2014 billing would have been \$35,286.54.
2015 Amnd No. 1	\$50,766	\$40,467	Cost increase included development of wetland credit ledger guidance document and updating wetland credit ledger for Clabber Creek Recreational Trail
2016 Amnd No. 2	\$50,000	\$50,000	See July 22, 2016 Tree/wetland credit memo. Due to dealing with the extensive overgrowth of trees, ECO, Inc. donated \$3,413 of consulting services to address the very important issues.
2017 Amnd No. 3	\$56,500	\$55,039	See January 25, 2017 cost memo. Slight cost increase to develop designated Tree Preservation Areas and USFWS Endangered Species clearance for endangered tree roosting bats.
2018 Amnd No. 4	\$61,872	\$61,606	Slight cost increase due to development of Academic Research Guidance document to maintain requirements of the City's Section 404 permit and Deed Restricted Covenant. Failure to manage research project activities has the potential to result in the not being in compliance with the terms and conditions of the City's Section 404 permit and the Deed Restricted Covenant.
2019 Amnd No. 5	\$66,255	\$66,244	Slight cost increase to provide environmental regulatory and technical guidance and communications to City, Jacobs, and Solar Provider regarding scheduling and implementation of adaptive management activities at WWP to support the optimum co-existence of WWP and solar array.
2020 Amnd No. 6	\$66,255	<\$66,255	Currently, it appears That ECO, Inc. will come in under budget as the 2020 annual monitoring and adaptive management report is nearing completion.
2021 Amnd No. 7	\$63,000	TBD	This figure represents a 5% (\$3,255) decrease from the 2020 budget. Part F–Solar Array Coordination has been removed from the 2021 scope now that the process for prescribed burns that do not damage the solar array has been streamlined.

* 2014 figures are not representative of the typical annual scope because ECO, Inc.'s contract was not approved until May 8, 2014.

Over the seven year span from 2014 and 2020, ECO, Inc. has billed for \$361,518 (94%) of the \$384,648 TOTAL budgeted amount, consistently coming in under budget while dealing with unpredictable circumstances.

Between 2015 and 2020, ECO, Inc. has **donated over \$17,000 of consulting time at no charge to the City** via providing the following at no charge to the City of Fayetteville:

- **Develop and maintain Woolsey Wet Prairie website,**
- **Develop and maintain Woolsey Wet Prairie Face Book page,**
- **Responding to frequent emails, calls, and questions from the public about Woolsey Wet Prairie,**
- **Submitted 2009 nomination for ADEQ ENVY Award; City was given an award as a Finalist,**
- **Submitted nomination for Arkansas Wildlife Federation Corporate Conservationist of The Year and the City became the first municipality to win this award since the foundation was formed in 1936,**
- **Submitted very detailed forms for Woolsey Wet Prairie to become nationally recognized as an Audubon Important Bird Area,**
- **Donated months of time to write and narrate the City of Fayetteville Government Channel documentary: *Woolsey Wet Prairie: After The Burn.***

ECO, Inc. possesses the very specialized technical and regulatory expertise and site-specific knowledge to complete these tasks for the purpose of meeting Corps-mandated mitigation performance standards and to maintain the existing surplus wetland credits for use in future city infrastructure improvements that require compensatory wetland mitigation. Having won numerous awards and recognitions, Woolsey Wet Prairie Sanctuary has been a success story under the design, management, and compassion of ECO, Inc. and is a unique ecological feature for the City of Fayetteville like no other in Arkansas.

**AMENDMENT NO. 7
TO
AGREEMENT FOR ENVIRONMENTAL CONSULTING SERVICES
BETWEEN CITY OF FAYETTEVILLE, ARKANSAS AND
ENVIRONMENTAL CONSULTING OPERATIONS, INCORPORATED
FOR
WOOLSEY WET PRAIRIE ECOLOGICAL MONITORING AND MANAGEMENT
ENVIRONMENTAL CONSULTING SERVICES**

THIS AMENDMENT NO. 7 to the Agreement For Professional Environmental Consulting Services, dated May 8, 2014 (the “Agreement”), by and between CITY OF FAYETTEVILLE, ARKANSAS (CITY) and ENVIRONMENTAL CONSULTING OPERATIONS, INC. (ECO) for environmental consulting services in connection with monitoring and ecological adaptive management of CITY’s wetland mitigation site (SITE) known as Woolsey Wet Prairie is made and entered into for purposes of continuity of Site wetland habitat status in order to maintain surplus wetland credits generated at Site and due to Corps of Engineers (Corps) regulatory requirements to manage and maintain wetland compensatory mitigation in perpetuity to assure Site continues to meet ecological performance standards.

