



## Legislation Text

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**File #:** 09-1061, **Version:** 1

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### Resolution to Approve Contract with Bodman, LLP, for Legal Services Relative to MDEQ Dam Safety Order Regarding Argo Dam (\$38,000.00)

On August 6, 2009, the Michigan Department of Environmental Quality (MDEQ) issued an Order regarding Argo Dam that requires the City to take certain action by certain dates, including the dewatering of the head race behind the embankment, and also requiring the City to make a decision whether to keep or demolish the dam in order to comply with deadlines in the Order either to make repairs to the toe drains or to demolish the dam. The MDEQ did not observe or document any change in the embankment conditions or any other documented condition or data that necessitated the Order. Although staff has met with MDEQ staff to seek some clarifications and to determine whether the dewatering of the head race would satisfy safety concerns, thereby eliminating the need to comply with the deadlines to keep and repair or to demolish the dam, MDEQ has not revised the Order. The Order also does not address the impact of dewatering or removal on the purple turtlehead that grows on a portion of the embankment. Whether the City decides to keep Argo Dam or remove Argo Dam, the Order imposes deadlines on the City that are not required by law or regulation and that are not based on the actual conditions at Argo Dam.

The procedure for challenging the MDEQ Order required the City to file a contested case within 60 days of the date of the Order, which was October 5, 2009. The contested case procedure includes an opportunity for negotiations with the MDEQ and, if the negotiations do not resolve the issues, provide for a hearing before an administrative law judge which will result in a decision by the MDEQ. Although a decision in the near future by the City to keep or remove Argo Dam may simplify some of the issues and proceedings, such decision will not eliminate all of the issues or the need to go forward with the contested case.

The City Attorney selected the Bodman, LLP, law firm to draft and file the contested case petition and to handle this matter. That selection is based on the firm's environmental experience and expertise, including experience with the MDEQ contested case process and, in particular, experience and familiarity with dam environmental issues.

Bodman, LLP, has calculated an estimated amount of legal service fees and costs to complete the pending contested case, including negotiations with the MDEQ, as well as an amount in the event a circuit court action is required to seek a stay of the Order. The estimated amount for those services is \$38,000.00. Funds are available to fund this amount from the FY10 Water Supply Fund.

Bodman, LLP, received human rights and living wage compliance approval on December 12, 2008;

Approval of a legal services contract with Bodman, LLC, in the amount of \$38,000.00 for legal services relative to the MDEQ Dam Safety Order regarding Argo Dam is recommended.

Prepared by: Abigail Elias, Chief Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Roger W. Fraser, City Administrator

Whereas, On August 6, 2009, the Michigan Department of Environmental Quality (MDEQ) issued an Order regarding Argo Dam;

Whereas, It is in the City's best interest to contest certain aspects of the Order;

Whereas, The Bodman, LLP, law firm is well qualified to provide legal services representing the City relative to the Order, including representing the City in a contested case and, if necessary, in possible court action;

Whereas, The firm has calculated an estimated amount of \$38,000.00 for legal service fees and costs to provide those services; and

Whereas, Bodman, LLP, received human rights and living wage compliance approval on December 12, 2008;

RESOLVED, That a professional services agreement for legal services with Bodman, LLP, be approved in the amount of \$38,000.00 to provide legal services relative to the MDEQ Order regarding Argo Dam;

RESOLVED, That the agreement be funded from the FY10 Water Supply Fund, with the contract amount of \$38,000.00 to be made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized to execute the professional services agreement with Bodman, LLP, subject to approval as to form by the City Attorney; and

RESOLVED, That the City Attorney and City Administrator be authorized to take the necessary administrative actions to implement this resolution.