# COUNTY DEPARTMENT AGENDA REQUEST

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| Department: | Water System | Presenter(s): | Tony Parrott |
| Meeting Date: | February 11, 2010 | Type of Request: | New Business |

Wording for the Agenda:

Consideration of Water Committee and staff recommendation to allow Eco-South, Inc., to perform Lake McIntosh wetlands mitigation on a site known as the Flint River site, at a cost of $416,840.

Background/History/Details:

The Lake McIntosh Reservoir project requires extensive mitigation work. Eco-South has performed mitigation work for Fayette County for many years and are familiar with the requirements and specification of the Army Corps of Engineers. The Scope of the work for this project includes the following components: A) Construction Staking/Layout and Material Mobilization - $43,325.00, B) Complete 800 LF of Priority 1 channel restoration - $97,611.00, C) Complete 31 acres of wetland restoration - $86,449.00, D) Complete 29 acres of wetland enhancement - $61,132.00, E) Plant Material and Planting (20,536 stems) - $128,323.00.

What action are you seeking from the Board of Commissioners?

Approval of the Eco-South Contractor Agreement and approval for the Chairman of the Board to sign the document.

If this item requires funding, please describe:

Lake McIntosh funds

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| Has this issue come before the Commissioners in the past? | No | If so, when? | |
| Do you need audio-visual for the presentation? | No | Back-up Material Submitted? | Yes |

## STAFF USE ONLY

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|---|---|---|---|
| Approved by Finance | Yes | Reviewed by Legal | Yes |
| Approved by Purchasing | Not Applicable | Approved by County Clerk | Yes |
| Administrator's Approval | Yes | | |

Staff Notes:

**ECO-SOUTH, INC.**

Environmental Consultants
P.O. Box 1456
1165 Church Street
Covington, GA 30015
770-385-1849

January 8, 2010

Mr. Tony Parrott, Director
Fayette County Water System
245 McDonough Road
Fayetteville, Georgia 30214

Re: Flint River (Mixon) Mitigation Work
Lake McIntosh Project

Dear Mr. Parrott:

For you review and use, please find enclosed two copies of the proposed contract for Eco-South to perform the environmental mitigation work at the Flint River site in Spalding County. Upon the recommendation of the Water Committee and the approval of the Board of Commissioners, we intend to purchase the surety bond in early March and begin work shortly thereafter.

We appreciate your assistance with this matter and please call or email me with any questions. We look forward to continuing this important project for Fayette County.

Sincerely Yours,

Kent Campbell, RLA
Vice President

# CONTRACTOR AGREEMENT

Between

Fayette County, Georgia

and

Eco-South, Inc.
and
Sports Turf Company, Inc.

## ARTICLE 1.0
## INTRODUCTION

1.1 This Agreement is made by and between Fayette County ("OWNER"), whose principal offices are located at 140 Stonewall Ave, W., Fayetteville, Georgia, 30214 and Eco-South, Inc., ("Contractor"), whose principal offices are located at 1165 Church Street Covington, Georgia 30014, and Sports Turf Company, Inc. ("Contractor"), whose principal offices are located at 1487 Blackdirt Road, Whitesburg, Georgia 30185, referred to collectively as "the Parties".

1.2 It is the intent of this Agreement to establish the terms and conditions upon which the Contractor agrees to perform work as described hereinafter:

Constructing wetlands on County owned property in compliance with the permit as issued by the U.S. Army Corps of Engineers and as further described in accompanying attachments, schedules or task orders where applicable.

## ARTICLE 2.0
## TERM OF AGREEMENT

2.1 This Agreement shall be effective on March 1, 2010 (Effective Date) and terminate on March 1, 2011 (Expiration Date), unless earlier terminated or extended in accordance with the terms and conditions of this Agreement.

## ARTICLE 3.0
## ATTACHMENTS AND SCHEDULES

3.1 The following attachments and schedules are hereby made a part of this Agreement:

Attachment A – Mitigation Work Plan, Flint River Site

## ARTICLE 4.0
## CONTRACT TYPE

4.1 Compensation Agreement. Contractor will be compensated for work performed on a fixed price basis. The total value shall be $415,840.00 dollars.