WHEREAS, this **AMENDMENT NO. 7** is a renewal of the May 8, 2014 Agreement that included a provision for automatic renewal of ECO’s annual Scope of Services beyond 2014 for additional 1-year terms upon mutual agreement by both CITY and ECO. Unless specifically stated, all other terms and conditions of the Agreement shall remain in full force and effect. Neither this Amendment nor the Agreement may be modified except in writing signed by an authorized representative of the CITY and ECO.

NOW THEREFORE, the CITY and ECO agree to amend the Agreement for ECO’s Scope of Services as follows:

1. Part A - Project Administration And Management

- a) General administration and project management activities;
- b) Perform project initiation activities;
- c) Provide environmental regulatory and technical information to CITY, CITY Contractors, Citizens of CITY, and Academia;
- d) Meet with CITY, CITY Contractors, and Academia for information exchange, goal and timeline setting, reviewing management strategies, and action items;
- e) Perform internal project control including budgeting, scheduling, and quality control;
- f) Part A applies to January through December 2021. Renewal of ECO's annual Scope of Services will be reviewed by the City Council and amended upon approval for renewal of Part A services beyond 2021.

2. Part B - Annual Ecological Restoration Monitoring

- a) Conduct qualitative monitoring activities throughout the growing season to maintain cumulative plant species lists, evaluations of seasonal hydrology and associated plant communities, and identification of stands of invasive plant species to be controlled;
- b) Observe and document total plant species richness for each wetland cell and the total mitigation SITE in historical comprehensive plant species lists;
- c) Record locations of concentrated stands of non-native and native invasive plant species and locations of rare Arkansas Natural Heritage Commission tracking plant species on wetland cell maps;
- d) Develop 2021 Woolsey Wet Prairie Adaptive Management Strategy & Monitoring Report No. 15 that is consistent with historical monitoring and management activities at Site in a format to be used for SITE adaptive management purposes;
- e) Part B applies to January through December 2021 . Renewal of ECO's annual Scope of Services will be reviewed by the City Council and amended upon approval for renewal of Part B services beyond 2021.

3. Part C - Annual Adaptive Management Strategy

- a) Continued development and implementation of annual strategy for specific controls of invasive species via selection, coordination, and scheduling of time sensitive hydrology controls, herbicide applications, mowing, hand pulling, and prescribed burning;
- b) Make SITE visits throughout the growing season to make observations of hydrology, vegetation, and effectiveness of invasive vegetation control;
- c) Oversee selection, scheduling, and coordination of SITE adaptive management activities and provide guidance pertaining to Site Deed-Restrictive Covenant restrictions to CITY and CITY's Contractors associated with management of Site;
- d) Provide restoration ecology advisory technical guidance to CITY and CITY's Contractors associated with management of Site for the purpose of implementation of Site management activities that are compliant with Site permanent protection measures and restrictions specified in the CITY's Section 404 permit;
- e) Document and maintain records of adaptive management activities implemented and the date of use;
- f) Make adjustments, as necessary, to timing and type of vegetation management to be implemented including, but not restricted to, hydrology management, mowing, herbicide applications, prescribed burning, and hand pulling of invasive plant species;

- g) Utilize wetland cell aerial photographs showing locations of concentrated stands of invasive and non-native plant species and locations of rare Arkansas Natural Heritage Commission tracking plant species in order to target and prioritize areas for specific management activities;
- h) Develop herbicide application specifications that include specific types of herbicides to apply to specific invasive plant species by CITY contractors;
- i) Schedule and select type of herbicide, adjuvant, and application rate to be used for specific target non-native and invasive plant species at specific locations and document herbicide effectiveness;
- j) Coordinate, schedule, and observe areas where herbicide applications have been made to evaluate effectiveness for controlling invasive species by CITY contractors;
- k) Develop burn specifications that clearly identify prescribed Burn Contractor responsibilities as a part of CITY's informal bid process that identify: SITE preparation, notifications, and Burn Contractor responsibilities;
- l) Coordinate, schedule, and observe prescribed burn to evaluate Burn Contractor's conformance with state laws, notifications, and specifications;
- m) Coordinate co-existence of planned construction and operation activities at adjacent solar array with adaptive management activities at the SITE;
- n) Part C applies to January through December 2021. Renewal of ECO's annual Scope of Services will be reviewed by the City Council and amended upon approval for renewal of Part C services beyond 2021.

