

CITY OF SAN ANTONIO
City Attorney's Office
Interdepartmental Correspondence

COMMITTEE AGENDA
75
ITEM 1

TO: Mayor and City Council

FROM: Andrew Martin, City Attorney

COPIES TO: Christopher J. Brady, Assistant City Manager, and Malcolm Matthews, Director,
Parks & Recreation Department

SUBJECT: Authorization for Payment of Legal Fees and Expenses in Connection with the
Lease and Development Agreement with Landry's Restaurants, Inc. for the
Tower of the Americas; and to Extend the Negotiation Period

Date: June 24, 2004

SUMMARY AND RECOMMENDATION

This ordinance authorizes execution of a professional services agreement with Bracewell & Patterson, L.L.P. and the payment of fees in an amount not to exceed \$125,000.00 for legal services in connection with the negotiation and drafting of a Lease and Development Agreement for development, operation, and maintenance of the Tower of the Americas by Landry's Restaurants, Inc. This ordinance also extends the 60-day period established by Ordinance No. 98910 to negotiate and execute the Lease and Development Agreement until an acceptable agreement is reached. The goal for completion of the negotiations is October 1, 2004.

Staff recommends approval of this ordinance.

BACKGROUND

The City Council passed Ordinance No. 98910 on March 4, 2004, to authorize negotiation and execution of an agreement with Landry's Restaurants, Inc. ("Landry's") to develop, operate and maintain the Tower of the Americas. Because of the complexity and significance of this transaction, the City Attorney engaged Bracewell & Patterson, L.L.P. as outside counsel to provide necessary legal resources to complete this transaction. Bracewell & Patterson has worked with city staff to prepare a draft Lease and Development Agreement, and has communicated with Landry's representatives to proceed with negotiations on the draft agreement. The City's proposed draft of the contract was provided to Landry's on May 19th. Landry's then notified the City of its desire and intent to engage its own outside counsel. We are confident negotiations towards a signed contract will proceed to completion once we have received Landry's comments to our proposed contract.

When Landry's was selected in March, staff anticipated that contract negotiations would require 60 days. This ordinance authorizes continued negotiations until an acceptable agreement is reached. The delay in completing the contract is attributable to both the City and Landry's obtaining outside legal representation to assist with contract preparation/negotiation.

POLICY ANALYSIS

The firm of Bracewell & Patterson currently represents the City of San Antonio as outside counsel in eminent domain proceedings. The Bracewell & Patterson attorneys we have engaged for this transaction are located in Houston, where Landry's is based. Thomas O. Moore, III, is a partner in the firm and has been designated as lead attorney for this engagement. Mr. Moore and the other Bracewell attorneys working on this transaction are not only experienced in negotiating and drafting complex real estate development and lease agreements, but have previously represented the City of Houston and another party in significant transactions negotiated across the table from Landry's.

FINANCIAL IMPACT

Bracewell & Patterson has provided its estimate that legal fees and expenses in this matter could be up to \$125,000.00, based on their current analysis and understanding of the transaction. Legal fees under this contract are calculated on an hourly basis, and the \$125,000 estimate is not a capped or fixed fee by the firm.

Payment of fees incurred under this engagement will be funded from 2004 Certificates of Obligation. Future City Council approval will be required to authorize payment of any fees or expenses that exceed \$125,000.00.

SUPPLEMENTARY COMMENTS

The required ethics disclosure form is attached.

COORDINATION

This Council action has been coordinated through the City Manager's Office and the Parks and Recreation Department.



Andrew Martin
City Attorney

Approved:



Terry M. Brechtel
City Manager

City of San Antonio Discretionary Contracts Disclosure*

For use of this form, see City of San Antonio Ethics Code, Part D, Sections 1&2

Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Disclosure of Parties, Owners, and Closely Related Persons

For the purpose of assisting the City in the enforcement of provisions contained in the City Charter and the Code of Ethics, an individual or business entity seeking a discretionary contract from the City is required to disclose in connection with a proposal for a discretionary contract:

(1) the identity of any **individual** who would be a party to the discretionary contract:

Not Applicable.

