# RESOLUTION NO. 2014-18

**A Resolution of the Washington Multi-City Business License and Tax Portal Agency Executive Board authorizing the chair to execute a contract for legal services superseding the letter of engagement approved with FL-2014-04.**

**Whereas,** the Washington Multi-City Interlocal Business License and Tax Portal Agency ("Portal Agency") Executive Board has determined that it is in the best interest of the Portal Agency to retain independent legal counsel;

**Whereas**, the Portal Agency conducted a competitive selection process and determined that the firm, Kenyon Disend, PLLC meets the needs of the Portal Agency;

**Now Therefore,**

**BE IT RESOLVED by the Executive Board of the Washington Multi-City Business License and Tax Portal Agency:**

SECTION 1. The Executive Board approves the "Contract for Legal Services" attached to this resolution. The chair of the Executive Board is authorized to execute this agreement.

**ADOPTED this 22nd day of September, 2014.**

ATTEST:

**Board Secretary**

**Washington Multi-City Business License and Tax Portal Agency Executive Board**
Seattle, Washington

**Board Chair**

**CONTRACT FOR PROFESSIONAL SERVICES**

**(Legal Services)**

**Contract No. _____**

This agreement (the "Agreement") is made and entered into this 22nd day of September, 2014, by and between the Washington Multi-Agency Business License and Tax Portal Agency (hereinafter referred to as the "Agency"), a not for profit Washington corporation, and **Kenyon Disend, PLLC** (hereinafter referred to as "Consultant");

**Consultant Information**:

Name: Kenyon Disend, PLLC

Representative: Michael R. Kenyon, Managing Member

Address: 11 Front St. So., Issaquah, WA 98027-3820

Phone: 425/391-4824

E-mail: Mike@KenyonDisend.com

UBI/Federal: 602 010 352

In consideration of the terms, conditions, covenants, and performance of the scope of work contained herein, as attached and made a part hereof, Agency and Consultant mutually agree as follows:

## I. Scope and Schedule of Work.

**A.** Scope of Work. The Consultant agrees to perform those professional services described in Exhibit "A" (Scope of Work) attached hereto and incorporated herein.

**B.** Warranty. Consultant represents and warrants that it and its staff to be assigned to provide services, have the requisite training, skill, and experience necessary to provide the services required by this Agreement and are appropriately accredited and licensed by all applicable agencies and governmental entities. Services provided by Consultant under this Agreement will be performed in a manner consistent with that degree of care and skill ordinarily exercised by members of the same profession currently practicing in similar circumstances.

## II. Compensation and Payment.

**A.** Compensation. The Agency shall pay the Consultant as sole compensation for the services performed under this contract, such sums of money as are arrived at by computing the actual number of hours expended by the Consultant in the performance of

this contract and multiplying such total hours performed by the applicable rate which for 2014 is as set forth in Exhibit "B" (Hourly Rates) attached hereto, plus any additional costs such as travel, copy costs, phone charges, materials and supplies, incidental expenses, or other such costs directly related to service provided by Consultant to the Agency. Such payment shall be the total compensation for all work performed under this Agreement, including but not limited to all labor and reimbursable expenses. Consultant typically adjusts its hourly rates effective the 1st of January of each year. For years 2015 and beyond, Consultant shall provide Agency with its adjusted hourly rates for the upcoming year by October 1 of each year.

**B.** Total Annual Compensation. The total compensation to be paid the Consultant for services provided shall not exceed **$20,000** in any calendar year except upon approval in advance in writing by the Agency.

**C.** Invoices. The Consultant shall be paid monthly, on the basis of invoices submitted. The Consultant shall submit an original written invoice, with necessary and appropriate documentation, in a format comparable to the invoice attached hereto and identified as Exhibit "C" as determined by the Agency, for work completed during the previous month. The invoice shall provide a description of the work performed during the month, the number of hours spent performing such work, and any reimbursable costs and expenses, if authorized herein, incurred in connection with such work.

**D.** Time of Payment. Payment shall be made through the Agency's ordinary payment process, and shall be considered timely if made within *thirty* (30) days of receipt of a properly completed invoice.

