

**SULTAN CITY COUNCIL  
AGENDA ITEM COVER SHEET**

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ITEM NO: C-12  
DATE: November 12, 2009  
SUBJECT: Kenyon Disend – Municipal Attorney Contract  
CONTACT PERSON: Deborah Knight, City Administrator

**ISSUE:**

The issue before the City Council is authorizing the Mayor to sign a professional services contract with Kenyon Disend not to exceed \$96,000 for general municipal attorney services.

**STAFF RECOMMENDATION:**

Authorize the Mayor to sign a professional services contract with Kenyon Disend for general municipal attorney services.

**SUMMARY:**

The City Council approved a one-year professional services agreement with Kenyon Disend on November 13, 2008. City staff recommend approving a new contract with Kenyon Disend (Attachment A).

The new contract will be effective November 15, 2009 and will expire on January 31, 2011 in order to stagger contract expiration dates and avoid having too many contracts expire in December. Under the contract the rates and fee schedule shall remain unchanged through January 31, 2011.

The maximum expenditure under the contract is \$96,000. Expenditures under the contract are \$72,000 through September 2009 – approximately \$8,000 per month.

**BACKGROUND:**

In October 2007, the City Council authorized staff to issue a request for proposal (RFP) for municipal attorney services. The City received six proposals and interviewed three firms – Kenyon Disend, Ogden Murphy Wallace, and Weed Graafstra and Benson. Following the interview process, Mayor Eslick recommended the City contract with Kenyon Disend for municipal attorney services.

Kenyon Disend specializes in serving small municipalities. The firm has ten attorneys. The majority of their current city clients are in King County and include – Duvall, Sammamish, Hunts Point, North Bend and Covington. The firm serves nearly 30 cities, counties and special purpose districts as both special and general council.

Margaret King is currently acting as the City's attorney. Ms. King also services the City's of Roslyn and Hunts Point. Her hourly rate for 2010 is \$210/hour.

#### DISCUSSION:

The municipal attorney is an essential member of the municipal team for purposes of managing legal affairs, risk management and assisting the City in making legally sound policy decisions. The selection and continuity of the City Attorney is one of the most important decisions for a City Council.

General municipal attorney services include attending council meetings, legal services to the Mayor, Council and staff, preparation and review of ordinances, resolutions, contracts and other legislative documents, and legal representation in civil matters such as land use hearings and appeals.

The City will continue to contract for special legal counsel (e.g. land use attorney) on an as needed basis. The City has a legal services contract with Cairncross and Hemplemann for specialized land use issues. The City also has a legal services contract with Weed, Graafstra and Benson for long-term public information requests and legal matters in the community development department that are progressing to completion under their guidance.

#### RECOMMENDED ACTION:

1. Authorize the Mayor to sign a professional services contract with Kenyon Disend for municipal attorney services.

This action implies the City Council is satisfied with the attorney services received from Kenyon Disend and are prepared to continue the attorney client relationship.

2. Authorize the Mayor to sign a professional services contract with Kenyon Disend and direct staff to areas of concern.

The City Council may have minor concerns regarding the contract terms or the relationship with Kenyon Disend as the City's municipal attorney. The Council may direct staff to areas of concern to resolve prior to authorizing the Mayor to sign the contract.

3. Do not authorize the Mayor to sign a professional services contract with Kenyon Disend.

The City Council may have material concerns regarding the contract terms or the work product provided by Kenyon Disend. The Council will want to direct staff to resolve the Council's concerns prior to authorizing the Mayor to sign the contract.

ATTACHMENTS:

A – Proposed legal services contract with Kenyon Disend

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COUNCIL ACTION:

DATE:

**AGREEMENT FOR SERVICES  
BETWEEN THE CITY OF SULTAN AND  
KENYON DISEND**

THIS AGREEMENT, is made this 15th day of November, 2009, by and between the City of Sultan (hereinafter referred to as "City"), a Washington Municipal Corporation, and Kenyon Disend (hereinafter referred to as "Service Provider"), doing business at 11 Front Street South, Issaquah, Washington.