(2) the identity of any **business entity**¹ that would be a party to the discretionary contract:

- (i) Bracewell & Patterson, L.L.P. is the business entity that is the party to the discretionary contract.
- (ii) None.

and the name of:

(A) any individual or business entity that would be a **subcontractor** on the discretionary contract;

None.

and the name of:

(B) any individual or business entity that is known to be a **partner**, or a **parent** or **subsidiary** business entity, of any individual or business entity who would be a party to the discretionary contract;

See attached list of Bracewell & Patterson, L.L.P. partners.

¹ A *business entity* means a sole proprietorship, partnership, firm, corporation, holding company, joint-stock company, receivership, trust, unincorporated association, or any other entity recognized by law.
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- (3) the identity of any lobbyist or public relations firm employed for purposes relating to the discretionary contract being sought by any individual or business entity who would be a party to the discretionary contract.

None.

Political Contributions

Any individual or business entity seeking a discretionary contract from the city must disclose in connection with a proposal for a discretionary contract all political contributions totaling one hundred dollars (\$100) or more within the past twenty-four (24) months made directly or indirectly to any current or former member of City Council, any candidate for City Council, or to any political action committee that contributes to City Council elections, by any individual or business entity whose identity must be disclosed under (1), (2) or (3) above. Indirect contributions by an individual include, but are not limited to, contributions made by the individual's spouse, whether statutory or common-law. Indirect contributions by an entity include, but are not limited to, contributions made through the officers, owners, attorneys, or registered lobbyists of the entity.

To Whom Made:	Amount:	Date of Contribution:
Art Hall	\$ 100.00	All within the last 24 months
Patti Radle	\$1,200.00	
Roger Perez	\$ 500.00	
Roger Flores, Jr.	\$ 250.00	

Disclosures in Proposals

Any individual or business entity seeking a discretionary contract with the city shall disclose any known facts which, reasonably understood, raise a question² as to whether any city official or employee would violate Section 1 of Part B, Improper Economic Benefit, by participating in official action relating to the discretionary contract.

² For purposes of this rule, facts are "reasonably understood" to "raise a question" about the appropriateness of official action if a disinterested person would conclude that the facts, if true, require recusal or require careful consideration of whether or not recusal is required.

City of San Antonio
Discretionary Contracts Disclosure*

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Attach additional sheets if space provided is not sufficient.

State "Not Applicable" for questions that do not apply.

** This form is required to be supplemented in the event there is any change in the information under (1), (2), or (3) below, before the discretionary contract is the subject of council action, and no later than five (5) business days after any change about which information is required to be filed.*

Signature: 	Title: Partner in Charge – San Antonio Office Company: Bracewell & Patterson L.L.P.	Date: 
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J. Tullos Wells

HOUSTON

Aksamit, Roger D.
Adis, Jay R.
Anderson, William S.
Ballard Jr., Glenn A.
Barr Jr., John H.
Behke, Lance W.
Blanco, Ileana M.
Bland, John L.
Bopp, Gregory M.
Borrecia, Christopher P.
Bradley, James E.
Brantley, John R.
Brenner, Margaret T.
Brown, Heather L.
Brown, Lisa A.
Carter, Lesa L.
Clark, Robert L.
Connelly, M. Coy
Crain, Stephen B.
Dade, W. C.
Daniels, Douglas A.
Dumesnil, Bryan S.
Edison, Andrew M.
Evans, Mark C.
Frels, Kelly
Gilbert, Christopher B.
Giraud III, Charles W.
Clover, Randall K.
Gonsoulin Jr., Dewey J.
Gonzalez, George Y.
Gunter III, J. C.
Gutermuth, William D.
Halevy, Amy K.
Harris, Warren W.
Hayes, William J.
Herring, Laura B.
Hester, Tracy D.
Hodgins, David B.
Hollingsworth, Jarvis V.
Homer, Jeffrey J.
Horton, Janet L.
Hull, Robert J.
Jacobs, Jennifer W.
Jocz, Bruce R.
Kaim, Henry J.
Keneally, Walter S.
Kimball Jr., Albert B.
Kneese, V. S.
Kuhn, Michael

