

## AGENDA



Thursday, January 10, 2008

**Law  
RECOMMENDATION FOR COUNCIL ACTION****Item No. 18**

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**Subject:** Approve an amendment to the outside counsel contract with Scott, Douglass & McConnico, LLP, Austin, Texas, in the amount of \$260,000 for legal counsel concerning development at Northcross Mall, including legal services related to the trial and possible appeal of, as well as the handling of other post-trial matters for, cause of action No. D-1-GN-07-001957, Responsible Growth For Northcross, Inc. v. City of Austin, Lincoln Property Company Commercial, Inc., and Lincoln Northcross, LTD.; and cause of action No. D-1-GN-07-002012, Allandale Neighborhood Association v. City of Austin, Lincoln Property Company Commercial, Inc., and Lincoln Northcross, LTD. (concerning site plan approvals by the City) for a total contract amount not to exceed \$684,000.

**Amount and Source of Funding:** Funding is available in the Liability Reserve Fund.

**Prior Council Action:** On February 15, 2007 Council approved an amended contract of \$175,000 for a total contract amount of \$224,000, including initial administrative authority authorization of \$49,000. On August 9, 2007, Council approved an amended contract of \$200,000 for a total contract amount of \$424,000.

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In mid-December 2006, the City Attorney engaged the law firm of Scott, Douglass & McConnico, LLP, to advise the City on certain limited and specific questions related to the site plan filed by Lincoln Properties in connection with the development at Northcross Mall.

On February 15, 2007, the City Council approved an amendment to the initial contract in the amount of \$175,000 bringing the total contract amount to \$224,000. The amendment was for the purpose of addressing new facts and circumstances creating a need for different and additional assistance from outside counsel, including assistance related to the filing of a second site plan by Lincoln Properties, as well as the initiation of negotiations with concerned citizens, Lincoln Properties, and Wal-Mart, concerning potential site plan improvements.

On June 28, 2007, Responsible Growth For Northcross, Inc. filed suit against the City challenging the City's site plan approvals for the site. On July 3, 2007, the Allandale Neighborhood Association also filed suit challenging the City's site plan approvals for the site. On August 9, 2007, Council approved an amendment in the amount of \$200,000 to provide an initial defense of the City in these two lawsuits for a total contract amount of \$424,000. Additional funds in the amount of \$260,000 are now required because discovery was more intensive than the plaintiffs initially indicated, an appeal is possible, and extensive post-trial work will be required to finalize not only findings of fact and conclusions of law for the final judgment, but also written agreements with Lincoln Properties and Wal-Mart finalizing commitments they previously made regarding their development of the site.