WHEREAS, Service Provider is in the business of providing certain services specified herein; and

WHEREAS, the City desires to contract with Service Provider for the provision of municipal attorney services, and Service Provider agrees to contract with the City for same;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

**TERMS**

1. **Description of Work.** Service Provider shall perform work as described in Exhibit A, Scope of Work, which is attached hereto and incorporated herein by this reference, according to the existing standard of care for such services. Service Provider shall not perform any additional services without the expressed permission of the City.
2. **Payment.**
  - A. The City shall pay Service Provider at the hourly rate set forth in Exhibit B, but not more than a total of ninety-six thousand dollars (\$96,000) for the services described in this Agreement. This is the maximum amount to be paid under this Agreement..
  - B. Time is accounted for and billed to the tenth (1/10) of the hour. The Service Provider shall not charge for time that is excessive relative to the task or service, redundant, unnecessary, or fails to provide value to the City commensurate with the associated fees. No premium or time added shall be charged for incorporating into the services work product from a separate engagement or undertaking. In-office conferences between Service Provider's attorneys should be minimized. Generally only one attorney should appear at meetings, hearings and other proceedings unless special circumstances warrant the presence of more than one attorney.
  - C. Service Provider shall submit monthly payment invoices to the City after such services have been performed, and the City shall make payment within four (4) weeks after the submittal of each approved invoice. Such invoice shall detail the hours worked, a description of the tasks performed, and shall separate all charges for clerical work and reimbursable expenses.
  - D. To allow the City to better track Service Provider time and effectively and appropriately utilize the Service Provider services, the Service Provider will advise the authorized City Representative monthly when the number of general service hours performed by the

attorneys and Service Provider's other billable employees during the month reaches 35 hours.

- E. If the City objects to all or any portion of any invoice, it shall so notify Service Provider of the same within five (5) days from the date of receipt and shall pay that portion of the invoice not in dispute. The parties shall immediately make every effort to settle the disputed portion.

**3. Relationship of Parties.** The parties intend that an independent Service Provider - client relationship will be created by this Agreement. As Service Provider is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subcontractor of Service Provider shall be or shall be deemed to be the employee, agent, representative or subcontractor of the City. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance and unemployment insurance, are available from the City to the Service Provider or his employees, agents, representatives or subcontractors. Service Provider will be solely and entirely responsible for his acts and for the acts of Service Provider's agents, employees, representatives and subcontractors during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent Service Providers to perform the same or similar work that Service Provider performs hereunder.

**4. Project Name.** Municipal Attorney

**5. Duration of Work.** Service Provider shall complete the work described in Attachment A on or before January 31, 2011.

**6. Termination.**

A. Termination Upon the City's Option. The City shall have the option to terminate this Agreement at any time. Termination shall be effective upon ten (10) days written notice to the Service Provider.

B. Termination for Cause. If Service Provider refuses or fails to complete the tasks described in Attachment A, or to complete such work in a manner unsatisfactory to the City, then the City may, by written notice to Service Provider, give notice of its intention to terminate this Agreement. After such notice, Service Provider shall have ten (10) days to cure, to the satisfaction of the City or its representative. If Service Provider fails to cure to the satisfaction of the City, the City shall send Service Provider a written termination letter which shall be effective upon deposit in the United States mail to Service Provider's address as stated below.

C. Rights upon Termination. In the event of termination, the City shall only be responsible to pay for all services satisfactorily performed by Service Provider to the effective date of termination, as described in the final invoice to the City. The City Manager shall make the final determination about what services have been satisfactorily performed.

**7. Nondiscrimination.** In the hiring of employees for the performance of work under this Agreement or any subcontract hereunder, Service Provider, its subcontractors or any person acting on behalf of Service Provider shall not, by reason of race, religion, color, sex, marital status, national origin or

the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

- 8. Indemnification / Hold Harmless.** The Service Provider shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including reasonable attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Service Provider and the City, its officers, officials, employees, and volunteers, the Service Provider's liability hereunder shall be only to the extent of the Service Provider's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Service Provider's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this Agreement.

