



Legislation Text

File #: 20-0538, **Version:** 1

Resolution to Approve Fifth Amendment to Professional Services Agreement with Bodman, PLC, for Legal Services Relative to 1,4-Dioxane from Gelman Sciences, Inc., dba Pall Life Sciences (\$92,500.00) and to Appropriate Funds (\$92,500.00) **(8 Votes Required)**

The City has previously litigated against Gelman Sciences, Inc., dba Pall Life Sciences (Gelman) relative to the 1,4-dioxane that Gelman released at its property in Scio Township that has migrated as one or more plumes, via aquifers, both under properties within the City of Ann Arbor and under properties in Scio Township.

On October 27, 2016, the Michigan Department of Environmental Quality (MDEQ) promulgated, and Governor Snyder approved, an emergency cleanup criterion of 7.2 ppb for 1,4-dioxane, replacing the 85 ppb criterion that was previously in effect, and that cleanup criterion of 7.2 ppb has since been adopted on a non-emergency basis.

Under the circumstances, the State was in negotiations with Gelman regarding possible revision of the consent judgment. In December 2016 the City, various Washtenaw County parties, and the Huron River Watershed Council moved and were granted permission to intervene in the case between the State and Gelman. In February 2017, Scio Township also was granted permission to intervene. Although the intervening parties can pursue litigation as parties to the case, the City and other intervenors became involved in the negotiations in an effort to reach agreement on an amendment to the consent judgment that will be satisfactory to the intervening parties. Since then, the parties have been meeting on a regular basis to negotiate, and have been exchanging drafts of proposed amendments to the consent judgment.

The City Attorney selected the Bodman, PLC, law firm to provide advice, to pursue the motion to intervene, and to assist with the negotiations. That selection was based on the firm's familiarity with the issues and details of this matter because of its representation of the City in the prior litigation against Gelman, and the firm's environmental experience and expertise.

The cost of the firm's legal services through the end of January of 2020 is within \$7,000.00 of the amount in the contract for legal services, as already amended. The amount of time spent on recent negotiations, including the exchanges of drafts, court conferences, and providing advice as needed, has been more time consuming than anticipated. Although the amount of time and cost of legal services going forward cannot be predicted with certainty, recent efforts and foreseeable efforts through June of 2020 to continue the work, including reaching final negated documents if possible, attending court, and providing advice and other legal services as requested and needed, Bodman, PLC, has calculated \$92,500.00 to be a reasonable estimate, which would bring the total contract amount to \$592,500.00. No addition to the \$20,000.00 previously approved to cover the City's share of costs for experts is required at this time. That amount is part of the contract total.

Budget and Fiscal Impact: Funds are available for the Bodman, PLC, contract amendment in the Water Supply Fund Balance, but need to be appropriated to the FY20 Water Supply Fund (0042)

(\$92,500.00) to be available for those purposes.

Bodman, PLC, complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances;

Approval of a fifth amendment to the professional services agreement with Bodman, PLC, in the amount of \$92,500.00 for legal services relative to the Gelman 1,4-dioxane, for a total contract amount of \$592,500.00, is recommended.

Prepared by: Abigail Elias, Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Tom Crawford, Interim City Administrator

Whereas, On October 27, 2016, the Michigan Department of Environmental Quality (MDEQ) promulgated, and Governor Snyder approved, an emergency cleanup criterion of 7.2 ppb for 1,4-dioxane, which criterion of 7.2 ppb has since been adopted on a non-emergency basis;

Whereas, The City was granted permission to intervene in the lawsuit brought by the State of Michigan, through various state agencies, against Gelman Sciences, Inc., dba Pall Life Sciences regarding the 1,4-dioxane plumes originating on Gelman's property;

Whereas, The City joined the negotiations regarding possible amendment to the consent judgment between the State and Gelman in the state's case and has pursued those negotiations with other parties who also were granted permission to intervene;

Whereas, Additional efforts are required to continue those negotiations;

Whereas, The Bodman, PLC, law firm is well qualified to provide legal services representing the City relative to the Gelman 1,4-dioxane plumes, including representing the City in negotiations as well as in litigation;

Whereas, The City and firm entered into an initial contract for legal services, which has been amended four times for a total contract amount of \$500,000.00, including \$480,000.00 for legal services and \$20,000.00 for expert services;

Whereas, The City Attorney recommends a fifth amendment in the amount of \$92,500.00, for a total contract amount of \$592,500.00, of which \$572,500.00 is for legal services, to continue those legal services; and

Whereas, Bodman, PLC, complies with the City of Ann Arbor's Non-Discrimination and Living Wage Ordinances;

RESOLVED, That a fifth amendment to the professional services agreement for legal services with Bodman, PLC, be approved in the amount of \$92,500.00 to provide continuing legal services relative to the Gelman 1,4-dioxane plumes;

RESOLVED, That \$92,500.00 be appropriated from Water Supply Fund Balance into the FY20 Water Supply Fund (0042) (\$92,500.00) to fund this fifth amendment to the professional services agreement;

RESOLVED, That after appropriation the \$92,500.00 in the FY20 Water Supply Fund be made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized to execute the fifth amendment to the professional services agreement with Bodman, PLC, 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.

Sponsored by: Mayor Taylor