

AGENDA



Thursday, July 23, 2009

Law
RECOMMENDATION FOR COUNCIL ACTION

Item No. 44

Subject: Authorize negotiation and execution of an amendment to the legal services agreement with Brown McCarroll, L.L.P., Austin, TX, for legal representation, advice, and counsel concerning securing Austin's long-term water supply, including regulatory matters involving the Colorado River and the Lower Colorado River Authority before the Texas Commission on Environmental Quality, and contractual matters relating to raw water supply, for an increase of \$200,000, with a total contract amount not to exceed \$1,970,000.

Amount and Source of Funding: Funding is available in the Fiscal Year 2008-2009 Operating Budget of Austin Water Utility.

Fiscal Note: There is no unanticipated fiscal impact. A fiscal note is not required.

For More Information: Ross Crow, Assistant City Attorney / 974-2159.

Prior Council Action: On July 19, 2001, Council authorized \$60,000; On May 9, 2002, Council authorized \$100,000; On January 30, 2003, Council authorized \$250,000; On August 26, 2004, Council authorized \$223,000; On June 23, 2005, Council authorized \$295,000; On May 4, 2006, Council authorized \$255,000; On November 16, 2006, Council authorized \$265,000; On July 26, 2007, Council authorized \$195,000.

This amendment increases the amount of legal services contract with Brown McCarroll, L.L.P. for legal representation, advice, and counsel concerning securing Austin's long-term water supply. These legal services have included regulatory matters involving the Colorado River and the Lower Colorado River Authority (LCRA) – primarily negotiations with LCRA over contractual matters relating to raw water supply, and permit applications before the Texas Commission on Environmental Quality (TCEQ). This amendment is for an increase of \$200,000, with a total contract amount not to exceed \$1,970,000.

The City initially contracted with Bracewell & Patterson (“Bracewell”) on June 30, 2000, for an original contract amount of \$40,000. In 2005 Brown McCarroll assumed this contract as part of a transfer of legal counsel from Bracewell to Brown McCarroll. Subsequent increases were authorized by the City Council in successive years, funded by the Austin Water Utility or jointly by the Austin Water Utility and Austin Energy totaling \$1,643,000. In addition, the contract was extended by administrative approval on two separate occasions: November 16, 2001, in the amount of \$43,000; and on January 15, 2003, in the amount of \$44,000. Administrative awards and Council approvals for these two firms for this representation for 2000 through 2009 have totaled \$1,770,000. [

In recent years Brown McCarroll has represented the City in negotiations with LCRA that culminated in two Memoranda of Understanding, a Settlement Agreement and a Supplemental Water Supply Agreement. These agreements resolved long-standing differences between the City and LCRA over each entity's rights to water in the Colorado River.

Brown McCarroll, pursuant to the terms of the Settlement Agreement, is currently working with City and LCRA staff in the preparation of a significant water rights application that will be filed jointly with TCEQ by the City and LCRA seeking an undivided interest in the City of Austin's return flows (treated effluent discharged into the Colorado River from the City's wastewater treatment facilities).

The City will also continue to need legal representation in other TCEQ water rights permits matters affecting the City. The Settlement Agreement provides for the City and LCRA to pursue or withdraw their various water rights applications, and each shall continue as a party to the other's proceedings, and will participate in the hearing process, but only to the extent necessary to ensure that subsequent permit processing does not injure its own rights.

Finally, Brown McCarroll has represented the City in on-going statutorily mandated regional and state water planning processes. The State is currently in the middle of the current Water Planning process, which typically is updated every five years, so significant legal representation in this process for the next fiscal year is anticipated.

The Council is now being requested to authorize the expenditure of an additional \$200,000 funded by the Austin Water Utility. The additional amount will be used to pay the fees and expenses of Brown McCarroll, L.L.P., anticipated through the end of the 2010 fiscal year to continue the representation outlined above. This will bring the total contract amount to \$1,970,000.