## ARTICLE 5.0
## ORDER OF PRECEDENCE

5.1 Conflicts. Where a conflict is found to exist between the text of this Agreement and any attachments or schedules, the following order of precedence shall be followed:

1. The detailed statement of work in Attachment A

2. The text of this Contractor Agreement

3. All other attachments or schedules.

## ARTICLE 6.0
## ADMINISTRATION

6.1 Notices and Contractual Correspondence. All notices given pursuant to this Agreement shall reference the Contractor Agreement Number and shall be delivered personally or sent by certified or registered mail, return receipt requested, as follows:

| | | | |
|---|---|---|---|
| For: | Eco-South, Inc.<br>1165 Church Street<br>Covington, Georgia 30014<br>Attn: Kent Campbell | For: | Fayette County, Georgia<br>140 Stonewall Ave., W<br>Fayetteville, GA. 30214<br>Attn: Jack Krakeel |

6.2 Submission of Deliverables and Invoices. All deliverables including reports, other technical correspondence shall be delivered to the technical POC on each Task Order. Invoices shall be delivered to the following address, and all documents must reference the Contractor Agreement No., and Task Order Number:

Fayette County, Georgia
140 Stonewall Ave., W
Fayetteville, GA. 30214
Attn: Jack Krakeel

## ARTICLE 7. 0
## INVOICING AND TERMS OF PAYMENT

7.1 Invoicing. The Contractor will invoice OWNER in a form and supported by documentation as OWNER may require. The work shall be completed in the following stages:

| | |
|---|---|
| WO 1. Construction Staking/Layout and Material Mobilization | $ 43,325.00 |
| WO 2. Complete 800 LF of Priority 1 channel restoration | $ 97,611.00 |
| WO 3. Complete 31 acres of wetland restoration | $ 86,449.00 |
| WO 4. Complete 29 acres of wetland enhancement | $ 61,132.00 |
| WO 5. Plant Material and Planting (20,536 stems) | $128,323.00 |

Contractor will submit invoices based on 50, 75 and 100 percent completion of the each individual work order. However, Contractor may not submit invoices no more frequently than monthly for completed work. OWNER will hold a 10% retainage on each invoice.

7.2 Interim Payments. OWNER will provide payment to Contractor within 30 days from receipt of an acceptable invoice.

7.3 Retainage Payment. Retainage payment will be paid to Contractor upon the U.S. Army Corp of Engineer's acceptance of the work as being in substantial compliance with the mitigation plan and upon completion of all work, receipt of all deliverables, and submittal of an acceptable final invoice from the Contractor marked as follows:

FINAL INVOICE, PAYMENT BY OWNER CONSTITUTES FULL ACCORD AND SATISFACTION FOR ALL AMOUNTS DUE FOR WORK PERFORMED UNDER THIS AGREEMENT.

Final payment will be made by OWNER within 30 calendar days of receipt of an acceptable invoice.

## ARTICLE 8.0
## CONTRACTOR SCOPE OF WORK

8.1 Upon acceptance of this agreement by both parties, Contractor agrees to perform the work described in Attachment A in exchange for the compensation from OWNER stated in Article 4.1. Contractor will provide all materials, equipment and labor necessary to complete the tasks as described in the Article 7.0.

## ARTICLE 9.0
## OBLIGATIONS OF CONTRACTOR

9.1 Independent Contractor. Contractor is an independent Contractor and nothing contained herein shall be construed as constituting any other relationship with OWNER, nor shall it be construed as creating any relationship whatsoever between OWNER and Contractor's employees. Accordingly, Contractor shall not be entitled as a result of this Agreement to any present or future benefits provided by OWNER or its affiliates to its employees. Nor will Contractor be considered an employee for purposes of any tax or contribution levied by the federal or any state or local government. Contractor has sole authority and responsibility to hire, fire, and otherwise control its employees. Contractor agrees to comply with all laws, rules, regulations, or ordinances applicable to an employer.

9.2 Performance. Contractor warrants that services shall be performed in a professional and businesslike manner. Further, the Contractor shall conduct all activities associated with this Agreement in a lawful and ethical manner, shall use its best efforts to enhance the good reputation and best interests of OWNER, and shall refrain from any conduct which will cause, or tend to cause, any injury to OWNER, its business, or its reputation.