- 9. Insurance.** The Service Provider shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Service Provider, their agents, representatives, employees or subcontractors.

A. **Minimum Scope of Insurance.** Service Provider shall obtain insurance of the types described below:

1. Automobile Liability All owners and employees of Service Provider performing service on Sultan's behalf shall maintain adequate automobile liability insurance covering their vehicles.
2. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent Service Providers, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract. The City shall be named as an insured under the Service Provider's Commercial General Liability insurance policy with respect to the work performed for the City using ISO additional insured endorsement GC 20 10 10 01 and GC 20 37 10 01 or substitute endorsements providing equivalent coverage.
3. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

B. **Minimum Amounts of Insurance.** Service Provider shall maintain the following insurance limits:

1. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per accident.
  2. Commercial General Liability insurance shall be written with limits no less than \$1,000,000 each occurrence, \$2,000,000 general aggregate and \$2,000,000 products-completed operations aggregate limit.
- C. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability and Commercial General Liability insurance:
1. The Service Provider's insurance coverage shall be primary insurance as respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Service Provider's insurance and shall not contribute with it.
  2. The Service Provider's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the City.
- D. **Acceptability of Insurers.** Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- E. **Verification of Coverage.** Service Provider shall furnish the City with original certificates and a copy of the amendatory endorsements, including but not necessarily limited to the additional insured endorsement, evidencing the insurance requirements of the Service Provider before commencement of the work.
- F. **Subcontractors.** Service Provider shall include each subcontractor as insured under its policies or shall furnish separate certifications and endorsements for each subcontractor. All coverage shall be subject to all of the same insurance requirements as stated herein for the Service Provider.
- 10. Entire Agreement.** The written provisions and terms of this Agreement, together with all documents attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of, or altering in any manner whatsoever, this Agreement.
- 11. City's Right of Supervision, Limitation of Work Performed by Service Provider.** Even though Service Provider works as an independent Service Provider in the performance of his duties under this Agreement, the work must meet the approval of the City and be subject to the City's general right of inspection and supervision to secure the satisfactory completion thereof. In the performance of work under this Agreement, Service Provider shall comply with all federal, state and municipal laws, ordinances, rules and regulations that are applicable to Service Provider's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

12. **Work Performed at Service Provider's Risk.** Service Provider shall be responsible for the safety of its employees, agents and subcontractors in the performance of the work hereunder and shall take all protections reasonably necessary for that purpose. All work shall be done at Service Provider's own risk, and Service Provider shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.
13. **Ownership of Products and Premises Security.**
  - A. All reports, plans, specifications, data maps, and documents produced by the Service Provider in the performance of services under this Agreement, whether in draft or final form and whether written, computerized, or in other form, shall be the property of the City.
  - B. While working on the City's premises, the Service Provider agrees to observe and support the City's rules and policies relating to maintaining physical security of the City's premises.
14. **Modification.** No waiver, alteration or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and Service Provider.
15. **Assignment.** Any assignment of this Agreement by Service Provider without the written consent of the City shall be void.
16. **Written Notice.** All communications regarding this Agreement shall be sent to the parties at the addresses listed below, unless notified to the contrary. Any written notice hereunder shall become effective as of the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.
17. **Non-Waiver of Breach.** The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements or options, and the same shall be and remain in full force and effect.
18. **Resolution of Disputes, Governing Law.** Should any dispute, misunderstanding or conflict arise as to the terms and conditions contained in this Agreement, the matter shall be referred to the City Manager, whose decision shall be final. In the event of any litigation arising out of this Agreement, the prevailing party shall be reimbursed for its reasonable attorney fees from the other party. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year above written.

