



Legislation Text

File #: 17-0498, **Version:** 1

Resolution to Approve Second Amendment to Professional Services Agreement with Bodman, PLC, for Legal Services Relative to 1,4-Dioxane from Gelman Sciences, Inc., dba Pall Life Sciences (\$170,000.00) and to Appropriate Funds (\$170,000.00) **(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. Although the City entered into a settlement with Gelman in late 2006, the City did not release all future claims and reserved its right to bring those claims if they arose.

Since 1988 the State of Michigan, through the Attorney General, the Department of Environmental Quality (MDEQ), and other state agencies (collectively the State), has been in litigation with Gelman relative to the 1,4-dioxane plume. In 1992 the State and Gelman entered into a consent judgment in an effort to resolve their litigation. The consent judgment has been amended three times, in 1996, 1999, and 2011.

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.

Under the circumstances, the State has been 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, 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 have become 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. The parties are now meeting to negotiate for at least four hours once or twice a month.

Gelman has also filed a motion for stay while it attempts an appeal to challenge the court's decision to allow intervention by the City and other intervening parties. Responding to the motion for stay, to a motion for stay in the court of appeals if the motion for stay is denied by the trial court, and to an application for leave to appeal by Gelman will require additional attorney time.

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 is 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 services through March 31, 2017, is close to \$125,000.00, which is the limit of their contract as first amended. Although the amount of time and cost of legal services going forward cannot be predicted with certainty, to continue the negotiations and related work, as well as

necessary legal services related to the litigation and anticipated appeal, Bodman, PLC, has calculated \$150,000.00 to be a reasonable estimate. In addition, the firm will be retaining one or more expert witnesses to assist with the negotiations and litigation, at a cost to the City up to \$20,000.00.

Fiscal/budget impact

Funds are available for both the Bodman, PLC, contract amendment and the expert witness services in the Water Supply Fund Balance, but need to be appropriated to the FY17 Water Supply Fund (0042) 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 second amendment to the professional services agreement with Bodman, PLC, in the amount of \$170,000.00 for legal services relative to the Gelman 1,4-dioxane, for a total contract amount of \$295,000.00, is recommended.

Prepared by: Abigail Elias, Chief Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Howard S. Lazarus, 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;

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 has joined the negotiations regarding possible amendment to the consent judgment between the State and Gelman in the state's case and wishes to pursue that option;

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 a contract for legal services for an amount not to exceed \$25,000.00, and entered into an amendment to that agreement for an additional amount of \$100,000.00;

Whereas, The City Attorney recommends a second amendment in the amount of \$170,000.00 to continue those services, including expert witness; and

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

RESOLVED, That a second amendment to the professional services agreement for legal services with Bodman, PLC, be approved in the amount of \$170,000.00 to provide continuing legal services relative to the Gelman 1,4-dioxane plumes, including expert witness services;

RESOLVED, That \$170,000.00 be appropriated from Water Supply Fund Balance into the FY17 Water Supply Fund (0042) to fund this second amendment to the professional services agreement;

RESOLVED, That after appropriation the \$170,000.00 in the FY17 Water Supply Fund be made available without regard to fiscal year;

RESOLVED, That the Mayor and City Clerk be authorized to execute the second 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.