**E.** Audit. All payments shall be subject to adjustment for any amounts, upon audit or otherwise, determined to have been improperly invoiced. Notwithstanding the provision of this Section II of the Agreement, if the Agency believes in good faith that some portion of work has not been completed in the manner described in Section I.B., above, Agency may request Consultant to correct work prior to Agency payment for such work. In such event, Agency must clearly and reasonably provide to Consultant an explanation of Agency concern over the work and the remedy that Agency expects from Consultant. Agency may withhold from any payment otherwise due an amount that Agency in good faith believes is under dispute, or if the Consultant does not provide a sufficient remedy consistent with the standard set forth in Section I.B., above, Agency may retain the amount equal to the cost to Agency for otherwise correcting or remedying the work not properly completed.

## III. Term; Termination of Agreement.

**A.** Term. This Agreement shall terminate on the 31st day of December, 2018, unless sooner terminated under subsection "B" below or extended by mutual agreement of the parties, in writing.

**B.** Termination. Either party may terminate this Agreement at any time, with or without cause, by giving *ten* (10) days advance notice to the other party in writing. In the event of termination, all finished and unfinished work prepared by the Consultant pursuant to this Agreement shall be provided to the Agency. In the event the Agency terminates this Agreement prior to completion without cause, the Consultant may complete such analyses and records as may be necessary to place its files in order, and as mutually agreed to by the parties. The Consultant shall be entitled to receive compensation for satisfactory work completed prior to the date of termination, not to exceed the total compensation set forth herein.

**C.** Effect of Termination. Upon the termination or expiration of this Agreement, copies of files containing the written record of the Consultant's work for the Agency shall be delivered to Agency upon request.

**D.** Suspension. The Agency may suspend this Agreement, at its sole discretion, upon *seven* (7) days advance notice to the Consultant. Such notice shall indicate the anticipated period of suspension. Any reimbursement for expenses incurred due to the suspension shall be limited to the Consultant's reasonable expenses, and shall be subject to verification. The Consultant shall resume performance of services under this Agreement without delay when the suspension period ends.

**E.** Force Majeure. Neither party shall be considered to be in default in the performance of this Agreement to the extent that performance is prevented or delayed by any cause which is beyond the reasonable control of the affected party.

## IV. Rights in Data and Publications.

**A.** Works for Hire. Data which is developed pursuant to this Agreement shall be "works for hire" as defined by the U.S. Copyright Act of 1976, as amended, and shall be owned by the Agency. Pursuant to 17 U.S.C. Chapter 2, § 201, the Agency will be deemed the author of the data and will own all copyrights in the data. "Data" shall mean all work product to be provided by the Consultant under this Agreement and shall include, but not be limited to, draft and final reports, documents, pamphlets, advertisements, books, magazines, surveys studies, computer programs and source codes, films, tapes and/or sound reproductions. All work product, including records, files, documents, plans, computer disks, magnetic media or material which may be produced or modified by Consultant while performing services for the Agency shall belong to the Agency, unless otherwise agreed to by the parties. Until at least *twelve* (12) months following final payment, Consultant shall provide Agency prompt access to (and Agency shall have the right to examine, audit and copy) all of Consultant's books, documents, papers and records related to the services provided to the Agency. Consultant cannot copyright the Agency content or templates. The Consultant shall obtain the Agency's written approval prior to the publication of any results of studies and/or services performed or to be performed for any purpose other than for Agency use. This provision shall not apply to any data that is developed independent of this Agreement.

**B.** Copyright Release. If any work infringes upon or misappropriates any patent, copyright, trade secret, trademark or other intellectual property right, Consultant shall either (a) procure for Agency the right to use such Work; or (b) modify Work so that it no longer infringes or misappropriates any such right.

**C.** Non-Disclosure. Consultant shall not, without the prior written consent of Agency, disclose to third parties information that is not otherwise subject to public disclosure unless:

i. The information is known to Consultant prior to receiving the same directly or indirectly in connection with the services provided;
ii. The information is in the public domain at the time of disclosure by Consultant; or
iii. The information is received by Consultant from a third party who does not have an obligation to keep the same confidential.