**CITY OF SULTAN**

**SERVICE PROVIDER**

By: \_\_\_\_\_  
Carolyn Eslick, Mayor

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Taxpayer ID #: \_\_\_\_\_

**CITY CONTACT**

**SERVICE PROVIDER CONTACT**

Deborah Knight  
City of Sultan  
319 Main Street, Suite 200  
Sultan, WA 98294  
Phone: 360-793-2231  
Fax: 360-793-3344

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**ATTEST/AUTHENTICATED**

By: \_\_\_\_\_  
City Clerk

**APPROVED AS TO FORM**

By: \_\_\_\_\_  
Office of the City Attorney

**EXHIBIT A**  
**SCOPE OF WORK**

Service Provider shall provide City Attorney services to the City and Kathy Hardy, a member attorney of the Service Provider, shall serve as the City Attorney, providing the traditional scope of attorney services, advising the City on all matters of a legal nature, providing legal advice, counsel, services, legal training, consultation and opinions to the Mayor, City Council, Boards and Commissions, and all levels of City government. Mike Kenyon, Bruce Disend, and other members of the Service Provider's firm, shall assist Ms. Hardy and serve as needed or requested.

The basic scope of services, for the purpose of the proposal, shall include those legal services generally understood from the field of municipal law to fall within the category of "general counsel" work, and shall include, but not necessary be limited to the following:

1. Provides legal advice, counsel, services, training, consultation, and opinions to the Mayor, City Council, Boards and commissions, and all levels of the City government, on a wide variety of civil assignments, including but not limited to land use planning, laws against discrimination, construction of public works, condemnation, purchasing and procurement, leasing, purchase and sale of property, employment legal matters, public disclosure issues, and tort law. The City Attorney's advice includes methods to avoid civil litigation and otherwise assist or participate in managing the City's exposure to risks.
2. Prepares and reviews ordinances and resolutions, contracts and other documents for legality and acceptability.
3. Assists administration officials and employees to understand the legal roles and duties of their respective offices and interrelationships with others.
4. Prepares legal opinions at the request of the Mayor, City Administrator or the City Council.
5. Provides the Mayor, City Council, and administration a legal perspective and legal advice on various governmental issues.
6. Furnishes legal representation at all City Council business meetings, and at other meetings when requested.
7. Provides the Mayor and City Council with guidance as to Robert's Rules of Orders and related procedural matters relating to City Council meetings.
8. Assists City officials and employees to maintain awareness of ethical standards and appearance of fairness standards, and to avoid potential conflicts of interest and prohibited transactions.
9. Works cooperatively with the municipal prosecutor and special legal counsel retained by the City for special projects.
10. Coordinates with other special legal counsel, as needed, to assure proper management of legal issues and proper coordination and transition of legal issues among special counsel.
11. Performs other legal services and legal tasks, as assigned by the Mayor, City Administrator and/or City Council.
12. Monitors pending and current state and federal legislation and court decisions as appropriate.

**SPECIFICATIONS.**

The Service Provider (City Attorney) attends City Council meetings as requested on the second and fourth Thursdays of each month, from 7:00 p.m. until close. Attendance may be for a portion of or for the entire meeting.

If requested by the Mayor or City Administrator, the City Attorney shall attend City Council public hearings and presentations, which occur every second and fourth Thursday starting at 6:00 p.m. Attendance may be for a portion of or for the entire meeting.

The City Attorney is a member of the City Management Team and may be requested to attend management team meetings, which are scheduled during the business day.

The City Attorney shall maintain regular office hours at a secure, private office location. The City Attorney must be available by phone, cell phone, fax and e-mail.

The City Attorney shall be responsible to provide quarterly reports to the authorized City Representative for the City Attorney contract, concerning the actual and projected expenditures for all cases and work performed by the City Attorney and to cooperate with the administration in providing an appropriate summary of the information to the City Council on a quarterly basis.