The standard of care applicable to Contractor's services will be the degree of skill and diligence normally employed by professionals performing the same or similar services. The Contractor will correct any services not meeting this standard without additional compensation. If such

deficiencies are not corrected in a timely manner, OWNER may cause the same to be corrected and deduct costs incurred from Contractor's compensation.

Subject to the above stated standard of care, the Contractor agrees that:

1. All materials including, but not limited to, designs, and plans furnished for the work shall have clear title; and

2. Such materials are free from valid claim for copyright or patent infringement.

3. All grading work performed hereunder shall be warranted to withstand any stream flow or flood event that does not exceed a "2x bankfull discharge" for a period of five (5) years after completion of all grading work. Contractor shall repair any and all failure that results from less than a "2x bankfull discharge" at no additional cost to OWNER during the warranty period. The surety's warranty period shall be limited to one year after completion of all grading work.

4. All plants are warranted for one year after the date of planting. If any plants die within one (1) year of planting, then Contractor agrees to replace said plants at no additional cost to OWNER.

9.3 Insurance. The Contractor shall maintain commercial and professional insurance standard and appropriate for the services the Contractor provides under this Agreement. Contractor agrees to indemnify, defend, and hold OWNER harmless from any and all claims, liabilities, obligations, governmental penalties, fines, and causes of action of whatsoever nature, including injury to or death of any person or damage to or destruction of any property, or court costs or attorney's fees resulting from any and all negligent acts or omissions of Contractor or any sub Contractor to this Agreement or any of their respective directors, officers, partners, principals, employees, or agents.

9.4 Permits, Licenses, and Fees. Contractor will obtain and pay for all permits and licenses required by law that are associated with the Contractor's performance of the work.

9.5 Confidentiality. Contractor will not disclose the nature of the services provided or engage in any other publicity or public media disclosures with respect to the services provided without the prior written consent of OWNER.

9.6 Access to Records. Contractor will maintain accounting records, in accordance with generally accepted accounting principles and practices, to substantiate all invoiced amounts. Records will be available for examination by OWNER during Contractor's normal business hours for a period of three years after Contractor submits its final invoice.

9.7 Completion and Acceptance. Contractor will provide with the delivery of final work products an explicit statement indicating that the Contractor considers the work complete. Within thirty (30) working days of receipt of such notice, OWNER will determine if the work

has been satisfactorily completed and provide notice to the Contractor. Should the work product be determined to be unsatisfactory, the Contractor will take action and resubmit the corrected work until work is determined to be acceptable to OWNER. Acceptance of work by OWNER shall not limit or affect the responsibilities and liabilities of the Contractor under any other paragraphs of this Agreement.

9.8 Performance Bond. Contractor shall provide a performance bond for 100% the amount stated in Article 4.0, Section 4.1 of this Agreement. The Bond shall name OWNER as Obligee. Further, the Bonding Company providing surety must be authorized to do business by the Georgia Insurance Department and provide an original or certified copy of their Certificate of Authority or Power of Attorney, and must be listed in the Department of Treasury's publication of companies holding Certificates of Authority as acceptable surety on Federal Bonds and acceptable reinsuring companies.

## ARTICLE 10.0
## GENERAL PROVISIONS

10.1 Proprietary Information. All proposals, reports, correspondence, and other information, written or oral, such as business strategies, themes, concepts, approaches, etc., developed by and furnished to Contractor either by OWNER and/or OWNER's client, or others in connection with the Services provided are, and will remain, the property of OWNER and/or OWNER's client, and may not be copied or otherwise reproduced or used in any way except in connection with the Services, or disclosed to third Parties or used in any manner detrimental to the interests of OWNER or OWNER's client. This Article is valid for a period of three (3) years from the date of termination of this Agreement.

10.1.1 The provision of this Article shall not apply to data or information in the public domain at the time it was disclosed, or known to the Contractor at the time of disclosure, or which becomes known to the Contractor independently of the disclosing party without breach of this Agreement, or which is independently developed by the Contractor.

10.1.2 The Contractor shall not be liable for the disclosure of such data or information pursuant to judicial or governmental action.