Kurtz, Marcy E.
Locascio, David W.
Long, Geoffrey A.
Luédke IV, William T.
Manford III, Thomas D.
McAnelly, W. J.
McBride, Ralph D.
McDowell, David T.
Miles, Robin J.
Moore III, Thomas O.
Orloff, Gary W.
Oxford, Patrick C.
Ozdogan, Mary C.
Parsons, Katherine D.
Patman, Carrin F.
Rafte, G. A.
Renfro, Tracie J.
Rhebergen, Constance G.
Rice, Richard C.
Roffwarg, Aaron P.
Sampson Jr., Phillip L.
Sanders, Scott C.
Schneider-Vogel, Merri
Scott, Ronald
Sharp, Phillip D.
Sholeen, Eden P.
Spalding, Andrew F.
Stephens, Robert G.
Stephenson, Phyllis P.
Still Jr., Charles H.
Symonds, Margaret B.
Temple, Tracy C.
Thompson Jr., Clark C.
Thompson III, J. D.
Tobor, Ben D.
Tomlinson, Thomas M.
Trautner, P. Kevin
Vance, Carol Stoner
Vest, Jr., G. W.
Visage, Tony L.
Wege, Mark W.
Whittle, Jeffrey S.
Wilde, Carlton
Wilde, William Key
Wilkins, Timothy A.
Witschey, Jr., R. D.
Wood III, William A.

AUSTIN

Adkins, Thomas W.
Benesh, W.S.
Ford, Joseph Moody
Fox, Paul W.
Gourley, Lacey L.

Groten, Eric
Ramirez, Kenneth R.
Ricketts, Philip F.
Taylor, Andrew M.
Watson, Robert A.

CORPUS CHRISTI

Hegland, Roberta J.
McHugh, Colleen

Nichols, Robert S.
Vicknair, Audrey Mullert

DALLAS/FORT WORTH

Boone, Gayle A.
Brown, Sanford M.
Davis, Janice Z.
Dinnin, Michael L.
Kyle, Alfred G.
Millard Jr., William H.
Rentzel, Christopher H.

Rossi, Lynn
Scott, Lynn R.
Stricklin, Samuel M.
Tankersley, Michael W.
Whitaker, Elizabeth D.
Williams Jr., Lon R.
Wisk, Allan C.

SAN ANTONIO

Bannwolf, Timothy H.
Barrera, Mario A.
Barrera, Ruben R.
Byrd, Leslie S.
Danysh, Richard C.
García, Victoria M.
Harris, J. J.

Johnson, Russell S.
Jones, Mark A.
Kizziar Jr., James H.
Ruttenberg, Frank Z.
Smith, Annalyn G.
Wells, J. Tullos.

WASHINGTON, D.C.

Anikeeff, Anthony H.
Bethune, Edwin R.
Brack, William T.
Chapman, James Louis
Cope, John R.
Ewing, Kevin A.
Foote, George M.
Godley, Gene E.
Hogwood, Stephen F.
Horn, Richard D.
Israel, Benjamin L.
Krachman, Albert B.
Lister, Penelope M.
Nelson, Nancy J.

Nido, Luis M.
O'Connor, Nancy M.
Pate, Michael L.
Racicot, Marc F.
Rich, Randall S.
Segal, Scott H.
Settanni, Andrea M.
Shoneman, Charles H.
Watkiss, Jeffrey D.
Williams, George H.
Wodka, Nancy A.

NORTHERN VIRGINIA

Decker, R. G.
Dulany, T. P.
Petersen, John C.

Rommel, Kurt C.
Stauffer Jr., William L.

KAZAAKHSTAN

Couch, John A.
Marston, Edgar J.

Vojack, Gregory

LONDON

Hunt, Martin J.