



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

**AGENDA ITEM NO.: 15
AGENDA DATE: Thu 08/26/2004
PAGE: 1 of 2**

SUBJECT: Authorize negotiation and execution of an amendment to the legal services agreement with **BRACEWELL & PATTERSON, L.L.P.**, Austin, TX, for legal representation, advice, and counsel concerning water rights permit matters (Lower Colorado River Authority [LCRA] Drought Management Plan before the Texas Commission on Environmental Quality [TCEQ]; LCRA application for Colorado River flows and City of Austin return flows before TCEQ; City of Austin bed and banks application before TCEQ; various LCRA Certificates of Adjudication before TCEQ, among others) involving the Colorado River and the LCRA for an increase of \$223,000, with a total contract amount not to exceed \$760,000.

AMOUNT & SOURCE OF FUNDING: Funding is available in the 2003-2004 Approved Operating Budget of the Austin Energy.

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

REQUESTING Law
DEPARTMENT:

**DIRECTOR'S
AUTHORIZATION:** Marty Terry

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

PRIOR COUNCIL ACTION: Resolution 07/19/01 in the amount of \$60,000; Resolution 05/09/02 in the amount of \$100,000; Authorization 01/30/03 in the amount of \$250,000.

BOARD AND COMMISSION ACTION: N/A

This amendment increases the amount of legal services contract with Bracewell & Patterson, L.L.P., for legal representation, advice, and counsel concerning water rights permit matters (Drought Management Plan; surface water return flows, and LCRA Certificate of Adjudication, among others) involving the Colorado River and LCRA for an increase of \$223,000, with a total contract amount not to exceed \$760,000.

The Law Department contracted with this firm on June 30, 2000 for an original contract amount of \$40,000. The City Council passed a resolution on July 19, 2001 in the amount of \$60,000. Administrative approval was granted on November 16, 2001 to increase the contract authority by \$43,000 for a total contract amount of \$143,000. The City Council passed a second resolution on May 9, 2002 in the amount of \$100,000. The original contract amount and each of these amendments were funded by the Austin Water Utility and Austin Energy. The contract was increased by \$44,000 on January 15, 2003 under the department's administrative authority. This amendment was funded by the Austin Water Utility only.

Originally, the firm was retained to explore various options available to the City to protect its water supplies from the Colorado River. Once the options for protecting the City's water supplies were explored, the firm began to represent the City in LCRA's applications and to assist the City with pursuing



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the additional permits necessary to place the City in a strong position regarding its future water needs. The firm represents the City in its "bed and banks" permit application before the TCEQ. The firm also represents the City before TCEQ concerning LCRA's application for a diversion point on Lake Travis, and LCRA's Drought Management Plan application currently pending before TCEQ. This RCA reflects the firm's expanded representation in these crucial permitting matters and reflects the level of expenditures anticipated for the remainder of the fiscal year for initial proceedings in each of these matters if they are fully litigated. The City has been in negotiations with LCRA in an attempt to reach a creative resolution of all outstanding permitting matters. The negotiations continue to be extensive in these matters; the timeframe for completion of negotiations or litigation remains unclear.

On January 30, 2003 the Council authorized an expenditure of an additional \$250,000 which was paid out of the Austin Water Utility only, to pay the fees and expenses of Bracewell & Patterson, L.L.P. This increased the total contract amount to \$537,000.

The Council is now requested to authorize the expenditure of an additional \$250,000, which will result in a total dollar contract amount that is split evenly between the Austin Water Utility and Austin Energy to pay the fees and expenses of Bracewell & Patterson, L.L.P. This will bring the total contract amount to \$537,000. This increase is estimated to cover anticipated costs to the end of March 2005.