10.2 Force Majeure. Contractor will not be liable to OWNER for delays resulting from labor strikes, riots, war, acts of governmental authorities, extraordinary weather conditions, or other natural catastrophe, or any other cause beyond the control or the Contractor.

10.3 Suspension. The Contractor will, upon notice from OWNER, suspend delay or interrupt all or part of the services. In such event, the Contractor will resume services upon notice from OWNER and an appropriate extension of time will be mutually agreed upon and added to the Contractor's time of performance, without any increase in price if the services are to be performed at a fixed fee.

10.4 Termination. OWNER may terminate this Agreement for its convenience upon notice to the Contractor. Subject to the other provisions of this Agreement governing payment for Services, OWNER will pay Contractor for the Services rendered in accordance with this Agreement through the termination date. Contractor shall submit a detailed invoice of the Services to OWNER. Contractor shall not be entitled to profit or other compensation for Services not performed. In accordance with O.C.G.A. § 36-60-13 (1) this Agreement shall terminate absolutely and without further obligation on the part of the county at the close of the calendar year in which it was executed and at the close of each succeeding calendar year for which it may be renewed as provided in this Code section; (2) this Agreement shall automatically renew unless the Board of Commissioners votes to terminate this Agreement on or before December 1 of the year in which it is to be terminated. The total obligation of the County for the calendar year of execution and for each year of renewal shall not exceed the price shown in the payment schedule as provided herein. Title to any supplies, materials, equipment, or other personal property shall remain in the Contractor until fully paid for by the County.

10.5 OWNER may terminate this Agreement for cause if:

A. Contractor fails to perform its obligations under this Agreement, and does not affect a prompt and timely cure;
B. Contractor undertakes a general assignment for the benefit of its creditors;
C. Contractor files a bankruptcy petition;
D. a receiver is appointed for Contractor's assets; or,
E. all or a substantial part of Contractor's assets are attached.

10.5.1 If OWNER terminates this Agreement for cause, then OWNER may, at its option:

A. Perform the Services in any manner it considers appropriate; and
B. deduct any additional costs OWNER incurs from any amount that would otherwise be due Contractor under this Agreement, including, without limitations, OWNER's attorney's fees related to Contractor's default, regardless of whether proceedings are instituted to enforce the provisions of this Agreement .

10.6 Changes. OWNER may add or delete work from the statement of work. If such adjustment results in an increase or decrease in the cost or time of performance an equitable adjustment will be negotiated by the Parties. All changes to this Agreement shall be in writing and signed by both Parties.

10.7 Conflict of Interest. Each Party shall notify the other immediately upon identification of any potential conflict of interest as generally described in FAR 9.5 which may arise from the provision of services to any other organization, government entity, or corporation through the term of this Agreement. This notification shall include a description of actions which the involved Party has taken or proposes to take to avoid, mitigate, or neutralize the actual or potential conflict of interest.

10.8 Waiver of Rights. The failure of either party to insist on a strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any rights or remedies that such party may have for any subsequent breach, default, or non-performance on the part of the other.

10.9 Captions. The captions used in this Agreement are for purposes of convenience only and form no part of this Agreement. In no event shall they be deemed to limit or modify the text of this Agreement.

10.10 Severability. The invalidity or unenforceability of any portion(s) or provision(s) of this Agreement shall in no way affect the validity or enforceability of any other portion(s) or provision(s) hereof. Any invalid or unenforceable provision(s) shall be severed from the Agreement and the balance of the Agreement shall be construed and enforced as if the Agreement did not contain the particular portion(s) or provision(s) held to be invalid and/or unenforceable.

10.11 Choice of Law. This Agreement shall be interpreted and the rights of the Parties construed in accordance with laws of the state of Georgia.

10.12 Entire Agreement. This Agreement constitutes the entire Agreement between the Parties. All prior Agreements, representations, statements, negotiations, and understandings are superseded.

IN WITNESS WHEREOF, this Agreement has been executed by persons who are properly authorized to legally bind these respective organizations. Each party acknowledges that it has read the Agreement, understands it, and agrees to be bound by its terms.

Eco-South, Inc.

By _____
Title:

Sports Turf Company, Inc,

By _____
Title:

Fayette County Commission Chairman

By _____
Title:

Date _____