

City of Fayetteville Staff Review Form

2021-0663

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9/7/2021

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

Tim Nyander

8/19/2021

WASTEWATER TREATMENT (730)

Submitted By

Submitted Date

Division / Department

Action Recommendation:

Staff recommends approval to pay the 2020 Wastewater Treatment Plants Operations and Maintenance Budget's cost overrun of \$362,544 and a budget adjustment.

Budget Impact:

5400.730.XXXX-5328.00

Water and Sewer

Account Number

Fund

N/A

WWTP Contract PCP Operations

Project Number

Project Title

Budgeted Item? Yes

Current Budget \$ 7,339,052.00

Funds Obligated \$ 7,339,052.00

Current Balance **\$ -**

Does item have a cost? Yes

Item Cost \$ 362,544.00

Budget Adjustment Attached? Yes

Budget Adjustment \$ 362,544.00

Remaining Budget **\$ -**

V20210527

Purchase Order Number: _____

Previous Ordinance or Resolution # _____

Change Order Number: _____

Approval Date: _____

Original Contract Number: _____

Comments:



MEETING OF SEPTEMBER 7, 2021

TO: Mayor and City Council

THRU: Susan Norton, Chief of Staff

FROM: Tim Nyander, Utilities Director

DATE: August 19, 2021

SUBJECT: FY2020 Cost Overrun on the Annual CH2M Hill Engineers, Inc., Operations and Maintenance Budget and Approval of a Budget Adjustment

RECOMMENDATION:

Staff recommends approval to pay the 2020 Wastewater Treatment Plants Operations and Maintenance Budget's overrun of **\$362,544 and a budget adjustment.**

BACKGROUND:

In March 2021, the Utilities Director was informed by the Jacobs staff that the 2020 O&M contract between the City of Fayetteville and CH2M Hill Engineers was over budget by \$435,857. City staff and Jacobs staff have been researching the details of the overrun and how it relates to the contract terms.

The City staff was both surprised and disappointed by this information, because all budget numbers are tracked on a monthly basis. That tracking indicated an overbudget on labor costs, but it was offset by an underbudget in materials and expenses. This was believed to be the case up to the fourth quarter of 2020, where the contract was running in the black by approximately \$7,500. There was no documentation submitted in the monthly reports that indicated funding issues with the 2020 budget.

DISCUSSION:

In nearly every year of the O&M agreement between the City and CH2M, the City has received a rebate check at the end of the year (See Attachment 1). Between 2007 and 2019 the average rebate was \$123,165. In 2019, prior to the 2020 budget the City and CH2M made amendments to the contract that had been in place for so many years without change. The City requested that CH2M "sharpen their pencils" and provide a more tightly estimated cost for operating the plants in 2020. The City felt the estimates were too high, given that some rebates were as high as \$500,000.

Another change in the contract terms was the budget overages (See Attachment 2). In the previous contracts, if the actual expenditures exceed the total estimated annual expenditures by more than \$20,000, specific approval to incur any additional costs must be obtained from the City in advance. Noting that this was a relatively low number in the current climate, that figure was changed from \$20,000 to 5% of the total estimated budget.

The budget ended up going over by 6%. There were miscues made by both the City staff as well as CH2M staff. The City failed to incorporate a 5% contingency when presenting the 2020 budget to the City Council, and CH2M did not seek prior approval from the City when it was known that the budget was going to be exceeded by more than 5%.

There were 3 factors that contributed to the budget overrun: (1) the changing structure of the 2020 contract, as compared to previous contracts, without making the necessary financial adjustments to the contract, specifically failing to add a 5% contingency to the contract, (2) significant unanticipated labor and maintenance costs, specifically due to COVID (See Attachment 3) and on the biosolids operations (See Attachment 4) and (3) delays on receiving invoices on materials and supplies, and additional overtime due to COVID-19.

Going forward, the Jacobs team has incorporated a forecasting tool to anticipate those costs that have not yet been invoiced at the time of the monthly reporting (See Attachment 5).

This item was presented to the Water and Sewer Committee on July 13th, 2021. The Committee failed to forward it to the City Council because they had additional questions to be answered. City staff took their questions. At the August 10th Water & Sewer Committee, the staff brought the answers back to the committee. A key question was how much was spent on the thermal dryer in 2020 as compared to 2019. (See Attachment 6). If you remember, in the latter part of 2019 the City Council approved an Out-of-Scope Agreement with Jacobs where they could utilize AIT services for dryer repair without taking it to the City Council, even if the cost was over \$10,000, the capital spending ceiling. (See Attachment 7). This resulted in zero dollars being spent on dryer repair in 2020. In comparison, in 2019 \$243,913 was spent on dryer repair out of the City's capital funding.

The Committee voted to forward the item to the City Council, and wanted two more pieces of information. They would like to see the contract (amount) history over the years (Attachment 8), and the legal ramifications were of not funding the overrun (Attachment 9). Additionally, since CH2M did not report the 1% overrun that occurred over the 5% amount, they have indicated they will absorb that cost of **\$73,313**.