**EXHIBIT B**  
**PAYMENT**

**A. FEES**

**KENYON DISEND, PLLC**  
**HOURLY RATE SCHEDULE FOR YEAR 2010**  
**Rates Effective February 1, 2009**

**ATTORNEYS:**

Partners and Senior Attorneys:

Michael R. Kenyon	\$245.00
Bruce L. Disend	\$245.00
Shelley M. Kerslake	\$215.00
Chris D. Bacha	\$215.00
Bob Sterbank	\$215.00
Noel Treat	\$215.00
Sandra S. Meadowcroft	\$210.00
Margaret J. King	\$210.00
Kari Sand	\$200.00

Associate Attorneys:

Amy Jo Pearsall	\$175.00
Renee Walls	\$160.00

**PARALEGALS:**

Margaret C. Starkey	\$100.00
Sheryl A. Loewen	\$ 90.00
Pam M. Odegard	\$ 85.00
Shelly Crossland	\$ 85.00
Mary Eichelberger	\$ 85.00
Terry Cox	\$ 85.00
Kim Obermayer	\$ 85.00
Kathy Swoyer	\$ 85.00

<b>LEGAL INTERNS:</b>	\$100.00
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**B. COSTS**

1. The charges for Service Provider services shall include all overhead and internal charges, including but not limited to administration, secretarial, word processing, computer time, computer based research charges of the data based provider, accounting, office supplies, storage fees, equipment costs, librarian time, routine photocopying and clerical time.
  - a. In addition to the charges for Service Provider services, the City agrees to reimburse the Service Provider for the actual costs incurred by the Service Provider for postage, legal messenger services, and other charges customary to the practice of law.
2. Travel: Mileage shall not be reimbursed to Service Provider. Travel time to and from City Hall shall not be charged for the first two round-trips each calendar month, but shall be charged thereafter. Travel time related to litigation or for travel other than to and from City Hall shall be charged at Service Provider's normal hourly rates.
3. Cell phone expenses (except for long distance calls) and costs to maintain e-mail services shall not be separately charged.
4. Use of legal messengers should be avoided when service can be accomplished through mail or express mail. Overnight delivery charges at cost are subject to reimbursement, unless the charge was necessitated by the Service Provider's inability to perform the services earlier due to scheduling conflicts or demands of other clients.
5. Any transcription made by a court reporter shall be at City expense.

**C. BILLINGS/BUDGETED AMOUNTS.**

1. Except as provided for herein, billings from the City Service Provider that exceed budgeted amounts for legal services are grounds for termination of the contract by the City and the City reserves the right to refuse to make payment for such excess billings.
2. The City shall provide the City Service Provider with an annual, and when necessary, periodic change orders in the form of a letter notice stating the maximum amount of legal services allowable under the contract.
3. The City Service Provider shall cease work on a legal matter, including general services, subject to a budget limit should the billings reach the budget limit for the legal matter. PROVIDED, nothing herein shall be construed to require the City Service Provider to stop work on a legal matter which would cause the City Service Provider to be in breach of the Rules of Professional Conduct or deprive the City Service Provider of compensation for work performed by the City Service Provider to remain in compliance with those rules or create a situation that would materially affect the City's position relative to a case; however, for work performed in excess of budget and pursuant to the preceding sentence, the City reserves the right to challenge the reasonableness and/or necessity of such work.

A. **INCREASES.**

The rates and fee schedule shall remain unchanged through January 31, 2009 after which a one-time rate and fee schedule increase may be authorized by City Council.

E. **METHOD OF PAYMENT.**

1. The Service Provider shall submit a monthly invoice for the compensation after services have been performed. An itemized billing statement in a form approved by the City will be submitted to provide a detailed description of each task performed during the month, the employee requesting the task, the number of hours spent performing such services itemized by Service Provider or other Service Provider employee with the associated billing rate, and any reimbursable costs and expenses incurred in connection with such services.
2. The invoice shall also sort these tasks by the requesting department, and provide a summary of hours and costs for each department and for the total due.
3. The monthly invoice will be accompanied by a Microsoft Excel spreadsheet file that summarizes monthly and year-to-date billings by department. This spreadsheet shall be updated by the Service Provider monthly, and shall include listings for General Services and Special Services project work, sorted by requesting department, showing hours spent performing such services, average cost per hour and total cost per topic / project item.