## V. Contract Administration and Management.

**A.** Contract Manager. The **Program Manager** for the Agency shall have primary responsibility for administering and approving services to be performed by the Consultant, and shall coordinate all communications between the Consultant and the Agency.

**B.** Reports. The Consultant, at such times and in such form as the Agency may require, shall furnish the Agency with periodic reports pertaining to the work and services undertaken pursuant to this Agreement. The Consultant will make available to the Agency all work-related accounts, records and documents for inspection, auditing, or evaluation during normal business hours in order to assess performance, compliance and/or quality assurance under this Agreement, provided that any such inspection, audit, or evaluation shall not unreasonably disrupt Consultant's normal business operation.

**D.** Compliance with Law. The Consultant shall comply with all applicable federal, state and local laws, ordinances, rules and regulations.

**E.** No Assignment. The Consultant shall not assign, subcontract, delegate, or transfer any obligation, interest or claim to or under this Agreement or for any of the compensation due hereunder without the prior written consent of the Agency.

**F.** Inspection. The Work shall be subject, at all times, to inspection by and with approval of Agency, but the making (or failure or delay in making) such inspection or approval shall not relieve Consultant of responsibility for performance of the Work in accordance with this Agreement, notwithstanding Agency's knowledge of defective or non-complying performance, its substantiality or the ease of its discovery. Upon reasonable advance notice from Agency, Consultant shall provide sufficient, safe, and proper facilities and equipment for such inspection and reasonable access to such facilities, provided that such access shall not unreasonably disrupt Consultant's normal business operations.

## VI. Records Retention

The Consultant shall establish and maintain records in accordance with requirements prescribed by the Agency and the State Public Records Act, with respect to all matters covered by this Agreement. Except as otherwise authorized by the Agency, the Consultant shall retain such records for a period of *six* (6) years after receipt of the final payment under this Contract or termination of this Contract.

## VIII. Independent Contractor Status.

**A.** Independent Contractor. The Consultant is and shall be at all times during the term of this Agreement an independent contractor, and not an employee of the Agency. Consultant shall control and direct the performance of the work of Consultant pursuant to this Agreement, subject to Agency oversight.

**B.** Taxes; Licenses; Fees – Release; Withholding. The Consultant acknowledges that it is responsible for the payment of all charges and taxes applicable to the services performed under this Agreement, and the Consultant agrees to comply with all applicable laws regarding the reporting of income, maintenance of insurance and records, and all other requirements and obligations imposed as a result of the Consultant's status as an independent contractor. If the Agency is assessed, liable or responsible in any manner for those charges or taxes, the Consultant agrees to hold the Agency harmless from those costs, including attorney's fees.

In the event the Consultant fails to pay any taxes, assessments, penalties, or fees imposed by any governmental body, including a court of law, that are related to services performed under this Agreement, then the Consultant authorizes the Agency to deduct and withhold or pay over to the appropriate governmental body those unpaid amounts upon demand by the governmental body. Any such payments shall be deducted from the Consultant's total compensation.

**C.** Office Space. The Consultant shall provide at its sole expense all materials, office space, and other necessities to perform its duties under this Agreement, unless otherwise specified in writing.

**D.** Licenses; Permits. The Consultant, at its expense, shall obtain and keep in force any and all necessary licenses and permits.

**E.** No Third-Party Beneficiaries. This Agreement shall be for the sole benefit of the parties hereto, and nothing contained herein shall create a contractual relationship with, or create a cause of action in favor of, a third party against either party hereto.

## IX. Indemnification.

**A.** The Consultant shall indemnify, defend, and hold harmless the Agency, its officials, officers, agents, employees, and volunteers, from any and all claims, demands, damages, lawsuits, liabilities, losses, liens, expenses and costs arising out of the subject matter of this Agreement; provided that this provision shall not apply to the extent that damage or injury results from the fault of the Agency, or its officers, agents, or employees. The term "fault" as used herein shall have the same meaning as set forth in RCW 4.22.015, as that statute may hereafter be amended.