BUDGET/STAFF IMPACT:

Funds from the Water & Sewer Fund Balance will be utilized and moved to the Water & Sewer Fund – Wastewater Treatment Plant Budget to cover this 2020 cost overrun.

Attachments:

- Attachment 1 - Rebate History
- Attachment 2 - Budget Overages
- Attachment 3 - COVID Related Overtime Costs
- Attachment 4 - Non-Labor Expenses Causing Overage
- Attachment 5- Forecasting Tool
- Attachment 6 - Dryer repair Costs 2014 thru 2021
- Attachment 7 - BMS Dryer OOS Signed
- Attachment 8 - WWTP Contract History 2010-2021
- Attachment 9 - City Attorney Legal Opinion

ATTACHMENT 1

CH2M Hill O & M Contract Rebates

Past 13 Years

Year	Amount
2007	\$294,246.40
2008	\$245,582.50
2009	\$504,145.47
2010	\$0.00
2011	\$3,717.35
2012	\$1,113.74
2013	\$101,612.22
2014	\$39,307.70
2015	\$50,424.04
2016	\$46,720.11
2017	\$63,976.49
2018	\$113,857.73
2019	\$136,442.35

Average Rebate **\$123,165.08**

ATTACHMENT 2 – BUDGET OVERAGES

Previous Terms

Should the actual expenditures exceed the total estimated annual expenditures by more than **Twenty Thousand Dollars (\$20,000)**, in any year of this Agreement, specific approval will be obtained from the City of Fayetteville prior to CH2M incurring additional costs.

FY 2020 Revised Terms

Should the actual expenditures exceed the total estimated annual expenditures by more than **five percent (5%)** in any year of this Agreement, approval will be obtained from the City of Fayetteville.

ATTACHMENT 3 - LABOR - OVERTIME OVERAGES

Category	2020 Budget	Overtime Actual	Costs Variance
Admin	\$5,234	\$1,070	\$4,164
Biosolids	\$26,793	\$48,695	(\$21,902)
Lab	\$7,713	\$8,892	(\$1,179)
Maintenance	\$20,596	\$19,064	\$1,532
Operations	\$20,138	\$31,292	(\$11,154)
SCADA	\$7,439	\$40,987	(\$33,548)
Regional Support	\$1,270	\$5,214	(\$3,944)
			(\$66,031)

Overtime expenses increased due to COVID related quarantines of employees.

Existing Staff was tasked for filling in for absent employees, increasing the overtime costs.

ATTACHMENT 4 - NON-LABOR EXPENSES CAUSING OVERAGE

Unplanned Costs for the Thermal Dryer Breakdown

	Budget	Actuals	Variance
AIT Services	\$0	\$56,675	(\$56,675)
Motion Industries	\$0	\$28,370	(\$28,370)
Waste Management	\$24,996	\$268,247	(\$243,251)
			(\$328,296)

ATTACHMENT 5 - FORECASTING TOOL
FORECASTING FOR EXPENSES

Jun-21

WRRF MGMT

Actuals	Forecast	Variance
107,494.55	109,019.15	1,524.60

Budget	Forecast	Variance
126,217.00	109,019.15	(17,197.85)

WRRF EAST OPERATIONS PROG

Actuals	Forecast	Variance
587,041.97	707,949.00	120,907.03

Budget	Forecast	Variance
639,651.50	707,949.00	68,297.50

WRRF WEST OPERATIONS PROG

Actuals	Forecast	Variance
189,936.55	213,079.61	23,143.06

Budget	Forecast	Variance
173,698.00	213,079.61	39,381.61

WRRF LAB & IPP PROG

Actuals	Forecast	Variance
47,285.47	56,199.42	8,913.95

Budget	Forecast	Variance
60,558.00	56,199.42	(4,358.58)

WRRF LIFT STATION MAINT PROG

Actuals	Forecast	Variance
139,929.47	142,449.86	2,520.39

Budget	Forecast	Variance
208,371.50	142,449.86	(65,921.64)

WRRF BIOSOLIDS MGMT

Actuals	Forecast	Variance
226,384.91	264,104.47	37,719.56

Budget	Forecast	Variance
276,940.50	264,104.47	(12,836.03)

GRAND TOTAL

Actuals	Forecast	Total forecast amount through May
1,298,072.92	1,492,801.51	194,728.59

Budget	Forecast	Forecasted YTD Variance
1,485,436.50	1,492,801.51	7,365.01

ATTACHMENT 6 - Dryer Expenses

DATE	COST	SERVICE
9/2/2014	\$48,300	Repair parts for thermal dryer
3/1/2016	\$72,546	Repair parts for thermal dryer
2/5/2019	\$137,918	Repair parts and repair services for thermal dryer
4/2/2019	\$47,745	Replace auger & scrubber on thermal dryer
6/4/2019	\$58,250	Repair parts for thermal dryer
7/6/2021	\$23,550	Replace solids blender on thermal dryer

\$243,913

Capital Expenditures in 2019

\$0

Due to OOS Agreement no capital expenditures in 2020

June 18, 2020

Mr. Tim Nyander
City of Fayetteville
113 West Mountain Street
Fayetteville, AR 72701

