



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

**AGENDA ITEM NO.:** 9  
**AGENDA DATE:** Thu 08/12/2004  
**PAGE:** 1 of 1

**SUBJECT:** Authorize negotiation and execution of an amendment to the outside counsel contract with CORNELL, SMITH & MIERL L.L.P, Austin, TX, in *Hector Fabela v City of Austin*, Cause No. 97-01805; in the 345th Judicial District Court of Travis County, Texas, in the amount of \$28,713.58, with a total contract amount not to exceed \$191,713.58.

**AMOUNT & SOURCE OF FUNDING:** Funding in the amount of \$28,713.58 is available in the Fiscal Year 2003-2004 Approved Operating Budget of the Liability Reserve Fund.

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING Law  
DEPARTMENT:**

**DIRECTOR'S  
AUTHORIZATION:** Dana Johnson

**FOR MORE INFORMATION CONTACT:** David Smith, City Attorney / 974-2268; Dana Johnson, Acting Division Chief / 974-2171

**PRIOR COUNCIL ACTION:** Resolution 5/6/99 in the amount of \$46,000; On 2/26/04 Council approved an additional \$40,000.

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

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This amendment increases the amount of the legal services contract with Cornell, Smith & Mierl, L.L.P., for representation in *Hector Fabela v. City of Austin*, Cause No. 97-01805; in the 345<sup>th</sup> Judicial District Court of Travis County, Texas.

The Law Department entered into a contract with Connie Cornell while she was employed with Jenkins & Gilchrist, P.C. on April 3, 1997 for an original amount of \$20,000. Administrative approval of \$19,000 was granted on January 21, 1998, for a total contract amount of 39,000. The City Council passed a resolution on May 6, 1999 in the amount of \$46,000. Administrative approval was granted on May 9, 2002 in the amount of \$20,000, for a total contract amount of \$105,000.

In April 2003, Connie Cornell left Jenkins & Gilchrist, P.C. to establish the firm of Cornell, Smith & Mierl, L.L.P. The existing legal agreement, in the amount of \$105,000, with Jenkins and Gilchrist, P.C. was transferred to Cornell, Smith & Mierl, L.L.P. Administrative approval was granted on July 2, 2003 in the amount of \$18,000, for a total contract amount of \$123,000. The City Council approved an additional \$40,000 on February 26, 2004 for a total contract amount of \$163,000.

This case proceeded to trial April 26, 2004; the jury rendered a verdict in the City's favor. Unanticipated expenses were incurred, and additional payment authority of \$28,713.58 is necessary to pay fees to conclude this case, with a total contract amount not to exceed \$191,713.58.