



**TO:** Elizabeth Pauli, City Manager  
**FROM:** Christopher D. Bacha, Chief Deputy City Attorney, City Attorney's Office  
William C. Fosbre, City Attorney, City Attorney's Office  
**COPY:** City Council and City Clerk  
**SUBJECT:** Amendment No. 5 for Legal Services with Kenyon Disend, PLLC – February 26, 2019  
**DATE:** February 5, 2019

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**SUMMARY:**

A resolution authorizing the execution of Amendment No. 5 of the Agreement for Legal Services with Kenyon Disend, PLLC, in the amount of \$100,000, for a cumulative total not to exceed \$300,000, budgeted from the ES Wastewater Fund 4300 and ES Solid Waste Fund 4200, for legal services related to completing implementation of requirements of the Consent Decree; and rewriting Chapter 12.09 of the Tacoma Municipal Code and continuing to provide legal services regarding environmental law matters.

**STRATEGIC POLICY PRIORITY:**

- Assure outstanding stewardship of the natural and built environment.
- Encourage and promote an efficient and effective government, which is fiscally sustainable and guided by engaged residents.

The project will ensure Tacoma's regulatory authority to protect its Publicly Owned Treatment Works from industrial user's discharges is fully compliant with Department of Ecology and the Consent Decree requirements. Such legal authority is necessary to assure outstanding stewardship of our natural and built environment by having a compliant industrial wastewater permit program with the authority to control discharges from industrial users.

**BACKGROUND:**

Since 2016, Kenyon Disend, PLLC has been representing the City in a third-party lawsuit brought under the Clean Water Act, challenging the City's wastewater pretreatment program. The third-party lawsuit was settled, resulting in the filing of a Consent Decree requiring that the wastewater pretreatment program be updated, including a rewrite of the sanitary and storm sewer code located in Chapter 12.08 of the Tacoma Municipal Code (TMC).

The original Agreement for Legal Services for miscellaneous municipal law matters was executed June 27, 2012, in the amount of \$10,000; Amendment No. 1 was executed March 20, 2014, in the amount of \$40,000; Amendment No. 2 was executed July 20, 2016, in the amount of \$25,000; Amendment No. 3 was executed October 17, 2016, in the amount of \$40,000, and Amendment No. 4 was executed October 20, 2017, in the amount of \$85,000. It is necessary to further amend the agreement by revising the hourly rate and increasing the maximum compensation under the agreement in the amount of \$100,000, for a cumulative amount not to exceed \$300,000, to allow the law firm to assist the City in completing implementation of the requirements of the Consent Decree, and in addition, rewriting TMC 12.09 (Solid Waste Code), and continuing to provide legal advice and services regarding environmental law matters.

**ISSUE:**

Additional services are necessary to complete the implementation of the requirements set out in the Consent Decree. Also services are need to conduct a comprehensive review and rewrite of TMC 12.09 (Solid Waste Code). Continued legal advice and services regarding environmental law matters is also needed.



**ALTERNATIVES:**

The City Council could reject the amendment and the work could be completed through use of in-house counsel or by retaining another law firm. Taking an alternative action would delay completion of the work to update the City’s pretreatment project which could result in non-compliance with the City’s obligations under the Department of Ecology pre-treatment audits and the Federal Consent Decree implemented under the Clean Water Act. It would additionally delay the project to update and rewrite the Solid Waste Code.

**RECOMMENDATION:**

A resolution authorizing the execution of Amendment No. 5 of the Agreement for Legal Services with Kenyon Disend, PLLC, in the amount of \$100,000, for a cumulative total not to exceed \$300,000, budgeted from the ES Wastewater Fund 4300 and ES Solid Waste Fund 4200, for legal services related to completing implementation of requirements of the Consent Decree; and rewriting Chapter 12.09 of the Tacoma Municipal and continuing to provide legal services regarding environmental law matters.

**FISCAL IMPACT:**

**EXPENDITURES:**

FUND NUMBER & FUND NAME *	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Wastewater Fund 4300	523600	5311300	\$50,000
ES Solid Waste Fund 4200	512025	5310100	\$50,000
<b>TOTAL</b>			<b>\$100,000</b>

\* General Fund: Include Department

**REVENUES:**

FUNDING SOURCE	COST OBJECT (CC/WBS/ORDER)	COST ELEMENT	TOTAL AMOUNT
ES Solid Waste Fund 4200	523900	4343250	\$50,000
ES Solid Waste Fund 4200	512000	various	\$50,000
<b>TOTAL</b>			<b>\$100,000</b>

**FISCAL IMPACT TO CURRENT BIENNIAL BUDGET: \$100,000**

**ARE THE EXPENDITURES AND REVENUES PLANNED AND BUDGETED? N/A**