

Law
CITY OF AUSTIN

AGENDA
DATE: 4/20/2006

#13

**RECOMMENDATION FOR
COUNCIL ACTION**

Subject: Approve negotiation and execution of an amendment to the outside counsel contract with Scott, Douglas, and McConnico, L.L.P., Austin, TX, for legal representation in connection with City of Austin v. FPL Energy Upton Wind I, L. P., Cause No. GN403274 in the 345th Judicial District Court, Travis County, Texas, in an amount not to exceed \$130,000, for a total contract amount not to exceed \$985,000.

Amount and Source of Funding: Funding in the amount of \$130,000 is available in the fiscal Year 2005-2006 Approved Operating Budget of Austin Energy.

Fiscal Note:

Requesting Department: LAW

For More Information: Andy Perny

Prior Council Action: Council approved the original contract on October 30, 2003 and amended it on December 1, 2005.

Boards and Commission Action:

On October 30, 2003, Council approved an outside counsel contract with Scott, Douglass & McConnico, L.L.P. in an amount not to exceed \$630,000 for legal representation in City of Austin v. FPL Energy Upton Wind I, L.P. On December 1, 2005, Council approved an amendment to the contract in amount of \$225,000, for a total contract amount of \$855,000. The case is currently on appeal after a successive trial resulting in a verdict in favor of the City on all points. The December contract amendment was intended to cover all further fees and expenses through final disposition of appeal in either the current appellate court or Texas Supreme Court, if necessary.

However, the December increase was based upon an erroneous estimate given to the City by outside counsel, which failed to include recently accrued charges. As a result, the request for additional funding made in December was short by approximately \$130,000. Council is therefore requested to approve an additional increase in the contract amount of \$130,000 to pay for fees and expenses through final disposition of appeal.