**B.** The Consultant specifically assumes potential liability for actions brought by the Consultant's own employees against the Agency and, solely for the purpose of this indemnification and defense, the Consultant specifically waives any immunity under the state industrial insurance law, Title 51 RCW. THE CONSULTANT RECOGNIZES THAT THIS WAIVER WAS SPECIFICALLY ENTERED INTO PURSUANT TO THE PROVISIONS OF RCW 4.24.115 AND WAS THE SUBJECT OF MUTUAL NEGOTIATION.

**C.** These indemnifications shall survive the termination of this Agreement.

**D.** A waiver or failure by either party to enforce any provision of this Agreement shall not be construed as a continuing waiver of such provisions, nor shall the same constitute a waiver of any other provision of this Agreement.

## X. Insurance.

A. During the course and performance of the services herein specified, Consultant will maintain the following insurance coverage:

1. Workers' Compensation and employer's liability --statutory limits.

2. Commercial General Liability --$1,000,000 single limit combined for personal injury, property damage; $2,000,000 aggregate.

3. Automobile public liability and property damage--$1,000,000 single limit combined for bodily injury and property damage.

4. Professional liability or errors and omissions --$1,000,000 combined single limit for errors and omissions resulting in monetary loss normally covered by professional liability insurance.

B. Certificates of the above insurance coverage shall be delivered, within *thirty* (30) days, to the Agency by Consultant's insurance carrier or agent certifying the above insurance coverage items are in effect and will not be cancelled or materially changed without thirty (30) days' written notice given to the Agency. The commercial general liability policy

shall be on an occurrence basis and shall include an endorsement naming the Agency as an additional insured and stating that coverage under such policy is primary over and non-contributory with any insurance the Agency may maintain.

C. Approval of the insurance by the Agency shall not relieve or decrease the liability of Consultant for any damages arising from Consultant's performance of the Work.

## XI. Non-discrimination.

The Consultant agrees to take all steps necessary to comply with all federal, state, and Agency laws and policies regarding non-discrimination and equal employment opportunities. The Consultant shall not discriminate in any employment action because of race, creed, color, national origin, honorably discharged veteran or military status, marital status, sex, age, or the presence of any sensory, mental or physical handicap, or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification. In the event of non-compliance by the Consultant with any of the non-discrimination provisions of this Agreement, the Agency shall be deemed to have cause to terminate this Agreement, in whole or in part.

## XI. Conflict of Interest.

No officer, employee or agent of the Agency, nor any member of the immediate family of any such officer, employee or agent, shall have any personal financial interest, direct or indirect, in this Agreement, either in fact or in appearance. The Consultant shall comply with all applicable federal, state, and Agency conflict of interest laws, statutes, regulations and policies. The Consultant represents that the Consultant presently has no interest and shall not acquire any interest, direct or indirect, in the program to which this Agreement pertains which would conflict in any manner or degree with the performance of the Consultant's services and obligations hereunder. The Consultant further covenants that, in performance of this Agreement, no person having any such interest shall be employed by Consultant.

## XII. Interpretation and Venue.

**A.** Choice of Law; Venue. Washington law shall govern the interpretation of this Agreement. King County shall be the venue of any arbitration or lawsuit arising out of this Agreement.

**B.** Severability. If one or more of the clauses of this Agreement is found to be unenforceable, illegal or contrary to public policy, the Agreement will remain in full force and effect except for the clauses that are unenforceable, illegal or contrary to public policy.

**C.** Complete Agreement. This Agreement constitutes the complete and final Agreement of the parties, replaces and supersedes all oral and/or written proposals and Contracts heretofore made on the subject matter, and may be modified only by a writing signed by

both parties. All attachments and addendum are incorporated herein by this reference, and shall be a part of this contract instrument.

