



**Outside Counsel  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 5  
AGENDA DATE: Thu 02/10/2005  
PAGE: 1 of 2**

**SUBJECT:** Authorize negotiation and execution of an amendment to the outside counsel contract with BRACEWELL & PATTERSON, L.L.P., Austin, TX, for legal services related to the matter of *The Application of The City of Austin for a Water Certificate of Convenience and Necessity (No. 33562-C and The Application of The City of Austin for a Wastewater Certificate of Convenience and Necessity (No. 33563-C)*, SOAH Docket No. 582-02-3056 for an increase of \$50,000, with a total contract not to exceed \$1,062,000.

**AMOUNT & SOURCE OF FUNDING:** Funding in the amount of \$50,000 is available in the 2004-2005 Approved Operating Budget of Austin Water Utility.

**FISCAL NOTE:** N/A

**REQUESTING Law  
DEPARTMENT:**

**DIRECTOR'S  
AUTHORIZATION:** Marty Terry

**FOR MORE INFORMATION CONTACT:** David Smith, City Attorney / 974-2268; Marty Terry, Assistant City Attorney / 974-2974

**PRIOR COUNCIL ACTION:** Resolution 04/04/02 in the amount of \$225,000; Resolution 08/23/01 in the amount of \$158,000; 10/03/02 Authorization in the amount of \$500,000

**BOARD AND COMMISSION ACTION:** N/A

---

In 2000 Bracewell & Patterson was retained to explore the feasibility of securing a Certificate of Convenience and Necessity (CCN) for water retail service and a CCN for retail wastewater service. The contract for the initial analysis was in the amount of \$10,000. Upon the conclusion of the study, the Council authorized additional funds to proceed with the applications for these certificates before what is now the Texas Commission on Environmental Quality (TCEQ).

The applications for these certificates received thirteen separate protests and were formally docketed for contested hearings before the State Office of Administrative Hearings (SOAH). This complex administrative litigation involved extensive discovery, including numerous depositions and written discovery, as well as the preparation of extensive pre-filed testimony in the several dockets before SOAH.

Over the course of the next year and a half, Bracewell & Patterson, together with City staff, negotiated with the protestants and reached accommodations with each of the protestants in both the water and the wastewater service cases. The dockets included not only the original CCN applications but also applications for Sale, Transfer, and Merger. The last accommodation reached involved a request by Hornsby Bend Utility Company, Inc., for a competing certificate to provide wastewater service in an area located south of the City of Manor, north of the Colorado River, and east of FM 973 within the City's ETJ. That matter was finally concluded to the satisfaction of both parties on October 20, 2003. There has been no increase in attorneys' fees since that time.



**Outside Counsel  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 5  
AGENDA DATE: Thu 02/10/2005  
PAGE: 2 of 2**

Costs for this matter included not only the costs associated with discovery, appearances on pre-hearing matters and testimony preparation but also costs associated with mediation with protestants and the preparation of extensive settlement and real estate transaction documents effectuating the agreements reached with the various protestants in both dockets.

Upon the settlement of the final dispute, the cases were remanded from SOAH to TCEQ. Once the cases were remanded TCEQ began its mapping process for delineating the areas of certification to be granted to the City. This was completed and the Executive Director, on December 1, 2004, approved the City's CCNs and related matters. During the appeal period for this decision, an entity who had not participated in any of the prior proceedings filed a motion to overturn the approval of the wastewater certificate of convenience and necessity. This request for additional attorneys' fees is anticipated to dispose of this belated motion objecting to the wastewater CCN approval.

Council has increased the attorneys' fees in these matters on several occasions during the course of the TCEQ and SOAH proceedings. The amount of the fees prior to this request totaled \$1,012,000. This request will bring the amount to be paid to the firm to \$1,062,000.