



Legislation Text

File #: 21-0160, **Version:** 1

Resolution to Approve Sixth Amendment to Professional Services Agreement with Bodman, PLC, for Legal Services Relative to 1,4-Dioxane from Gelman Sciences, Inc., dba Pall Life Sciences (\$157,500.00)

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 and met on a regular basis in an effort to reach agreement on an amendment to the consent judgment satisfactory to the intervening parties. Because the final draft of a proposed amended consent judgment was rejected by the intervening parties in late 2020, the parties are now preparing for a court hearing in early March 2021 on changes needed to the existing consent judgment, as amended, and existing court orders.

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. Including amendments 1 through 5, the contract with Bodman, PLC, has reached \$572,500 for legal services, plus \$20,000 for the City's share of expert services.

The total cost of the firm's legal services through the end of 2020 is approximately \$666,500. The amount of time spent on the negotiations, including the exchanges of drafts, court conferences, and providing advice as needed, ended up being more time consuming than anticipated. Because the proposed amended consent judgment was rejected by all the intervening parties, there has been additional and ongoing work, and will be considerable remaining work in January, February and March to prepare for the March 2021 court hearing now set in this matter. Additional work and possibly a longer time will be required to address one or more motions Gelman is expected to file, and possible appeals. Although the amount of time and cost of legal services going forward cannot be predicted with certainty, the costs for recent and foreseeable efforts through March of 2021 would be about \$150,000, which would bring the total contract amount for legal services to \$722,500.00.

In addition, the City's original \$20,000.00 share of the cost of expert services fees has been depleted. To cover the expert costs to prepare for, and participate in the hearing, an additional amount of \$7,500.00 is needed, increasing the requested amendment amount to \$157,500.00, and increasing the total contract amount for expert services to \$27,500.00.

Budget and Fiscal Impact: Funds were budgeted for this and are available for the Bodman, PLC, contract amendment in the Operations and Maintenance Budget of the Water Supply System.

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

Approval of this sixth amendment in the amount of \$157,500.00 to the professional services agreement with Bodman, PLC for the Gelman 1,4-dioxane litigation, of which \$150,000.00 is for legal services and \$7,500 is for expert services, for a total contract amount of \$750,000.00, is recommended.

Prepared by: Abigail Elias, Assistant City Attorney

Reviewed by: Stephen K. Postema, City Attorney

Approved by: Tom Crawford, 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 were required for those negotiations and provide advice after the negotiations were concluded, and are now required for a court hearing in March 2021, and for related court proceedings;

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 both negotiations and litigation;

Whereas, The City and firm entered into an initial contract for legal services, which has been amended five times for a total contract amount of \$592,500.00, including \$572,500.00 for legal services and \$20,000.00 for expert services;

Whereas, The City Attorney recommends a sixth amendment in the amount of \$157,500.00, including \$150,000.00 for legal services and \$7,500.00 for expert services, for a total contract amount of \$750,000.00, of which \$722,500.00 is for legal services and \$27,500.00 is for expert services, to continue those legal and expert services; and

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

RESOLVED, That a sixth amendment to the professional services agreement for legal services with Bodman, PLC, be approved in the amount of \$157,500.00 to provide continuing legal and expert services relative to the Gelman 1,4-dioxane plumes;

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