**XIII. Notice.**

All notices which may be or are requested to be given, pursuant to this Agreement, shall be in writing and deemed given when personally delivered, or when deposited in the United States Mail, postage prepaid, and marked registered or certified mail, return receipt requested, and addressed to the Parties at the following addresses unless otherwise provided for herein:

Agency: FileLocal
Attn: Program Manager
700 Fifth Avenue, Suite 4350
PO Box 94669
Seattle, WA 98124-4669

Consultant: Michael R. Kenyon, Managing Member
11 Front Street So.
Issaquah, WA 98027-3820
Tel: 425/391-4824
Fax: 425/391-7071

Either Party may change the address to which notices shall be sent by notice to the other Party.

**XIV. Miscellaneous.**

A. This Agreement will be considered valid once signed by both parties.

B. Time is of the essence of this Agreement in each and all of its provisions in which performance is a factor.

C. Any remedies provided for under the terms of this Agreement are not intended to be exclusive, but shall be cumulative with all other remedies available to Agency at law or in equity.

D. The titles to the paragraphs of this Agreement are solely for the convenience of the parties and are not an aid in the interpretation of the instrument.

E. It is agreed by and between the parties hereto that in no event shall any official, officer, employee, or agent of Agency be in any way liable or responsible for any covenant or agreement herein contained whether express or implied, nor for any statement of representation made herein or in any connection with this Agreement.

**IN WITNESS WHEREOF** the parties hereto have executed this Agreement as of the day and year first written above.

| **AGENCY** | **KENYON DISEND, PLLC** |
| --- | --- |
| Jamie Carnell | Michael R. Kenyon<br>Managing Member |
| Program Manager | |
| Date Signed _____ | Date Signed:_____ |

# EXHIBIT "A"

# SCOPE OF WORK

Consultant shall provide the following legal services:

Serve as general legal counsel to the Washington Multi-City Business License and Tax Portal Agency (“Portal Agency”).

Chris Bacha will be the primary assigned attorney to the Portal Agency.

# EXHIBIT "B"

## HOURLY RATE SCHEDULE FOR YEAR 2014

ATTORNEYS:

| | |
|---|---|
| <u>Partners and Senior Attorneys</u>: | |
| Michael R. Kenyon | $280.00 |
| Bruce L. Disend | $280.00 |
| Chris D. Bacha | $245.00 |
| Kim Adams Pratt | $245.00 |
| Kari L. Sand | $230.00 |
| John "Jay" P. Long Jr. | $230.00 |
| | |
| <u>Associate Attorneys</u>: | |
| Rachel B. Turpin | $155.00 |
| Danielle M. Evans | $155.00 |
| Ann Marie Soto | $150.00 |

PARALEGALS:

| | |
|---|---|
| Margaret C. Starkey | $115.00 |
| Sheryl A. Loewen | $100.00 |
| Pam M. Odegard | $100.00 |
| Mary A. Swan | $100.00 |
| Terry T. Curran | $100.00 |
| Kathy I. Swoyer | $100.00 |

# EXHIBIT "C"

# FORM OF INVOICE

**This form is intended to illustrate the information the Agency needs to process contract payments. The Agency prefers that Consultants use their standard business invoice forms so long as they include the following information. Consultants who do not have a standard business invoice form may use this form as their invoice. Your cooperation in providing us the information we are requesting will ensure prompt processing of your payments.**

## I HEREBY REQUEST PAYMENT FOR SERVICES:

**AS PER CONTRACT No.:**_____ **AMOUNT DUE:**_____

**I HEREBY CERTIFY THAT THIS BILL IS CORRECT AND JUST AND THAT PAYMENT HAS NOT BEEN RECEIVED. I FURTHER CERTIFY THAT ALL SERVICES UNDER THIS CONTRACT HAVE BEEN PERFORMED.**

**BY:**_____ **DATE SIGNED:**_____

**SIGNATURE:**

**TITLE:**_____

**ORGANIZATION NAME:**_____

**SS No. OR FEDERAL TAX ID No.:**_____

**TELEPHONE NUMBER:**_____

**PLEASE REMIT PAYMENT TO: (**Name & Address of Vendor)

**I attest that these services have been completed as per the contract.**

_____

**Contract Coordinator Signature**