4. Part D - Update Credit Tracking Ledger for Surplus Wetland Credits

- a) SITE has generated surplus of wetland credits above those required by CITY's Section 404 permit for wetland compensatory mitigation. CITY has received Corps approval to use wetland credits to mitigate for wetland impacts caused by the CITY's infrastructure improvement projects within Illinois River watershed, HUC 11110103;
- b) Under the 2014 Scope of Services, ECO developed a wetland credit ledger to include surplus credits and credit debits from CITY's Van Asche Extension Project for submittal to Corps;
- c) Under the 2015 Scope of Services, ECO developed a wetland credit ledger to include surplus credits and credit debits from CITY's Clabber Creek Recreational Trail Project for submittal to Corps;
- d) Under the 2016 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;

- e) Under the 2017 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- f) Under the 2018 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- g) Under the 2019 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- h) Under the 2020 Scope of Services, CITY did not utilize any surplus wetland credits for City infrastructure improvement projects requiring wetland compensatory mitigation;
- i) It is unknown at the current time, whether or not Part D services will be necessary for January through December 2021, and will be a function of whether or not surplus credit transactions occur. Should-2021 wetland credit transactions occur, ECO shall update wetland credit ledger accordingly for submittal to Corps at the end of 2021;
- j) Renewal of ECO's annual Scope of Services will be reviewed by the City Council and amended upon approval for renewal of Part D services beyond 2021.

5. Part E - Academic Research Project Review and Guidance

- a) During 2017, there was an increased interest in the SITE for academic research projects from various departments of the University of Arkansas ranging from herpetology to soil microbiology. While research projects at the site are exciting and encouraged, the need exists for guidance and oversight to ensure that all parties involved are made aware of the various requirements of the CITY's Section 404 permit and Deed Restricted Covenant for the SITE. Failure to manage research project activities at the SITE has the potential to result in the CITY not being in compliance with the terms and conditions of the CITY's Section 404 permit and the Deed Restricted Covenant for the SITE.
- b) ECO, Inc. has developed a research request form and guidance document intended for use by proposed research projects that will provide project-specific relative information to ECO, Inc., Jacobs, and the CITY for review and approval, while also educating the applicant about the SITE Section 404 permit requirements. ECO, Inc. will review academic research project proposals and provide project-specific guidance to parties conducting research at SITE.
- c) Part E applies to January through December 2021. Renewal of ECO's annual Scope of Services will be reviewed by the City Council and amended upon approval for renewal of Part E services beyond 2021.

7. Compensation

For the amended Scope of Services described herein, CITY agrees to pay ECO the sum specified below on Cost Detail Table. The total payment shall be a lump sum “not to exceed” amount of **SIXTY THREE THOUSAND U.S. DOLLARS (\$63,000.00)**.


Amendment No. 7 - 2021 Cost Detail

Amended ECO Scope of Services	Fee Estimate
Part A - 2021 Project Administration And Management	\$4,350
Part B - 2021 Annual Ecological Restoration Monitoring	\$28,000
Part C - 2021 Annual Adaptive Management Strategy	\$30,050
Part D - 2021 Update Surplus Wetland Credit Tracking Ledger	\$0
Part E – 2021 Academia Research Project Guidance	\$600
TOTAL	\$63,000

The CITY and ECO intending to be legally bound, indicate their approval of this **AMENDMENT NO. 7** by their signatures below.

**ENVIRONMENTAL CONSULTING
OPERATIONS, INC.**

CITY OF FAYETTEVILLE

By: 
Bruce Shackleford, President

By: _____
Lioneld Jordan, Mayor

Date: November 25, 2020

Date: _____

ATTEST:

By: _____
Kara Paxton, City Clerk

Date: _____

End of November 25, 2020 Amendment No. 7 for Environmental Consulting Services