Subject: Out of Scope Letter Agreement- BMS Dryer Subcontract

Dear Mr. Nyander

In order to facilitate the expedited repair of the thermal dryer at the Biosolids Management Site, the City of Fayetteville (the "City") has requested for CH2M HILL Engineers, Inc. ("CH2M") to perform certain services which are ancillary to the services provided by CH2M to the City under the terms of the Agreement for Operations and Maintenance Services dated December 15, 2009 (the "Agreement") between the parties. The additional Out of Scope services will be performed as set forth below:

What is being provided:	Capital Expenditures (as defined in Section B.2 of the Agreement) related to the Thermal Dryer Repairs at Biosolids Management site, more specifically allowing CH2M to perform or subcontract performance of repairs to the dryer in excess of \$10,000 directly.
When it is being provided:	The Services will be provided upon approval of this Out of Scope Letter Agreement by the City's Utility Director and continue through December 31, 2020.
Price of services:	The cost of services under this Out of Scope Letter Agreement shall be in accordance with Section D.2.3 of the Agreement, as it has subsequently been amended. .
Payment terms:	Invoices shall be paid in accordance with D.2.4 of Amendment 11 to the Agreement dated December 5, 2019.

All other terms and conditions of the Agreement, as it has subsequently been amended, between CH2M and The City of Fayetteville remain in full force and effect.

If these terms are agreeable to you, please sign both copies of this letter. We will return one fully executed original for your files.

CH2M appreciates the opportunity to provide these additional services to the City of Fayetteville.

Sincerely,



Greg Weeks

Both parties indicate their approval of the above-described services by their signature below.

Authorized CH2M:

Authorized City of Fayetteville, Arkansas:



Name: Steve Carpenter

Title: Manager of Projects

Date: 06/18/2020

Name: Lioneld Jordan

Title: Mayor

Date: _____

5328.00 - WWTP Contract PCP Operations (2010-2021)

Year	Actual	Rebate	Net Before Electric	Electric	Net After Electric
2010 Actual Amount	6,858,886	-	6,858,886	1,000,000	5,858,886
2011 Actual Amount	6,765,224	(3,717)	6,761,507	1,000,000	5,761,507
2012 Actual Amount	6,656,934	(1,114)	6,655,820	1,036,580	5,619,240
2013 Actual Amount	7,224,875	(101,612)	7,123,263	875,580	6,247,683
2014 Actual Amount	7,441,429	(39,308)	7,402,121	1,148,303	6,253,818
2015 Actual Amount	7,731,966	(50,424)	7,681,542	1,040,751	6,640,791
2016 Actual Amount	7,872,235	(46,720)	7,825,515	1,072,627	6,752,887
2017 Actual Amount	7,807,468	(63,976)	7,743,491	1,150,250	6,593,241
2018 Actual Amount	7,938,833	(113,858)	7,824,975	1,194,972	6,630,003
2019 Actual Amount	6,981,332	(136,442)	6,844,890	-	6,844,890
2020 Actual Amount	7,250,876	-	7,250,876	-	7,250,876
2021 Amended Budget	7,339,052	-	7,339,052	-	7,339,052
2022 Projected	7,672,713	-	7,672,713	-	7,672,713

Estimated

\$7,672,713. With that, please add a 5% contingency of \$383,635.



OFFICE OF THE
CITY ATTORNEY

DEPARTMENTAL CORRESPONDENCE



Kit Williams
City Attorney

Blake Pennington
Assistant City Attorney

Jodi Batker
Paralegal

TO: **Water and Sewer Committee**

CC: **Paul Becker**, Chief Financial Officer
Tim Nyander, Utilities Director

FROM: **Blake Pennington**, Assistant City Attorney

DATE: **August 18, 2021**

RE: **Payment for CH2M/Jacobs Cost Overruns**

Paul informed me this week that the Water and Sewer Committee is discussing cost overruns in wastewater treatment operations for the 2020 contract year.

The City’s 2020 contract with CH2M Hill Engineers, Inc. (aka Jacobs) requires the City to make monthly payments based on an annual Base Fee. Appendix D of the contract (attached) makes it clear that the Base Fee represents CH2M’s estimate for the cost of services to be provided to the City based on the scope of services agreed upon for that year.

Section 4.3 of the Contract further states that CH2M “will provide a monthly report...reflecting estimated to actual cost” and that a “year end reconciliation shall be performed following CH2M HILL’s annual audit and shall be submitted within ninety (90) calendar days of the end of the contract year. **Any difference due to City of Fayetteville or CH2M HILL will be paid within thirty (30) calendar days of the annual reconciliation completion.**”

Appendix D also states that “if the actual expenditures exceed the total estimated annual expenditures by more than five percent (5%) in any year of this Agreement, approval will be obtained from the City of Fayetteville.”

Unless we are disputing the invoices or the reconciliation submitted by CH2M, the City will need to pay them for the actual costs of services even if it exceeds the Base Fee. In the future, staff might consider recommending a 5% project contingency, which would allow for administrative approval of a change order up to that amount. If cost overruns are more than 5% above the Base Fee, staff will have to bring an item to the City Council for approval.